

New Edition

Both Versions
of the
Treaty of
Waitangi

A restorative
interpretation

Bruce Mason

BOTH VERSIONS OF THE TREATY OF WAITANGI
A RESTORATIVE INTERPRETATION

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Waitangi

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Contents

Preface	1
Treaty structure	2
Treaty interpretation	5
About the English version	7
A cautionary note about historians	11
English Text	13
Māori Text	19
Kawharu consequences	31
The Tribunal and sovereignty	33
Invitation to Waitangi	37
Signing of the Treaty of Waitangi	39
Meaning of Treaty expanded	53
How the Tribunal interprets the Treaty	55
Partnership and co-governance	59
What the Treaty means	63
Inescapable conclusions	65
<i>Endnotes</i>	67

Preface

This is a radical new look at the Treaty of Waitangi. It is radical because it departs from deference to historical narrative to provide meaning to the Treaty. Recorded history has the role in establishing the setting for past events, however not for unravelling the meaning of the Treaty.

The 1840 Treaty was an agreement between the British Crown and Māori chiefs to establish a settled form of government over the archipelago of islands known as New Zealand / Nu Tirani. Since 1814 there was a resident missionary presence. They had a profound effect through the introduction of literacy, thereby Christianity. They were also peace-makers among the tribes. The Treaty was intended to protect both the interests of Māori, and British subjects who were settling through unsanctioned private initiatives.

The Treaty was preceded by the 1835 *Declaration of Independence by a Confederation of the United Tribes of New Zealand* following several Māori requests seeking British protection from lawless traders, whalers and sealers, with constant apprehension about French invasion. The Crown recognised the Declaration but was reluctant to become more involved other than the appointment, as a holding action, of a British Resident. Without standing or assistance James Busby became a hapless 'man-of-war-without-guns'. Busby however instigated the Confederation. This was with the intention of governance of Māori by Māori. The Confederation agreed to convene annually but failed to do so.

Inter-tribal warfare continued apace. No one, Māori or settler, was safe. French settlement on Banks Peninsula and ill-founded settlement by an out of control New Zealand Company, forced the hand of Britain. This was the genesis for the Treaty.

Generations of historians have published enormous tomes about the Treaty. Almost without exception they engage in presentism, postulating meaning within the present rather than placing themselves back in 1840. And, as that body of work grows, there has been increasing reliance on the work of others, and acceptance of received-wisdom, rather than confining attention to relevant primary sources.

This publication's new approach is also conservative. The means to answer the question: What does the Treaty mean? has long been available but overlooked. Applying interpretation as already established within the law provides an answer. This is on a whole-Treaty basis — all of it, not just the parts that reinforce prior perceptions of what the Treaty *should* mean. The latter is what the Waitangi Tribunal have done since it was given the role of exclusive Treaty interpreter.

This work is predicated on understanding the full Treaty within its 1840s' context and what was recorded at that time — and not in retrospect. It largely excludes post-Treaty interpretation and commentary, of which there is plenty. I have studied this for years and concluded that there is no definitive answer to be found to the question: What does the Treaty mean?

As much as possible external sources are ignored, sticking to legal methodology accompanied by commentary. I knew from the outset that what is now commonly attributed to 'taonga' is wildly astray — in 1820 'taonga' was defined as 'property procured by the spear'. However the rest of my findings were a revelation, unknown until this work was well advanced. This cuts across many lifetimes of misplaced historical endeavour.

This short, simple agreement between the British Crown and Māori proved relatively straightforward to understand. After all, the texts of the Treaty are capable of speaking for themselves.

Treaty Structure

English Text ¹

Māori Text ²

Preamble	English Summary Colour Key [Mason]	Preamble
<p>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 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 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.</p>	<p>Sets out the purposes and reasons for the Treaty, the means of obtaining a Treaty, with an invitation to concur with its articles and conditions</p>	<p>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 Māori o Nu Tirani-kai wakaaetia e nga Rangatira Māori te kāwanatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motuna te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.</p> <p>Na ko te Kuini e hiahia ana kia wakaritea te kāwanatanga kia kua ai nga kino e puta mai ki te tangata Māori ki te Pakeha e noho ture kore ana.</p> <p>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 aiane, 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.</p>
<p>Article the First</p>		<p>Article the First</p>
<p>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 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.</p>	<p>Chiefs cede Sovereignty to the Crown</p>	<p>Ko te Tuatahi</p> <p>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 kāwanatanga katoa o o ratou wenua</p>

Article the Second	English Summary [Mason]	Article the Second
<p>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.</p>	<p>Exclusive possession of property <i>but</i> subject to right of Preemption to Crown</p>	<p>Ko te Tuarua</p> <p>Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu-ki 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 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.</p>
Article the Third		Article the Third
<p>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.</p> <p>(Signed) William Hobson Lieutenant Governor</p>	<p><i>In consideration ...</i> extends Royal protection, rights and privileges of British Subjects to Natives</p>	<p>Ko te Tuatoru</p> <p>Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te kawanatanga o te Kuini-Ka tiakina e te Kuini o Ingarani nga tangata Māori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.</p> <p>(Signed) WILLIAM HOBSON, Consul and Lieutenant-Governor.</p>
Affirmation		Affirmation
<p>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 being 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 dates respectively specified.</p> <p>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.]</p>	<p>Chiefs enter into the Treaty provisions in the full spirit and meaning thereof</p>	<p>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.</p> <p>Ko nga Rangatira o te wakaminenga.</p>

Treaty Interpretation

There are similarities but also differences between internationally recognised treaties and New Zealand's domestic laws. There are differing rules applying to their interpretation. The Treaty of Waitangi does not meet all the requirements to qualify as a treaty under the *Vienna Convention on the Law of Treaties* – the international agreement that regulates treaties between states.

New Zealand in 1840 was not a coherent nation state capable of entering into a collective treaty with Britain. Doubts over the legitimacy of dealing with disparate tribes are expressed in the First Article – referring to the powers – ‘the Chiefs respectively exercise or possess, or may be supposed to possess over their respective Territories’. The Treaty was a device to deter foreign intervention and the means of extinguishing the limited extent of Māori sovereignty acknowledged by the *Declaration of Independence*. The Treaty was supplemented by proclamations of sovereignty in accordance with international custom. The Treaty negated the Declaration and non-operative Confederation.

The Treaty was long regarded in New Zealand as “a simple nullity”.³ It could only obtain legal force if incorporated into municipal (domestic) law. The *Waitangi Day Act 1960* reproduced an English version, but not in Māori. All this achieved was a declaration that the 6th February would become a public holiday. Inclusion of the Treaty in this Act had no other effect. That changed with the passage of the *Treaty of Waitangi Act 1975*. The Waitangi Tribunal, newly created under the Act, was charged with interpreting the meaning and effect of the Treaty from the scheduling of an English and a Māori text. The Tribunal's jurisdiction was then limited to what the Crown was doing currently or proposed to do. This changed with amendment in 1985 when jurisdiction was extended back to 1840.

General principles of interpretation

There are standards to be met in interpreting Acts of Parliament. The replacement to a long succession of *Acts Interpretation Acts* is the *Legislation Act 2019*. The methodology of section 10, subsection (1) in particular, is the focus of this work. The Crown is bound by this Act.

Unlike the Courts, the powers of the Waitangi Tribunal are determined by Parliament. It exists at the discretion, and, as a functionary of the Crown, reporting to a Minister of the Crown. The Tribunal needs to be bound by the rules of the *Legislation Act*, or equivalent rules, to properly determine the meaning of the Treaty.

Legislation Act 2019 Section 10

- (1) **The meaning of legislation must be ascertained from its text and in the light of its purpose and its context**
- (2) Subsection (1) applies whether or not the legislation's purpose is stated in the legislation.
- (3) The text of legislation includes the indications provided in the legislation.
- (4) Examples of those indications are preambles, a table of contents, headings, diagrams, graphics, examples and explanatory material, and the organisation and format of the legislation.

Application: “The meaning of legislation *must* be ascertained from its text”... **all of the text** ... “and in light of its purpose”...**the purposes expressed in the Treaty**, (and, if uncertain, from applicable extrinsic sources) ...“and its context” ... **including the reasons for the purposes, and the meaning of words at the time of the Treaty.**

The Treaty is a very simple document. Anyone capable of conducting their daily affairs should be able to comprehend its main provisions – if the whole document is considered.

No one would reasonably expect to get away with being rewarded with replacement value for their written-off vehicle if they had not taken any notice of conditions, such as not committing fraud, or paying the premium. Most read their policies so they see what they get, and what they do not get, for their money. *Basic comprehension skills are universals needed in a literate world. But regrettably, in practice, not for the Treaty!*

Reading the Treaty's words and phrases in isolation from other provisions is the way the Waitangi Tribunal, and most others' with an opinion, have operated.

At the highest level the Treaty has been distilled-down to “*being the essence of New Zealand*”⁴. After making this statement, the then Prime Minister admitted she did not know what is in the Articles of the Treaty⁵. Her successor has also displayed (apparent) ignorance of the content⁵. For the Government it was the ‘spirit’, ‘principles’, and undefined ‘obligations’⁶ that were projected. But these are empty boxes begging to be filled by whoever is wielding power on the day – they are capable of meaning anything. This is what has happened and is what is happening.

This work is a back-to-basics factual interpretation of the Treaty, applying methodology consistent with the Legislation Act 2019.

A note on dictionaries

It cannot be taken for granted that modern dictionary editions, in any language, reveal the historic context that the *Legislation Act* requires. All languages reflect evolving cultures over time. To respect the 1840 context of the Treaty in English (*Johnson, Richardson and Oxford English*) and Māori (primarily *Williams*), dictionary definitions are largely confined to as close to 1840 as possible. Any later definitions are included only to reveal consistency or evolution of meaning.

Dictionaries record the ordinary meaning of words. A rule for compilers is to only include words that are in general use, have widely agreed-upon meaning, and have been around for a while. As meaning changes, it is the role of subsequent editions to record these. Dictionaries close to 1840 provide the only reliable time-contextual references that are available for translating the Treaty texts.

Dictionaries cited

Kendall. 1820. *A Grammar and Vocabulary of the Language of New Zealand*. CMS. London
 Johnson. 1822. *Dictionary of the English Language*. Volume One. London
 Richardson. 1839. *A New Dictionary of the English Language*. William Pickering. London
Oxford English. 1893, 1897, 1901, 1908, 1909, 1919
 Kawharu T. S. 1984. *Concise Māori Dictionary*. Reed.

Williams Dictionaries:

First edition, 1844. William Williams, B.A., Paihia
 Second edition, 1852. William Williams, D.C.L., London
 Third edition, 1871. William Leonard Williams, B.A., London
 Fourth edition, 1892. William Leonard Williams, B.A., Auckland
 Fifth edition, 1917. Herbert William Williams, M.A., Wellington
 Sixth edition, 1957. Wellington
 Seventh edition, 1971. Wellington

1844-1917 Williams' dictionaries are by *relatives* of Henry Williams, Treaty translator.

About the English version

Only 39 Chiefs signed what purports to be the English 'version', whereas over 500 signed copies of the Māori language document. All signings subsequent to Waitangi were affirmations of what was agreed at Waitangi, not separate treaties — hence the 'Treaty of Waitangi'.

The English 'version' also purports to be what was agreed to at Waitangi:

“Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty”.

However, it is well established that there was no signing of an English language document at Waitangi. This falsehood was enacted into law by the Treaty of Waitangi Act 1975.

All drafting of the Treaty was in English over a few days, culminating in Governor William Hobson delivering a final draft to translators Henry Williams and son Edward late on the 4th February. It was the Williams' overnight translation into Māori, with one substitution at Busby's suggestion, of 'wakaminenga' for 'huihuinga', that was read out to the assembled chiefs on 5th February.⁷

It was also recorded that, in addition to the Māori text, the English *text* from which the Māori translation was made was read out. However, this *document* went missing from the public record shortly afterwards (note the distinction between *text* and *document*).

The translation into Māori on paper, as presented on 5th February, was reproduced on a more durable parchment overnight for the next day's proceedings. The scribe, Rev. Richard Taylor, 'kept the original draft for my pains'. It subsequently disappeared. There is a suggestion that some wording changed during this reproduction. The new Māori text was read out on 6th February. If there was a substantive difference from the first translation, there is no record of anyone raising this as an issue.

The question arises whether the Māori language Treaty is a translation of what now purports to be the official English 'version'. Evidence indicates the two texts are not translations of either:

- 1) As can be seen on pages 2-3, the English 'version' is significantly longer than the Māori text. The Preamble is written in a 'royal style'. This is not reflected by the Māori Text.
- 2) Article Two covers a wider range of property than the Māori text in which equivalents of *Estates*, *Forests* and *Fisheries* are absent.

There is no credible evidence, despite dismissals of Williams senior's competence by latter-day commentators, that Williams mistranslated (even deliberately) the final English draft they were provided with. Apparently, it has not occurred to critics that Williams may not have been translating from what is now regarded as the official English text.

The most probable final Treaty draft (or copy, back-translation précis or whatever) was rediscovered in 1989 and lodged in the National Archives in 1992. This is a handwritten text in English containing full Treaty provisions. It was on a particular water-marked paper known to be in use by one of the participants in the events at Waitangi. What is more, it was dated '4th Feb 1840'. Unlike the now preferred official version, the '4th Feb' document has no provision for estates, forests and fisheries. The handwriting has been identified as that of James Busby,⁸ out-going British Resident and then voluntary assistant to Hobson.

Press coverage at the time of rediscovery posited it as *possibly* the missing draft Treaty. This should have been acclaimed with national fanfare. Instead the Minister of Internal Affairs expressed his department's "irritation that the news of the find had been made public"⁹. At that time, Government was finalising the *Sealord fisheries deal* with Māori. That Minister's response reflects successive governments' disinterest.

Others have contributed to the lack of public awareness. Treaty authority Claudia Orange was reported as saying that despite the '4th Feb' version making no mention of fisheries and forests, "the discrepancy [with the Māori text] is certainly unimportant". Dr Orange "warned people against getting too excited about this especially in the political sense."¹⁰

The question as to whether the 4th Feb document is THE final draft used for translation appears more a matter of logical semantics and supposition than substance.

Dr Phil Parkinson, forensic bibliographer, archivist and then Librarian at the Alexander Turnbull Library, advised Archives NZ in 2004 that:¹¹

"I do conclude that the [Littlewood] document is in Busby's handwriting. However I have consistently stated that in my opinion the document is NOT a 'copy of the Treaty', but **rather a précis, possibly** drawn up for Hobson to read out to the assembled spectators, on 5 February 1840. (This would be consistent with the date of 4 February on the document, *if* he wrote the précis from memory on the day before the meeting on 5 February. The alternative *suggestion*, if the **smudged '4'** is read as a '6', is that the Littlewood document is a **back-translation** (from Colenso's printed text in Maori into a MS text in English) and made by Busby after 17 February, the date when the printing [of 200 Maori text sheets] occurred]...The Busby/Littlewood *text* was copied by James Clendon [US Consul] for his despatch #6, sent in April 1840, and there is evidence in Clendon's papers of his unsuccessful efforts to obtain an official authenticated copy of the Treaty *text* for despatch to the USA. **The text that Clendon did send matches that in the Littlewood Document**, apart from the **ambiguous date**, and was *probably copied* from that MS. The date is of no significance, since the date on the printed 'treaty' is 6 February, that of the first signing, and Clendon gave the date correctly in his despatch #6. Busby's holograph date (read as either 4 or 6 February) *may* simply be a *lapsus calami*" [Mason emphasis].

The 4th Feb is of every significance since this determines whether it is a *draft* rather than a consequent document. The view that it is "NOT **a copy of the Treaty**" amounts to a straw man. It has been referred to by some as "the Littlewood *Treaty*" in the same breadth as "the final draft"; a 'lapse into inexactude' rather than intent. Public debate has been focused on whether it was **the final draft of the Treaty** as evidenced by press coverage at the time of rediscovery.



Smudge or
lapsus calami?

It is incomprehensible, having travelled to the 'other-end-of-the-Earth' on his most important mission, that Hobson would have presented to Henry Williams a '*ponderous*'* final draft by various officials, rather than a clear and concise statement of what the Crown wanted translated (like the 4th Feb document). Parkinson proffers an editorial role for Williams, however Williams only claimed to be translator. Parkinson: "Henry provided an apt and appropriate translation from the rather *ponderous** lucubrations of the officials into a contemporary Maori idiom which the chiefs could comprehend. He did it well and with that specific intent".¹²

The above proposition is that *deletion*, allegedly by Williams, of estates, forests and fisheries "does not affect the sense in the slightest because "other properties" is *inclusive* of "Estates Forests [and] Fisheries".¹³

In the possession-context of Article Two 'other properties' *have confined meaning* dissimilar to estates and forests [refer pp 15,16]. Additionally 'fisheries' are *places* where fish are procured, *not things* able to be possessed [p 16]. "*Lands and Estates Forests Fisheries and other properties*" is only in part reflected by the Maori text: "*o ratou wenua o ratou*" **kainga me o ratou taonga katoa**", unlike the Littlewood text of "**lands, dwellings and all their property**"

The text that Clendon sent to the USA *does* match that of the Littlewood Document. *This text* was read out on the 5th February. This was an oral presentation, like that of the Māori text, and of no less significance. *Despite over twenty years of professional dismissal of its significance, none have been able to evidentially explain its existence.* Too many distinguished and entrenched reputations are at stake to risk thorough examination.

Call the 4th Feb document what you like, but the text within is what was presented on the 5th February as 'THE ENGLISH-equivalent-TREATY' *

[* It would need to be signed by both parties to qualify as 'Treaty']

Her Majesty Victoria Queen of England
in his gracious consideration for the chiefs and
people of New Zealand, and his desire to
preserve to them their Land and to main-
tain peace and order amongst them,
has been pleased to appoint an officer to
treat with them for the cession of the
Sovereignty of ~~the~~ ~~islands~~ and of the
Islands adjacent to the Queen, Seeing
that 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 Sir 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 the United Tribes of
New Zealand, and the other chiefs to
agree to the following Articles -

Articles 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

The entire Sovereignty of their Country.

Article Second

The Queen of England confirms and guarantees to the Chiefs & 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 and the other Chiefs grant to her Majesty the Queen the exclusive right of purchasing such land as the proprietors thereof may be disposed to sell at such prices as shall be agreed upon between them and the persons appointed by the Queen to purchase from them.

Article Third

In return for the cession of the Sovereignty 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
Governor General

Now we the chiefs of the Confederation of the United Tribes of New Zealand being assembled at Waitangi, and we the other chiefs of New Zealand having understood the meaning of these articles, accept of them and agree to them all. In witness whereof our names or marks are affixed. Done at Waitangi on the 6th Feb 1840.

A cautionary note about historians

The history profession has been prolific in providing insights into nineteenth-century New Zealand. Libraries must be struggling to find shelf-space for the massive tomes and academic opinion purporting to reveal ‘*the true meaning of the Treaty*’.

The Treaty is seen in fragmented parts, as separate, independent entities. Either Articles are isolated from one another, or words are picked out of context, even within the same sentence, let alone in relation to the rest of the Treaty. For most legal practitioners it appears they have forgotten basic principles of *legal interpretation* from their first-year studies. There is also an erroneous assumption that today’s English meaning is unchanged from the 1840s.

Advocates of Māori nationalism, and some independent professionals, have become partisan. As in politics, omission of that which contradicts is a tempting practice. Caution is advisable about some supposedly authoritative modern contributions.¹⁵ Discovery of the past is a fascinating field to be immersed in — the results are widely appreciated. However there is no such beast as ‘complete history’. New historic sources are constantly appearing, especially since digitalisation. These cause new takes on the Treaty and its background — the process is fascinating but never-ending.

“The past is composed of an infinite number of events. Historians have to select a few. The events they select, and the stories they tell with those events, to some extent reflect their personal beliefs and experiences. That’s why history is always partly subjective as well as partly objective, and why there is no final, single historical narrative.”¹⁷

The most comprehensive history, is reliable only due to the objectiveness of the compiler, the timing and completeness of citation. Cultural influences are also at play.

“All history, it is sometimes said, is political, dependent always on perspective. For Māori, one can take the argument further. Accounts of others outside the kin group are irrelevant, because historical accuracy is secondary to maintaining tribal prestige. Objectivity is not the issue. Māori readers also tend to look past the narrative and concentrate on the relationships between protagonists. This is an interesting aspect of how Māori view the past.”¹⁸

Dame Claudia Orange has been acclaimed as “one of New Zealand’s most distinguished historians”. In 2021 she received the *Prime Minister’s Award for Literary Achievement in Non-fiction*.¹⁹ Dame Claudia has had perhaps the major influence on modern public perceptions about the Treaty. However, legal scholar Richard Dawson opines that Dame Claudia’s history:

“...lacks the historical sense...she looks for the causation of human activity in preceding events rather than placing herself in the position of the participants.”²⁰

Looking for causation of human affairs in preceding events, rather than focusing on *ultimate decisions*, does not necessarily culminate in predictable results. One only needs to look at the machinations of government, even within a time-span of days, to witness swings in position and contradiction. These can be the result of error, new actors on the scene, political manoeuvre, or external events — often unpredictable and beyond control. Inconsistency is normal for governments everywhere. This makes both present-day and historical sense. Conversely, subsequent events, including those Treaty-related, can also be unreliable markers of what transpired previously. Later actions by governments and tribes, in compliance or defiance of the Treaty, do not change its 1840s meaning.

For the purpose of *determining the meaning of the Treaty*, reliance on historic sources extrinsic to the Treaty texts must be limited to the records of proceedings at the time of presentation to the chiefs, including the invitation to meet Hobson. What transpired before the Treaty, including Colonial Office instructions to the New South Wales Governor and Hobson, *matters nought*. It is the *final content of the Treaty* (flawed as some may suggest) and what was presented at Waitangi, that determined whether chiefs accepted or rejected it, not what the Colonial Office or any other party intended.

Documentation of historic events cannot reliably provide meaning for the Treaty.
Instead structured interpretation is required

This is provided by the *purposive and contextual approach* of the *Legislation Act*. Without such an approach, the relationships within and between articles become obscured, indeed ignored. This has been the universal flaw by just about every Treaty discourse to date. The absence of 1840s' context is another fatal flaw.

However, history scholarship remains essential to enable the Waitangi Tribunal to investigate breach-of-Treaty claims. The historians' role in this capacity should be to present a full evidential record, consistent and inconsistent, while keeping clear of judgment. It is the role of the Tribunal to make recommendations to Government *based on this evidence* and for Government to decide outcomes. Tribunal and Government performance is another matter entirely.

Governments have become hung-up on textural differences between the versions on the assumption that Treaty meaning is uncertain and irreconcilable

On this basis Treaty 'principles', 'spirits', 'perspectives' and 'living documents,' viewed through 'frames and lenses,' arose

The meaning of the Treaty has gone completely off the rails since

There is no need for invention

The Treaty is capable of speaking for itself

English Text

The Preamble provides the reference point for the Treaty. The Articles that follow must be assessed against the **purposes** to be found in the Preamble. The **reasons** may assist in determining these purposes. **Actions** and **invitations** in the Treaty and **key words** highlighted.

Preamble

“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 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.**”

The **purposes** are three-fold (qualification and inference italicised)

- to protect their (chiefs, etc.) *just Rights and Property* and to secure to them the enjoyment of peace and good order.
- the recognition of Her Majesty’s Sovereign (*absolute*) authority over the whole or any part of those islands.
- to establish a settled form of Civil Government.

Article One

“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 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”.

Step 1. Determine meaning

Key words and phrases

Sovereign authority

Johnson 1822 p565:

Dominion. n.s. Sovereign authority; unlimited power.

Richardson 1839 p663:

Reign, v.s. To reign is—to rule or direct, to govern; to have, to exercise supreme or sovereign power or authority; (usually the power of a king.)

Richardson 1839 p740:

SOVEREIGN, ad. s. Being above all other; most powerful. Most able, most efficacious chief, principal, predominant.

Cede

Johnson 1822 [None]

Richardson 1839 p117:

CEDE, v. To go away from, to quit or foresake, to yield or give up, to resign.

Oxford English 1893 p208:

1. inter. To give away, give place, yield to.

2. To cede, give up, surrender.

3. trans. to give up; to yield, surrender: esp. to give up a portion of territory.

Civil

Oxford English 1893 p446:

2. Of or pertaining to the whole body or community of citizens; pertaining to the organisation and internal affairs of the body politic, or state.

14. Distinguished from military

Government

Johnson 1822 p830:

n.s. 1. Form of community with respect to the dispossession of the supreme authority. “*No government can do any act to limit itself: the supreme legislative power cannot make itself not to be absolute*”. Leslie.

Step 2. Meaning vs purposes

- to protect their (chiefs, etc.) just Rights and Property and to secure to them the enjoyment of peace and good order.
- the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands.

purposes reasons actions invitations key words

Conclusions

Article One is in accord with all the purposes, as full sovereignty is required to achieve them (see Hobson below). Article One is an unambiguous ceding to the Crown “absolutely and without reservation all the rights and powers of Sovereignty.”

As Hobson explained to the assembled chiefs on 5th February 1840,²⁰ the protection they sought could *only* be possible with the Crown obtaining full sovereignty. Peace and good order for *both* Māori and settlers could *only* result from a settled form of civil government, and passing of laws applicable to *both* Māori and the new settlers ... ‘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.’

Article Two

“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.”

purposes reasons actions invitations key words

Step 1. Determine meaning

Key words

Possess

Johnson 1822 p902: To Hold; to have.

Johnson 1822 p546: To Dispossess. v. a. 1. To put out of possession; to deprive; to disseize.

Richardson 1839 p615 POSSESS, v. To have or hold; to keep, to take or seize hold or occupy, (as owner or master or proprietor).

Oxford English 1909 p1155:

2. To hold as property; to have belonging to one, as wealth or material objects; to own.

Land

Oxford English 1908 p46:

1. The solid portion of the Earth's surface, as opposed to sea, water.

Estate

Johnson 1822 p644:

n.s. 4. Fortune; possession; generally meant of possessions in lands, or realities.

Forest

Oxford English 1901 p442:

n. An extensive tract of land covered with trees and undergrowth, sometimes intermingled with pasture, Also, the trees collectively of a 'forest'.

Fishery

Oxford English 1901 pp257–258:

1. The business, occupation, or industry of catching fish, or of taking other products of the sea or rivers from the water.

2. A place or district where fish are caught: fishing-ground.

Property

Oxford English 1909 p1471:

2. That which one owns; a thing or things belonging to or owned by some person or persons; a possession (usually material), or possessions collectively; (one's) wealth or goods. (In quotes. 1456, 1526, private as distinguished from common property.) Also fig.

Discussion

The structure of the Treaty is widely misunderstood. Article Two is solely about property — nothing to do with sovereignty. Article One deals with sovereignty. Misguided notions of independence or self-determination are frequently attributed to Article Two. As will be seen in Māori Article Two, ‘tino rangatiratanga’ solely relates to property protection.

Article Two contains the most contested content of the Treaty. This is primarily because the official English text is at odds with the Māori text over the extent of property protected.

Forests and Fisheries from the English text are usually cherry-picked in preference to an absence of translated equivalents in the Māori text, often while professing ascendancy for the latter.

A structural component that many either do not see or do not wish to see is the much-ignored ‘*but proviso*’. Following ‘but’ is the provision for land sales. This requires Article Two to be read and understood in its entirety.

The right of pre-emption requires first offering to the Crown ahead of anyone else.

“Full exclusive and undisturbed possession” *applies only to unsold property*. This is equivalent to English titles under the sovereign authority of Her Majesty.

Definitions are herein confined to key words. Their Article-context is discernible from the balance of the text.

Possession and **possess** lie at the heart of the property provisions. They are the key determinants to what properties are retained. The essence of ‘possession’ is ‘having, holding, and occupying material objects, to the exclusion of others’. The next question is, what is the extent of ‘possession-properties’ ?

Lands and **estates** are capable of physical possession to the exclusion of others. They fall within the ambit of possessions and are in accord with the First Preamble purpose.

Forests are part and parcel of ‘the solid portion of the Earth’s surface’ (*‘Land’*. *Oxford English* 1908). However this is out of context with Article Two. It is difficult to see how forests can be separately ‘had and held’ from lands that are sold with consequent loss of possession.

Fisheries require fish. It is difficult to envisage physical confinement of fish off-shore; they are free to migrate, pursue seasonal changes in feed, and go where they like. Unless fish are confined within sea-pens they cannot be physically possessed. Sea fisheries are therefore non-compliant with the possession-property requirement of Article Two.

Other properties are confined to personal chattels and goods capable of securing against theft, damage or destruction.

These ‘other properties’ are therefore in accord with the Preamble’s first purpose.

- **to protect their** (chiefs, etc.) **just Rights and Property and to secure to them the enjoyment of peace and good order.**

Conclusions

Article Two is in accord with the first Preamble purpose, with the exception of forests and fisheries. Forests and fisheries in the English Article Two is seriously at odds with the Māori text, indicating that it was not what the Māori text was translated from.

Article Three

“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**”.

Step 1. Determine meaning

Key word

Subject

Richardson 1839 p766:

A subject,—one who is, who put or placed, under the rule, order, or dominion ... any one, any thing, subject, subservient, under the power or sway of.

Oxford English 1919 p20:

1. One who is under the dominion of a monarch or reigning prince; one who owes allegiance to a government or ruling power, is subject to its laws, and enjoys its protection.

Discussion

Universal misrepresentation of the Treaty is exemplified by the omission, in just about every discourse, of the opening words of Article Three, *“In consideration thereof”*.

This is the equivalent of the pay-out to an insurance claim — for Māori the Treaty was an insurance policy.

The whole Treaty falls over without recognition of the granting of British subject-hood as the consequence of the ceding of sovereignty. There is no other benefit on offer for ‘the Natives of New Zealand’.

Richardson 1839 and the *Oxford English* 1919 are explicit on the meaning of ‘**subject**’ :

“under the rule, order, or **dominion**”:

any one, any thing, subject, subservient, under the power or sway of ... one who is *under the dominion* of a monarch or reigning prince; one who owes allegiance to a government or ruling power, is subject to its laws, and enjoys its protection.

As noted above, no subject-hood, no protection.

Royal protection, and the rights and privileges of British Subjects, extended *collectively* to *all of the Natives* (‘tangata Māori’), *not* sub-classes such as ‘tangata wenua’, ‘mana wenua’ and ‘kaitiaki’ (in the sense of *exclusive* guardians of alienated lands and waters). These are not recognised by the Treaty.

Step 2. Meaning vs purposes

Article Three fulfils Preamble purposes one and three:

- to protect their (chiefs, etc.) *just Rights and Property* and to secure to them the enjoyment of peace and good order.
- to establish a settled form of Civil Government...

Conclusion

There is no residual special Crown-Māori relationship, except for rectifying proven Treaty breaches by the Crown.

Outside this sphere, all individuals of Māori descent have the same rights, obligations and privileges as all other citizens of New Zealand. There are no special privileges which an individual may claim or assert merely because that the person is of Maori descent.

Affirmation

“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 being 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 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.]

Conclusion

‘Having being made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof’ is self-explanatory.

The Great Falsehood:

“Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty.”

[It is well established that there was no signing of an English language document at Waitangi.]

Māori Text

Introduction

The Māori text must be regarded as the pre-eminent Treaty. This is due to its universal presentation to Māori in Māori. Over 500 chiefs signed the Māori text on eight separate sheets. Only 39 signed another sheet in English, which was later purported to be 'the English version', but may have been no more than an appendage to a Maori-text sheet.

The Waitangi Tribunal is obliged by law to consider *both* the official English text, as well as the Māori text, in determining Treaty meaning.

However the Tribunal has gone further by substituting a new interpretation into English. The *Kawharu translation* ²² has effectively replaced the official English text as one of two official versions that the Tribunal is obliged to have regard, *and no other*.

A whole-translation to English is not presented. This is not essential as the structure of both texts are similar and word-context is discernible. The focus is on key words and phrases where most debate is directed. Meaning depends on context, especially surrounding words and phrases. The latter influenced any choice of dictionary meaning.

Preamble

“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 Māori o Nu Tirani–kai wakaaetia e nga Rangatira Māori te kāwanatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu–na te mea hoki he tokomaha ke nga tangata o tona lwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te kāwanatanga kia kua ai nga kino e puta mai ki te **tangata Māori** 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 korerotia nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.”

Tangata

Kendall 1820: Tangata; Man; male or female.

Williams 1844: Tangata, s. A man.

Williams 1852: Tangata, s. A man.

Williams 1871: Tangata, n. man; human being.

Williams 1892: Tangata, n. man; human being. Mankind, s. *Tangata*.
People, s. *Hunga*: tangata.

Māori

Williams 1844: Māori, a. Native.

He tangata Māori ; A native man.

Williams 1871: 1. Māori, a. 1. native.

Williams 1892: Māori, a. 1 properly, of the normal, or usual kind. [As in 'wai Māori' normal (fresh) water]
Tangata Māori; *Man of the Polynesian race, as opposed to the white-skinned European.*

Thereby:

tangata Māori

A normal, usual (ordinary) Native person; collectively all Native people.

Using *Williams* the sentence containing **Tangata Māori** can translate:

FROM: “Na ko te Kuini e hiahia ana kia wakaritea te kāwanatanga kia kua ai nga kino e puta mai ki te **tangata Māori** ki te Pakeha e noho ture kore ana”.

TO: Now, the Queen wishes that Governorship be arranged [= established] so that there may be no harm coming to the Native People or the Pakeha who are living without the [rule of] (inserted) law.

‘The Native People’ is in accord collectively with ‘all Native people’.

Ko te Tuatahi

Article the First

“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 **kāwanatanga** katoa o o ratou wenua.”

Using *Williams* this can translate to:

The Chiefs of the Assembly and also all the Chiefs who have not joined that assembly will surrender completely to the Queen of England, for ever, the entire Governorship of their lands.

Kāwanatanga is a key word that is in considerable contention. Determination of the meaning of *kāwanatanga* (Article One) is required to determine the degree to which the Queen obtained governorship *or* sovereignty over New Zealand. This in turn influences the degree to which chiefs were able to continue pre-Treaty control (**tino rangatiratanga**) over property including **taonga**. These chiefly rights are in turn constrained by what follows after the ‘**But**’ word (Otiia ko) (Article Two). All of which must be assessed against Treaty purposes.

There are other aspects of the Treaty in contention with *the Kawharu translation*.²³ The principal ones are addressed on page 31.

Kawana

Kendall 1820: [None].

Williams 1844: [None]. But...–ai, by which, kia tukua ia ki te ringatiratanga ki te kaha o te kawana, he (is) to be delivered to the power and authority of the governor.

Williams 1852: [None]. But...–ai, by which, kia tukua ia ki te ringatiratanga ki te kaha o te kawana, he (is) to be delivered to the power and authority of the governor.

Williams 1871: [None].

Williams 1892: Kawana, n. governor.

kāwanatanga

Kendall 1820: [None].

Williams 1844: [None]; but...–ai, by which, kia tukua ia ki te rangatiratanga ki te kaha o te kawana, he (is) to be delivered to the power and authority of the governor.

Williams 1852: [as above].

Williams 1892: n. government.

Williams 1917: [None].

Williams 1957: [None].

Williams 1971: government.

‘Sovereignty’ had no equivalent in Māori. Sovereignty is vested in a single paramount figure, in New Zealand’s case exercised through Governors. Chiefs had authority over their own areas, but there was no central paramount figure or sovereign. The chiefs, while exercising individual Chiefly authority, collectively had no cultural precedent of ‘complete sovereignty’. However many had travelled overseas and witnessed European sovereignty in action. More on page 33.

The Henry Williams’ translation of ‘sovereignty’ as ‘kāwanatanga’, a neologism derived from ‘kawana’, was probably the nearest approximation available within a then limited Māori vocabulary. Its translation will be shown to reflect the English text ‘rights and powers of sovereignty’.

The definitions above show that between 1844 and 1871 there were no Williams’ translations for ‘kawantanga’. However between 1844 and 1852 ‘the power and authority of the Governor was recognised. Parkinson: “Although not defined by Williams Kawana and kawatanga were in common use, as shown by the proclamations printed in Maori in the government gazettes from 1842 onward such as *Te Karere o Nui Tireni* (1842-1846) and its bilingual successor *The Maori Messenger = Te Karere Maori* (1849-1854)”.²³

Latter-day critics assert that Henry Williams should have used ‘mana’, as in the *Declaration of Independence*. Williams was the translator of both it and the Treaty. Currently critics conflate the Declaration and Treaty as one and the same. They are not. The contexts are quite different — they served different purposes. The Declaration was **of sovereignty and mana**. The Treaty was about **extinguishing sovereignty, not mana**, and replacing with a settled form of government.

In considering the Treaty, Williams must have realised that mana is inseparable from the person and is incapable of transfer to anyone, including the Crown (*Mana*, s, Power ; influence. Williams 1844), hence the absence from the Treaty of cession of mana. [[Nowadays the concept of *mana* extends to Māori spiritual and religious beliefs ‘alike to the several faiths of England,’ not a Crown obligation to inject such precepts into public affairs. More on pages 49-50, 53.

In 2012 Government’s *TeAra* recorded: ²⁴

“Redefining kāwanatanga: In recent times scholars of the Māori language have questioned the accuracy of this translation [1840 Māori text by Williams]. They have suggested that many chiefs would not have signed the treaty if they had understood that by doing so they were surrendering “complete sovereignty” over their tribal lands.

“Anthropologist Hugh Kawharu has made a new translation of the Treaty using the term ‘government’ rather than ‘sovereignty’, for ‘kāwanatanga’. Kawharu noted:

“There could be no possibility of the Māori signatories having any understanding of government in the sense of ‘sovereignty’: ie, any understanding on the basis of experience or cultural precedent.”²³

Sir Hugh did not record when and where his definitions were derived from. His Māori isolationist view expressed above is at odds with that of the Government's *1990 Commission* ²⁴, charged with marking 150 years after the Treaty: "To fully understand why the Treaty of Waitangi exists and what makes it our founding document, we must first understand the nature of the country it was signed in

"What was our country like in 1840? ... It was a country that was increasingly being affected by contact with the outside world; not just by people coming into the country but also by Māori going out. The Māori were great travellers. Many had reached England. As a result, some Māori people spoke English and had seen what was happening in the world. They saw a very strong British Empire and a Britain that ruled the waves and which had defeated Napoleon's France. So they looked to Britain as the major maritime power of the period."

Most early contact was in and from (later Treaty-focused) Northland. Many Māori sailed the seas, either trading to Sydney as masters of their own ships, or as sailors under many flags to all parts of the globe. King George IV received Ngā puhi paramount chief Hongi Hika in 1820 and presented him with a suit of chain mail and several guns. Hongi traded his Royal gifts in Sydney for hundreds of muskets and reengaged in revenge (utu) with his neighbours, so instigating the pre-Treaty Musket Wars.

Greatest Māori contact was with New South Wales, a British penal colony under a succession of governors, which latterly had jurisdiction over New Zealand. Missionaries, in particular, were prominent in initiating overseas contact for northern Māori. For instance a succession lived as guests of missionary Samuel Marsden at his Parramatta residence near Sydney. Many stayed months before returning home. The record of these 'meeting-of-peoples' pre-Treaty is so extensive that it was common knowledge then, only diminished through memory, not record. The Kawharu assertion that: 'there could be no possibility of the Māori signatories having any understanding of government in the sense of sovereignty: ie, any understanding on the basis of experience,' should be regarded with incredulity.

On the basis of the *Kawharu translation*, the Waitangi Tribunal rewrote history and the Treaty. The scheme of the Treaty depends on the Crown having 'complete sovereignty' exercised through the local embodiment of the Queen – a Governor. It is fanciful to consider the possibility of an alternative, as currently asserted, of a so-called 'governor', separate and distinct from Queen Victoria's sovereignty, bestowing anything on anyone — such as property protection or the rights of British subjects.

Ko te Tuarua

Article the Second

“Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga **Rangatira** ki nga hapu–ki 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 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.”

Using *Williams* this can translate to:

The Queen of England will arrange and consent [= grant] to the Chiefs, the tribes and all the people of New Zealand full dominion over their lands, their places of abode and all their valuable property. **But** the Chiefs of the Assembly and all the other Chiefs will surrender to the Queen the buying of those land portions that those whose Land it is see fit, with agreement of the price that is fixed by them and the buyer done [= designated, appointed] as a buyer for her.

Tino rangatiratanga is a key phrase where the meaning is in contention.

Rangatira

Kendall: 1820: A Gentleman. A gentleman or lady.

Williams 1844–1971: s. A chief man/male or woman/female.

Williams 1844–92: Rangatira māori n. normal chief.

There was stratification between senior and junior status chiefs. The definitions of *Rangatira māori* 1844–1892 ‘n. normal chief’, recognises that other chiefs were ‘above normal’. *Williams Dictionaries* are consistent with rangatira being either male or female (1844–1971).

Rangatiratanga

Kendall: 1820: [None].

Williams 1844: Waka-rangatiratanga, v. Act of ennobling.

Williams 1852: Dominion, s. Rangatiratanga. Kingdom, s. Rangatiratanga. Rank, s. Rangatiratanga.

Williams 1871: Dominion, s. Rangatiratanga. Kingdom, s. Rangatiratanga.

Williams 1892: Dominion, s. Rangatiratanga.

Williams 1917–71: n. Evidence of breeding and greatness.

Tino

This is a substantive adjective, preceding ‘rangatiratanga’.

Kendall 1820: Tino, s. Origin or derivation of name, &c.

Williams 1844: Tino, s. A precise point.

Tino: ad. Quite : Very.

Williams 1852: Tino, s. A precise point. Tino, ad. Quite; very.

Williams 1892: Tino, s. exact ; precise ; very. Tino, n. precise spot. Tino adverb quite; very.

Williams 1917: Tino, n. 1. Essentiality, self, reality.

2. Used with a qualifying noun or adjective following it must be translated by adverb or adjective. Exact, veritable, quite, very.

3. In some cases it is transferred from a noun to the governing verb, and, being translated by an adverb, gives the appearance of an adverb preceding the verb which it qualifies.

4. Sometimes it is used to give vividness and force to the narrative.

Williams 1957: Tino, n. 1. Essentiality, self, reality.

2. Used with a qualifying noun or adjective following it must be translated by an adjective or adverb. Exact, veritable, quite, very.

3. In some cases it is transferred from a noun to the governing verb, and, being translated by an adverb, gives the appearance of an adverb preceding the verb which it qualifies.

4. Sometimes it is used to give vividness and force to the narrative.

Williams 1971: Tino, n.

1. Essentiality, self, reality.

2. Used with a qualifying noun or adjective following it must be translated by an adjective or adverb. Exact, veritable, quite, very.

3. In some cases it is transferred from a noun to the governing verb, and, being translated by an adverb, gives the appearance of an adverb preceding the verb which it qualifies.

4. Sometimes it is used to give vividness and force to the narrative.

Tino rangatiratanga

This appears within the context of the opening sentence of Article Two. The first part reads:

“Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu–ki tangata katoa o Nu Tirani te tino rangatiratanga...”

Using *Williams* this can be translate :

The Queen of England will arrange and consent (grant) to the Chiefs, the tribes and all the people of New Zealand *the full dominion* ...

Williams 1852–92: ‘rangatiratanga’ is synonymous with ‘dominion’

Dominion

Johnson 1822 p564: DOMI’NION. n. s. [dominium, Lat.]

1. Sovereign authority ; unlimited power.

2. Power ; right of possession or use, without being accountable: “He could not have private dominion over that which was under the private dominion of another”. Locke.

Oxford English 1897:

Dominion (cLmrnyon). [a. obs. F. *dominion* (in Godef.), ad. L. type **dominion-em*, deriv. of *dominium* property, ownership, f. *dommus* lord.

Derivative of *dominium* property, ownership]

1. The power or right of governing and controlling; sovereign authority; lordship, sovereignty; rule, sway ; control, influence.

2. a. The lands or domains of a feudal lord.

2. b. The territory owned by or subject to a king or ruler, or under a particular government or control.

Often in pi.

3. Law. Ownership, property; right of possession.[=*dominium* in Rom. Law.]

4. Domination 3. (Usually in pi.)

From the preceding definitions there are two options for ‘**dominion**’.

1. Sovereignty, unlimited power, full dominion.
2. Right of property possession and use, without accountability.

Considering options 1 and 2

1. Ko te Kuini o Ingarani ka wakarite ka wakaee ki nga Rangatira ki nga hapu-ki tangata katoa o Nu Tirani te *tino rangatiratanga*

As above, using *Williams*, this can translate to...

The Queen of England will arrange and consent (grant) to the Chiefs, the tribes *and all the people of New Zealand the full dominion* ...

If ‘sovereignty-full dominion’ were to apply only to Māori this would retain lawless Frontier New Zealand. This is contrary to the purposes of ‘**protect(ion of) Māori just Rights and Property**’ and securing to them ‘**the enjoyment of Peace and Good Order**’.

Māori would remain unprotected from foreign invaders, from themselves by way of unremitting inter-lwi and hapu warfare, unrestrained land sales, and an assorted ragbag of new settlers and transitory miscreants. In turn, the settlers would remain unprotected from their own ilk, and Māori. All of which undermines *any* justification for British intervention.

It should be noted that: ‘tino rangatiratanga’ applies to the ‘Chiefs, *and the Tribes*’. The comma indicates distinction between classes but with equal rights of ‘tino rangatiratanga’. The corporate structures established by Government for Treaty settlements is a re-establishment of a chiefly (corporate) class, with little apparent influence over the ‘chiefs’ by relatively power-less commoners. As ‘tino rangatiratanga’ applies to all Māori, this is inconsistent with the Treaty.

2. **Tino rangaritira** is therefore confined to a “right of property-possession and use” — free of unlawful dispossession from overarching sovereign authority, as in English law. The object is individual and communal property protection, not personal or collective sovereignty or independence from the Crown.

The right of property possession mirrors the official English text:

...“the full exclusive and undisturbed possession of their [unsold] Lands”

This applies equally to ‘all the (native) people of New Zealand’.

Both versions of this part of the Treaty are in accord.

To continue ... the rest of the above sentence:

“...o o ratou wenua o ratou kainga me o ratou **taonga** katoa”

Using *Williams* this can translate to:

...over their lands, their places of abode and all their valuable property

Lands and places of abode (*kainga*) are within the meaning of protected property.

Taonga are considered next.

Taonga

Kendall 1820: Taonga: s. Property procured by the spear, &c. Derived from :Tao, s. A long spear.

Williams 1844: Taonga: s. Property. Ngerengere, s. Property; goods.

Syn. with Taonga (E.C.) and Rawa, s, Goods; property.

Williams 1852: Taonga. s. Property; treasure. Wealth, s. Taonga.

Property, s. Hanga; taonga; rawa; taputapu; ngerengere. Treasure, s. Taonga.

By 1852 meaning had changed to 'wealth', 'treasure' (thereby being 'valuable property').

Williams 1871: Taonga, n. Property; treasure.

Property, s. Hanga; taonga; rawa; taputapu; ngerengere. Treasure, s. Taonga.

Wealth, s. Taonga.

Williams 1892: Taonga, n. Property; treasure.

Williams 1917: Taonga, n. Property, anything highly prized.

[This is the first instance of 'taonga' extending to 'anything highly prized']

Williams 1957: Taonga, n. Property, anything highly prized. taputapu, n.

1. Charm, incantation.

2. Goods, property = taonga.

3. Appliances

Williams 1971: Taonga, n. Property, anything highly prized.

Karetu 1984: *Concise Māori Dictionary*. Revised Edition.

taonga: possessions; valuables; possessions: taonga; goods: taonga.

[Karetu focuses on possessions, property, goods, and valuables; not necessarily 'anything-valuable'].

From this contextual look at 'taonga' I have to conclude that the Waitangi Tribunal, Courts and Governments have got it wrong. **Treaty-taonga do not extend to the intangible, nor to tangible objects or natural resources that are incapable of possession to the exclusion of others.**

In continuation of the balance of Article Two:

“Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka whokonga 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”

Using *Williams* this can translate to:

But the Chiefs of the Assembly and all the other Chiefs will surrender to the Queen the buying of those land portions that those whose Land it is see fit, with agreement of the price that is fixed by them and the buyer done [= designated, appointed] as a buyer for her.

The intention of land sales to the Crown in the latter part of Article Two is not in contention. What is in dispute are the meaning of 'hoko' vs 'Pre-emption'.

Hoko

Kendall 1820: [None].

Williams 1844: s. Traffic.

s. Belonging to traffic. v. To traffic.

Williams 1852: s. Traffic; a sale.

s. Belonging to traffic; to buy; to sell.

Williams 1892: v. T. Exchange; barter. n. merchandise.

In 1840/1850s Second Article context *Hoko* means **selling**, and the act of selling

Pre-emption

Johnson 1822: [None]

Oxford English 1897:

Pre-empt (pnⁿIC'mpt), v. Chiefly U. S. [Back-formation from PRE-EMPTION, PRE-EMPTIVE trans. To obtain by pre-emption; hence (U. S.)> to occupy (public land) so as to establish a pre-emptive title. To acquire or appropriate beforehand, pre-engage.

Pre-emption (pn,e'mPf3n). [ad. med.L. *prsecmpi 'ion-em , n. of action f. *prseemZre to buy beforehand : see PRE- A. 2 and EMPTION. Cf. F. preemption (1812 in Hatz.-Darm.)]. Purchase by one person or corporation before an opportunity is offered to others; also, the right to make such purchase; spec. a. formerly in England, the prerogative of the sovereign, exercised through his purveyor, of buying household provi-of the owners, such goods of neutral* as are doubtfully or conditionally contraband.

Pre-emptive right ^ the right to pre-emption ; also, in Australia, land held by such right.

Pre-emption means **purchase** by one person or corporation before an opportunity is offered to others; also "the right to purchase".

In its application the Treaty 'pre-emption' offered in the English text goes beyond first offer. It excludes any subsequent sales to others when the Crown declines to purchase. This is not conveyed in translation to the Māori text. If viewed in isolation this is unambiguous.

However, the overall Treaty must be considered to determine which text best fits Treaty purposes

Conclusions

Unregulated land sales directly by Māori to all-comers proved to be chaotic. The actions of the New Zealand Company, land sharks, and multiple sales over the same land by chiefs, including those not entitled to sell, had to be constrained. There had to be Crown intervention to protect Māori from rapacious buyers and sellers, as well as the interests of British settlers. Short of military invasion, *the only means available was to require exclusive sales to the Crown.*

The most immediate gain for Māori from the Treaty was extinguishment of the law of conquest. This was in part-fulfillment of Article Three. No longer would Maori have no recourse for dispossession by invading tribes, other than an endless cycle of fighting and reciprocating utu. English law arrived to protect rangatiratanga property rights, this being absent under native customary 'title'. However it would take several years before British law became universal.

Hobson's Declaration on 30th January 1840 and his undertaking on 5th February to appoint Lands Commissioners to review all previous sales should have, by inference, made this clear. Apparently it did not.

It is of interest that the '4th Feb' document avoided the incomprehensible term 'pre-emption' and simply said:

“...grant to the Queen the exclusive right of purchasing such land as the proprietors thereof may be disposed to sell at such prices as shall be agreed upon between them and the persons appointed by the Queen to purchase from them.”

This applies not just to first-offers, but to *all offers for sale*. This is what English-literate chiefs would have heard from the English text, if it was the '4th Feb' text that was read out at Waitangi. This may explain subsequent mixed understanding among chiefs about land sales.

In view of the Declaration of 30th January 1840 with a commitment made by Hobson to appoint Land Commissioners (see pages 43-44), the scheme of the Treaty and the purpose “to protect their [all 'tangata Māori'] just Rights and Property” so that they would not become landless, the meaning of the English text(s) must prevail. The higher objectives of the Crown, long urged by the CMS and the Wesleyans, to intervene on behalf of Maori, were achieved.

Ko te Tuatoru

Article the Third

“**Hei wakaritenga mai hoki tenei** mo te wakaaetanga ki te kāwanatanga o te Kuini–Ka tiakina e te Kuini o Ingarani nga tangata Māori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.”

Using *Williams* this can translate to:

And this too as *the balancing equivalent* for consent to the Queen's Governorship the Queen of England will protect all the native people of New Zealand and allow them all the same customs as those of the people of England.

“Hei wakaritenga mai hoki tenei”...

The meaning of this opening phrase is not in contention. However as Article 3 created the bargain for Māori, in consideration of what was ceded to the Crown in Articles One and Two, it requires attention. It is essential to the scheme of the Treaty. Without it there would not have been a Treaty.

Key words

Hei

Kendall 1820: [None].

Williams 1844: Hei, *prep.* At, for.
Hei konei takoto ai; Let it lie here.

Williams 1852: Hei, *prep.* At, for.
Hei konei takoto ai; Let it lie here.

Williams 1871:
1l. Héi, *prep.* future.
1. at of time or place.

Williams 1892:
Héi, *prep.* future. 1. at of time or place.

Wakaritenga

Kendall 1820: [None].

Williams 1844: 'Wakaritenga, Act of likening.

Williams 1852: [None].

Mai

Kendall 1820: Mai, *ad.* Hither, here.

Williams 1844: Mai, *ad.* Hither.

Haere mai ki konei : Come. hither (to this place.)

Williams 1852: Mai, *ad.* Hither. Come hither to this place.

Williams 1871: Mai, *ad.* hither; towards the person speaking.

Williams 1892: Mai, *ad.* hither; towards the person speaking.

Hoki

Kendall 1820: [None]

Williams 1844

Hoki, v. To return.

Hoki, *ad.* Also.

Williams 1852:

Hoki, v. To return.

Also : even ; likewise. Because.

Williams 1871:

1. Hoki, v. i. return. be returned for.

Hoki *ad.* or *conj.* 1. also.

2. for; because.

3. to give emphasis to an assent or affirmation &c.

Williams 1892: v. i. Return.

Tenei

Kendall 1820: P.This (very near).

Williams 1844: *pron.* This.

Williams 1852: Demonstrative singular pronoun. This.

Williams 1871: *Prom.* This; near the speaker. *Ad.* 1. Here.

As above, applying a *Williams*' translation:

And this too as *the balancing equivalent* for consent to the Queen's Governorship

In contrast the *Kawharu translation*: ²²

"For this agreed arrangement therefore concerning the Government of the Queen... the Queen of England will protect all the native people of New Zealand and allow them all the same customs as those of the people of England".

There are difficulties with Kawharu regarding Article Three. The protections bestowed on 'all the Native people of New Zealand', being the same as British subjects, are not derived from a 'Government of the Queen' but directly **from** the Queen. After 1840 Māori did not rely on whatever transitory government, a step down from the Sovereign, would bestow on them (in the case of British settlers they were already British subjects). The rights of Article Three extend beyond 'customs' to include property law and law in general. *Kawharu* continued on page 31.

Conclusions

The 'official' English text:

“In consideration hereof ... 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”.

Compared to this too literal meaning of this *Williams'* translated text.

And this too as the balancing equivalent for consent to the Queen's Governorship the Queen of England will protect all the native people of New Zealand and allow them all the same customs as those of the people of England.

“Many traditional “customs = tikanga and ritenga would wither and some would be suppressed, and ‘customs’ trivialises the effort at encouraging equal rights and duties. Explicitly an exchange of subjection in return for protection, accompanied by a guarantee of full and equal status with Pakeha as British Subjects. The Treaty established parity as subjects under the Crown. As specified in the Colonial Office instructions to Hobson, the introduction of British law among hapu was to be gradual, with due allowance for Maori customary law among hapu, until such time as assimilation and integration enabled the practical application of universal law among all persons.” ²⁷

A sounder translation of the third article into English ²⁸:

“For this agreement to an acceptance of the Government of the Queen, the Queen of England protects all the Maori people of New Zealand and grants to them all the rights and duties equal to those of the people of England.”

This is consistent with the wording of the so-called *Forth Article* recorded by Colenso with the insertion of “me te ritenga Maori hoki” (‘and also the Maori custom or usage’) as a *correlative* [corresponding/alike] to *that of Rome*.” i.e. comparable customs protected, not all pre-Treaty customs especially murder, cannibalism, infanticide and slavery.

Kawharu consequences

Difficulties with the *Kawharu translation* arise not from questionable translation alone. Footnotes contradictorily assert contemporary meanings while claiming “context of Māori social and political organisation as at 1840”.²³

There is no measuring of articles against the purposes identified in the Preamble. There is no weighing up of different provisions to deduce meaning. The following *Kawharu* footnotes negate the 1840 context and change the ordinary meaning of Articles Three and Two.

Article Three

*Footnote 11*²³

“There is, however, a more profound problem about ‘tikanga’. There is a real sense here of the Queen ‘protecting’ (ie, allowing the preservation of) the Māori people’s tikanga (ie, customs) since no Māori could have had any understanding whatever of British tikanga (ie, rights and duties of British subjects). This, then, reinforces the guarantee in Article 2”.

The notion that: “no Māori could have had any understanding whatever of British tikanga” [ie, rights and duties of British subjects] must (again) be regarded with incredulity given over 40 years of pre-Treaty contact between northern Māori, New South Wales and England.

Article Two

*Footnote 8*²³

“Treasures”: “taonga”

“As *submissions* to the Waitangi Tribunal concerning the Māori language have made clear: “taonga” refers to all dimensions of a tribal group’s estate, material and non-material — heirlooms and wahi tapu (sacred places), ancestral lore and whakapapa (genealogies), etc”.

Contemporary wishes from those standing to benefit from an expanded meaning trumped the historic authority of **Williams 1844**. This led to one of the Tribunal’s more obvious misrepresentations of the Treaty. This is revealed in their *Orakei Report* by citing **Williams 1985** as their authority for ‘taonga’:²⁹

“We also considered “taonga” in the *Te Atiawa* and *Manukau* reports. *William’s Dictionary* renders it as “property, anything highly prized”. (1985:381) We emphasise here, as described in our earlier reports, that: “taonga” is not limited to property and possessions. Ancient sayings include the haka (posture dance) as a “taonga” presented to visitors. “Taonga” may even include thoughts. We have found it includes fisheries (*Te Atiawa Report* (1983) and language (*Te Reo Māori Report* 1986).”

The Tribunal and sovereignty

In 2014 the Waitangi Tribunal released its findings on northern hapu claims that their tūpuna (ancestors) had never ceded sovereignty and mana to the Crown. This contrasts markedly with the Tribunal 1985 *Manukau Report*, as reproduced in 1987 ²⁹ “*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.*”

Part of the Tribunal’s 2014 report is a review of what transpired at Waitangi between 4th and 6th February 1840. What was recorded at Waitangi has bearing on the purposes of the Treaty, on any elaboration of its terms, and any assurances given beyond the express terms of the Treaty. All are potentially relevant to the meaning of the Treaty.

The Tribunal’s account is heavily interspersed with opinion from current-day experts. This is heavy on supposition and conjecture, served up as large ‘dollops of doubt’. This does not warrant any weight being attached to it. If the evidence had been derived from first-hand sources this would qualify as admissible.

It is what transpired at Waitangi that matters in determining the meaning of the Treaty, not what was later *thought* to have occurred without verifying documentary evidence.

Any suggestion that northern rangatira did not know what they were getting into is negated by this Tribunal commentary: ³⁰

”By the mid-1830s, Māori of the Bay of Islands and Hokianga had experienced increasingly intensive interaction with Europeans over the course of some six and a half decades. From the early visits of British and French explorers, hundreds of Britons and people of other nationalities had come to live; others visited frequently on whaling and trading ships. *Hundreds of Māori, in turn, had travelled overseas.* These encounters had brought together people ...

The first encounters between rangatira and representatives of the British Crown after Cook’s visit followed the establishment of the penal colony in New South Wales. Successive governors sought to develop good relations with rangatira in order to protect burgeoning commercial interests in New Zealand. Rangatira, for their part, sought to understand Britain’s economic and military power, *and the ideas and institutions on which it was based*”

Accounts of Treaty proceedings

The Tribunal records:

“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 were checked by Busby the following month) were published by him much later in life, in 1890.” ³¹

“There are other eye-witness 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”. ³¹

Yet the Tribunal recorded doubts about Colenso's account: ³¹

"Yet, there is still much that is clearly missing from Colenso's notes".
Dr Donald Loveridge goes on in his opinion that it is "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".

Dame Anne Salmond made the observation about the written reports (Colenso's, for example) of the speeches at Waitangi, which she noted 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". ³²

This is valid comment, but raises the question why there was absence of similar comment by Salmond or the Tribunal on the retrospective hand-down accounts of claimants 170 years after the event. The Tribunal's (apparent) total weight on claimants' present-day, unverifiable submissions that sovereignty was never ceded is contradicted by the Colenso-recorded tūpuna statements on 5th February 1840.

Overall, however, Salmond believed that none of the changes (between Colenso's notes of 1840 and publication in 1890) "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." ³²

The differences between the two documents (sources for Colenso's account) were considered by Loveridge, who set out a full comparison of the two texts. ³³ He concluded from this that the 1890 history was "a fairly accurate transcript of the 1840 notes".

[*Notwithstanding this conclusion*] "...Loveridge 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". Loveridge regarded it as "*unreliable in places*", and remarked that: "*just because Colenso does not mention something, does not mean it did not happen*"." ³⁴

It appears that the absence of the unknown is now acceptable for evidential purposes.

In regard to Hone Heke Pokai's speech, Salmond:

"...*suspected* that Colenso, who was not fully versed in the rhetorical conventions of Māori oratory, simply misunderstood the import of Heke's speech". Salmond *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..." ³⁶

This is the passage to which Salmond refers: ³⁷

"Hoani Heke, a chief of the Matarahurahu Tribe, arose and said, "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 Māori 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." (Pronounced with remarkably strong and solemn emphasis, well supported both by gesture and manner.)" [Ref. page 47]

There is cause to wonder who is more “fully versed in the rhetorical conventions of Māori oratory”.

“William Colenso, as CMS printer, arrived at Paihia on 30 December (1834) ... his early productions were a considerable achievement. The first pamphlet printed in New Zealand was a 16 page translation into Māori of the Epistles of Paul to the Philippians and to the Ephesians, which appeared on 17 February 1835. More ambitious was the production of 5,000 copies of William Williams’s Māori New Testament. The first of these 356 page books were produced in December 1837. Māori demand was high... His next major undertaking was 27,000 copies of the Book of Common Prayer in Māori ... Colenso’s output attracted great Māori interest and increased the authority and extent of missionary influence. By 1840 Colenso had produced over 74,000 copies of various books and pamphlets, not all religious publications. In October 1835 the first tract produced in English was printed by order of the British Resident, James Busby, warning settlers about the imperialist ambitions of Baron Charles de Thierry. Over the following nine years other official notices and publications appeared, including the first New Zealand government *Gazette* on 30 December 1840”. ³⁸

The Colenso account potentially extends the meaning of the Treaty beyond the Treaty texts, especially:

- Statements and clarification of British Treaty purposes, and purposes perceived by the Natives.
- Reasons for the Treaty offered to the Natives, and for acceptance by them.
- Native understanding of ‘who is up’ and ‘who is down’, in relation to the Governor, by virtue of the Treaty.
- Assurances and undertakings given by Hobson or his proxies.

Refer pages 39-51

It is perturbing that the Tribunal found other first-hand accounts ‘disappointing’, especially that of Henry Williams. His account contradicts Tribunal assertions that the chiefs did not understand they would be ceding sovereignty...“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”. ³⁹ Williams was the primary explainer of the Treaty’s terms to Maori.

Invitation to Waitangi ⁴⁰

” A bifolium printed on the first page (of four) of a folded half-sheet of foolscap, the other pages blank. The watermark is "Gilling and Alford 1830."

Dated at the top: "Na te 30 o nga ra o Hanuere, 1840,"

The circular letter printed privately by Colenso on behalf of James Busby on the date of issue, inviting the chiefs to Waitangi for a hui to meet the newly arrived Consul Captain William Hobson. Busby's official position as British Resident expired with Hobson's arrival.

The original letter from Busby to Colenso, dated "Waitangi, 29 Jany., 1840" is in the Alexander Turnbull Library and is accompanied by Busby's own draft in Maori and Colenso's translation into English, in Colenso's own hand. Colenso made a number changes to Busby's draft to improve the grammar. Busby had volunteered to assist Hobson but ignored Hobson's desire, communicated by Governor Gipps of New South Wales that the circular be sent not only to the chiefs who had signed Busby's 'Declaration of Independence' of 1835 (see EMI 0028) but to a more representative group (see Parkinson, "The Governor and the Treaty" (in press) and J. C. Ross, Busby and the Declaration of Independence' NZJH vol. 14 no. 1 (April 1980) pp. 83-89). ”

Next page: ... “sent by the Queen of England *to be a Governor for us both*”

No te 30 o nga ra o Hanuere, 1840.

E taku hoa aroha,

Tenei ano taku ki a koe; na, tenei ano tetahi kaupuke 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 katoatia 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.

Invitation translation

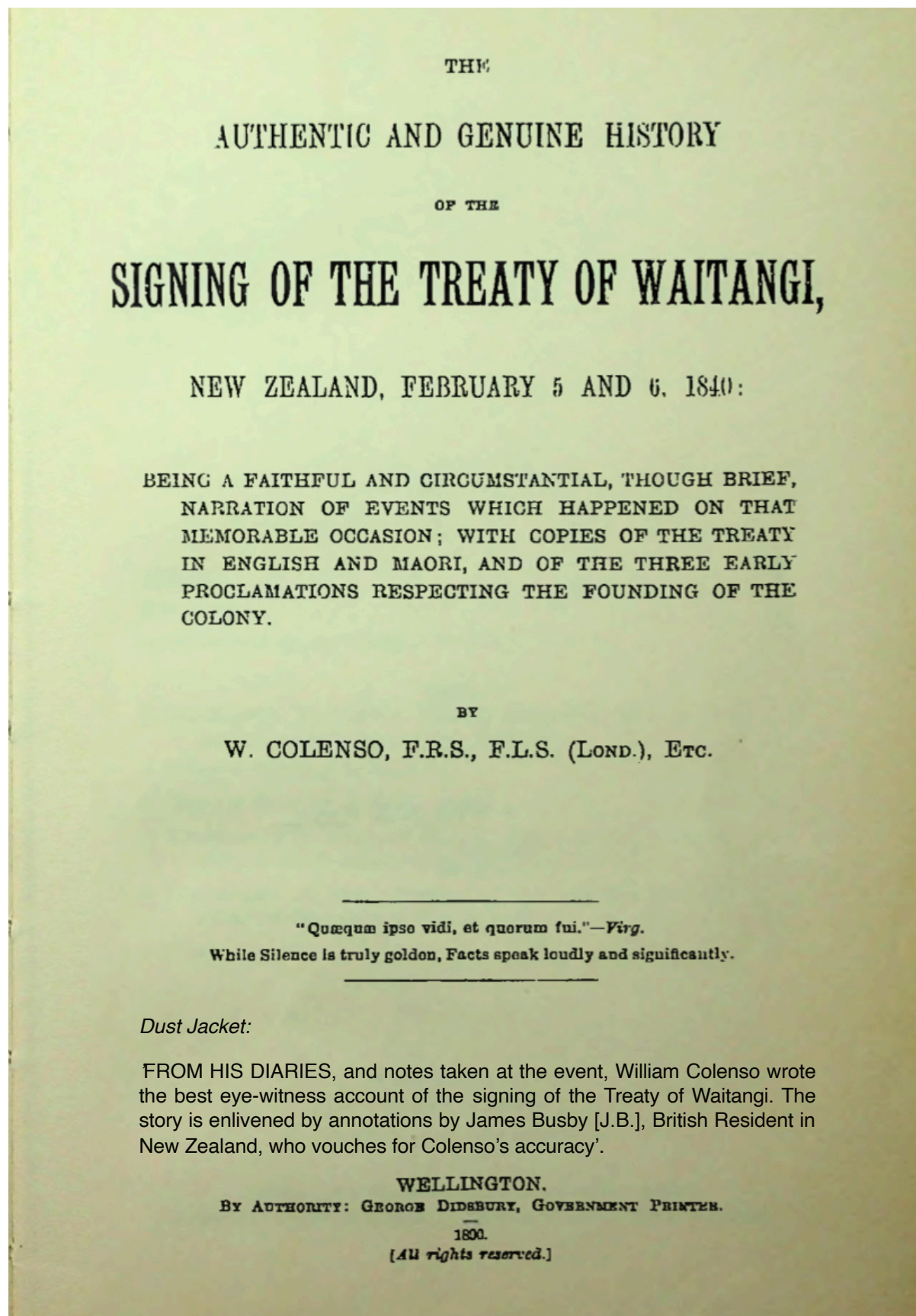
30 January 1840

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 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

Signing of the Treaty of Waitangi ⁴¹



Statements of purposes, intentions, actions,
 explanations, Governor-Native relationship,
 Native perceptions/reasons **[square brackets]**

HISTORY OF THE SIGNING OF THE TREATY OF
 WAITANGI.

Page 11

MEMORANDA of the Arrival of Lieut.-Governor Hobson in New Zealand, and of the Subsequent Assembling of the Native Chiefs at Waitangi, in the Bay of Islands, the Residence of the late British Resident, James Busby, Esq., on Wednesday and Thursday, the 5th and 6th days of February, 1840, for the Purpose of meeting His Excellency.

1840, *January 29th* .--This morning Her Majesty's ship "Herald," Captain J. Nias, arrived in the Bay of Islands and anchored in the harbour, having on board Lieut.-Governor Hobson and his suite.

30th .--Early this morning circular letters were printed at the press of the Church Missionary Society for the assembling together of the Native chiefs at Waitangi, to meet the newly-arrived Governor, on Wednesday next, the 5th day of February.

Two Proclamations were also issued by the Governor-- the first stating that he had been appointed Lieutenant-Governor over any territory which is or may be acquired in sovereignty by Her Majesty within the Islands of New Zealand,

[Intention to acquire sovereignty proclaimed]

and that this day he entered on his office; the second stating that Her Majesty does not deem it expedient to recognise as valid any titles to land in New Zealand which are not derived from nor confirmed by Her Majesty; and that all purchases of land in any part of New Zealand made after the date of this Proclamation **[Land titles invalid before 30 January 1840]**

Page 12

will be considered as absolutely null and void, and will not be confirmed or in any way recognised by Her Majesty. **[Uncontrolled land sales null and void and unrecognised]**

In the afternoon the Governor landed at Kororareka, and, walking to the church there belonging to the Church Mission (the only large building), publicly read his Letters Patent and his two Proclamations.

Wednesday, February 5th .--This morning at an early hour, the Natives, who had been gathering together all day yesterday, began to move towards Waitangi, the appointed place of meeting. About 9 a.m. the Lieutenant-Governor, accompanied by the captain of the "Herald," arrived at Waitangi; and from 9 to 10 a.m. the officers of the man-o'-war, the suite of the Governor, all the members of the Church Mission residing in or near the Bay of Islands, together with different European and American residents and settlers, kept arriving. The day was particularly fine, and the spectacle of the most animated description. On the water were to be seen the numerous canoes gliding from every direction towards the place of assembly, their respective rowers straining every nerve to gain and keep the lead, whilst their paddles kept time with the cadence of the canoe-song of the *kai-tuki* (canoe-song singer), who, standing conspicuously erect in the midst of each canoe, and often on the thwarts, animated the men by his gestures as well as his voice; the boats of the many settlers and residents living on the shores of the bay, together with those from the different ships and vessels at anchor in the harbour; and the ships and vessels decorated with the flags of their respective nations. On shore, in the centre of the delightfully-situated lawn at Waitangi, a spacious tent was erected, which was tastefully adorned with flags, &c., &c., over which England's banner streamed proudly in the breeze;* the whites, many of whom were new-comers, who seemed to be much delighted with the scene before them, were comfortably walking up and down in different little parties, socially chatting with

* The flag was taken down while the proceedings were going forward. --J. B.

Page 13

each other *a l'Anglais* ; whilst the countenances and the gestures of the Natives, who were squatting grouped together according to their tribes, bore testimony to the interest which they took, if not in the business, in the gaiety and life of the day. Nature appeared for once to have consented to doff her mantle of New Zealand grey,* and to have become quite exhilarated. Even the *cicadae*, those little gallant monotonous-toned summer gentlemen, sang livelier than usual. Everything, in fact, wore the appearance of cheerfulness and activity. Whilst all this was exhibited and enjoyed without, the Lieutenant-Governor, Mr. Busby, and Rev. H. Williams were engaged within, translating the treaty, and arranging other preliminary matters for the meeting. About half-past ten a.m. the French Roman Catholic Bishop Pompallier, dressed in canonicals, attended by one of his priests, arrived. They landed, and walked onwards, without the least hesitation, into the room in Mr. Busby's house where the Lieutenant-Governor and others were closely and privately engaged, brushing by the [mounted] police,† who, in uniform, were keeping guard before the door. At this a buzz might be heard among the Natives, one saying to another, “Ko ia ano te tino rangatira! Ko Pikopo‡ anake te hoa mo te Kawana” (i.e., “He, indeed, is the chief gentleman! Pikopo (Pompallier) only is the companion for the Governor”). Hearing the observations made by the Natives, I repeated them to my brethren, Messrs. King, Kemp, Clarke, and Baker, at the same time calling their attention to what had just taken place, saying, “If Pikopo and his priest go in, we, for the sake of our position among the Natives, should go in also.” To which the brethren assenting, we walked on towards the house.

* Mr. Busby has here, in the margin of the MS., “?, J. B.” My allusion was to the rather sombre appearance of the fern, and manuka (*Leptospermum scoparium*) scrub, and rushes, on the barren hills around.

† A small body of them had accompanied Captain Hobson from Sydney.

‡ The common Māori name by which the Roman Catholic bishop and the priests were known.

Page 14

Just as we had gained the verandah an invitation was announced from the Lieutenant-Governor for all those who had not and who wished to be presented to him to come in through one door, be presented, and then pass out through the other. On this some of the brethren were going in with the settlers and residents, who were pressing forward, when I said, “I pray you do not go in and out in this manner while Pikopo and his priest remain in the room.” On which they all, with myself, remained without. After the several persons who had entered had been introduced, which was soon done, the Lieutenant-Governor came out to proceed to the tent, His Excellency, the captain of the “Herald,” and Mr. Busby, preceded by some of the [mounted] police, leading the way; on which the Roman Catholic bishop and his priest stepped briskly up close to the heels of the Governor, so shutting us out unless we chose to walk behind them. “Brethren,” I exclaimed, “this won't do: we must never consent to this position.” “No,” rejoined the Rev. R. Taylor; “I'll never follow Rome.” And on his so saying we stepped on one side, out of the line of procession. Arriving at the tent, the Governor and captain took their seats in the centre of a raised platform, when Pikopo and his priest immediately took possession of the seats on the left next to the Governor,* we, the Church of England missionaries, standing behind. The Rev. H. Williams was now directed to a chair placed on the Governor's right, on which the Colonial Secretary, Mr. Willoughby Shortland, came over to us, took me by the sleeve, and said, “Go over to that end and support your cloth.”--an intimation we lost no time in attending to, ranging ourselves as we best could behind the Rev. H. Williams. The tent was all this time rapidly filling with the different persons assembled. The scene was very interesting and impressive. In the centre of the narrow raised platform were the Governor and

* Mr. Busby was on the Governor's immediate left, and the Roman Catholic bishop next to him.--J. B

Page 15

captain of the man-o'-war in full uniform; on the Governor's left were Mr. Busby, and the Roman Catholic bishop in canonicals, his massy gold chain and crucifix glistening on his dark-purple-coloured habit; on the right of His Excellency were the members of the Church of England mission, in plain black dresses. The different officers of the “Herald,” together with His Excellency's suite, stationed themselves as they best could--some here and there on the platform and some immediately before 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 before seen in New Zealand;* while some were dressed in plain European and some in common Native dresses. Nearly in the midst stood Hakitara, a tall Native of the Rarawa Tribe, dressed in a very large and handsome silky white *kaitaka* mat (finest and best kind of garment, only worn by superior chiefs), fringed with a deep and dark-coloured woven border of a lozenge and zigzag pattern, the whole of Native (I might truly say of national) design and manufacture.+ The sunlight streaming down from an aperture in the top of the tent on this beautiful white dress threw the figure of this chief into very prominent and conspicuous relief, forming a fine contrast to the deep and dark shades of colour around; whilst here and there a *hani* (or *taiaha*, a chief's staff of rank, &c.) was seen erected, adorned with the long flowing white hair of the tails of the New Zealand dog and crimson cloth and red feathers. In the distance the raven-black and glossy locks of the Natives, gracefully ornamented with the snow-white

* The gifts of the Roman Catholic bishop. J. B

+ This garment was afterwards much admired and talked of by the Natives themselves. I have only seen one similar one, which I early (in 1836) had obtained from Rotorua.

Page 16

and drooping feathers of sea-birds and of the white crane, forming a striking contrast, added much to the *tout ensemble*. Around the sides of the tent were the whites, residents, and settlers, by far the greater part being very respectably dressed; and outside of them, against the walls of the tent, were flags of different nations, which, from the vividness of their colours, especially when the sun shone brightly on them, gave a charming air of liveliness to the whole.

A few little matters having been adjusted, the Governor arose, and, addressing himself briefly to the whites, said that the meeting was convened for the purpose of informing the Native chiefs of Her Majesty's intentions towards them, and of gaining their public consent to a treaty now about to be proposed to them. He then addressed himself to the Natives, in English, as follows, the Rev. H. Williams acting as interpreter:--

"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.

[Ceding sovereignty of Confederation chiefs necessary before Queen has domain of their territories and ability to do good]

"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.

**[Protection and freedom of subjects subject to not transgressing law]
[Power of restraint when in breach; Queen always ready to restrain]**

"Her Majesty the Queen asks you to sign this treaty, and so give her that power which shall enable her to restrain them.

[Ceding sovereignty of Confederation chiefs is necessary]

"I ask you for this publicly: I do not go from one chief to another.

Page 17

"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."

Here His Excellency read the treaty in English, and the Rev. H. Williams read the translation of the same, which had been prepared in the New Zealand language, to the Natives.

The treaty having been publicly read in English and in the Native tongue, liberty of speech was granted to any one who felt inclined to speak on the subject, or to make any inquiry relative to the same.

Some brief preliminary proceedings followed, during which Mr. Busby addressed the Natives to the effect that the Governor was not come to take away their land, but to secure them in the possession of what they had not sold; that he (Mr. Busby) had often told them that land not duly acquired from them would not be confirmed to the purchaser, but would be returned to the Natives, to whom it of right belonged; that this the Governor would be prepared to do. Suddenly,

[As per Proclamation of 30th January: Governor came to secure Native possession of lands not sold; Governor prepared to return lands not duly acquired]

Te Kemara, a chief of the Ngatikawa, arose and said, "Health to thee, O Governor! This is mine to thee, O Governor! I am not pleased towards thee. I do not wish for thee. I will not consent to thy remaining here in this country. If thou stayest as Governor, then, perhaps, Te Kemara will be judged and condemned. Yes, indeed, and 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. O Governor!

[Recognition that the Governor would be superior; able to hang]

Page 18

this is mine to thee. 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."

This chief spoke in his energetic, peculiar manner, as if very angry; his eyes rolling, and accompanying his remarks with extravagant gestures and grimace, even for a Native. The officers of the man-o'-war, and all strangers, were wonderfully struck with his show of himself. To any one unacquainted with New Zealand oratory it is morally impossible to convey a just idea of his excited manner, especially when addressing himself to Mr. Busby and to the Rev. H. Williams on the subject of the land. *

Rewa, chief of the Ngaitawake Tribe, arose, and said (his first short sentence being in English), "How d'ye do, Mr. Governor?" which, unexpected as it was, set all hands a-laughing. "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

* And yet it was all mere show--not really intended; as was not long after fully shown, when they gave their evidence as to the fair sale, &c., of their lauds before the Land Commissioners, I myself acting as interpreter.

Page 19

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."

[Recognition that rule by a British Governor is akin to Port Jackson, Sydney, being a British convict colony]

Moka, chief of the Patuheka Tribe, arose and said, "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."

On this being interpreted to the Governor, His Excellency said “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.”

[As per Proclamation of 30th January]

This was also interpreted to Moka by the Rev. H. Williams; when

Moka rejoined, “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.” This he addressed to Mr. Baker, coming forward as near as he could to the place where Mr. Baker was standing on the raised platform, and looking up, waiting for a reply. To which question Mr. Baker quietly replied, “E hoki, koia?” --equivalent in English to, “Will it, indeed, return?” On which Moka continued, “There! Yes, that is as I said. No, no, no; all false, all false alike. The lands will not return to me.”

At this juncture a white man came forward, and, ad-

Page 20

dressing His Excellency, said that the Native speeches were not half interpreted by Mr. Williams, neither were His Excellency’s remarks fully interpreted to the Natives; that a Mr. Johnson* was present who could interpret well, &c.

The Governor: “Then, pray, Mr. Johnson, do me this great favour and come forward and interpret for me. I am anxious that the Natives should know what I say, and also that I should know what they say. Mr. Johnson, do you fully understand the Native language?”

Johnson, (coming forward): “Why, I can’t say I do, but I know how to speak to them, and know also what they say when they speak to me; and”-----

The Governor: “Then pray tell me what has not been interpreted.”

Johnson: “No, Sir, I beg to be excused. The gentlemen of the mission ought to be able to do it, and can do it very well; only let Mr. Williams speak out loud so that we may hear--we here in the back part of the tent; and let all that the Natives say be interpreted to the Governor. They say a great deal about land and missionaries which Mr. Williams does not translate to you, Sir,” &c. t

The Rev. Henry Williams, having obtained permission of His Excellency, addressed the whites in English, and said, “A great deal has been said about the missionaries holding land, and their farming, and what not; but the Commissioners who are about to sit will examine into the lands held by the missionaries, and their titles thereto, as strictly as into any other. I wish for this to be done, and I have already applied to His Excellency for the lands in the possession of the missionaries to be first brought before the Commissioners.

[Land Commissioners to sit]

People should recollect that were it not for the missionaries they would not be here this day, nor be in possession of a foot of land in New Zea-

* Johnson was an old resident (dealer in spirits, &c.) of Kororareka.

t This can only refer to their immense amount of repetition ; other-wise Mr. Williams translated fairly what they said.

Page 21

land. If any one person has a prior claim to land in this country, that person must be the missionary, who had laboured for so many years in this land when others were afraid to show their noses. I have a large family--a family of eleven children--more, probably, than any one present; and what are they to do when I am taken from them if they are not to have some land? Much has been said about my land, but I believe that when it is seen and known, and shared up between my children, no one will say that I have been over the mark, but, on the contrary, under. All I shall say at present is, I hope that all who hold lands obtained from the Natives will be able to show as good and as honest titles to the same as the missionaries can do to theirs.”

Mr. Busby, having also obtained permission of His Excellency to speak a few words to the whites on his purchasing of land, rose and said in English, “I deny that the term ‘robbed’ has been used by the chiefs Te Kemara and Rewa with reference to my purchase of land, as indicated by the white man who spoke, and coupled by him with Mr. Williams by gestures, though not plainly by name. I never bought any land but what the Natives pressed me to buy, for which I always paid them liberally. Allusion has been made to my possessing large tracts of land: I am happy to say that I do hold some land; but I did not make any extensive purchase until I was out of office, and then, on my finding

that, after having served the Government for fifteen years, not any provision was made, nor was likely to be made, for myself and my family, I purchased land. I only regret that I had not done so at an earlier period, and that to a larger extent. In all my purchases, also, I have reconveyed to the Natives both habitations and cultivations, by an inalienable deed of gift, according to the number of persons thereon."

Tamati Pukututu, chief of Te Uri-o-te-hawato Tribe, rose and said, "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

Page 22

sneak about, sticking to rocks and to 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."

[Recognition of a father relationship; not equals]

Matiu, a chief of the Uri-o-ngongo Tribe, rose and 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."

[Recognition of a father relationship]

Kawiti, chief of the Ngatihine Tribe, rose and said, "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.

[Loss of freedom for Natives]

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."

Wai, a chief of the Ngaitawake Tribe, rose and said, "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

* "*Piritoka*," and "*piriawaawa*"--words of deep metaphorical meaning: *anglice*, homeless wanderers, skulks, loafers.

Page 23

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?"

Here there was an interruption by a white man named Jones (a hawker and pedlar of Kororareka), and by the white man who had previously addressed the Governor, and also by another young white man, who all three spoke to the Governor at one time from different parts of the tent, calling on His Excellency to have the speeches interpreted for the whites to hear, and also to have them interpreted correctly. Johnson was again called for to come forward, who, on the Governor desiring him to do so, interpreted the speech of the last speaker, Wai, commenting on the same, after first remarking that "it was great lies."

Pumuka, chief of the Roroa Tribe, rose and 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."

[Recognition of father relationships]

Warerahi (George King), a chief of the Ngaitawake Tribe, rose and 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." *

[Recognition of Governor as is 'a man of the Queen'; not a separate entity]

Here a commotion and bustle took place among the Natives, who were sitting closely packed, in consequence of a lane or open space being made in front of the plat-

* After him a chief of Waikaro spoke of the unjust dealings of the whites, saying that for very little thing--a shilling--they wanted a pig big as himself, and much more to the same purpose. Would the Governor cause them to give as large a payment as the article they got? -- J. B. (Meaning its fair value.) Not much noticed in the bustle.

Page 24

form for Tareha, and for Hakiro, and for other chiefs to make their running speeches in, *a la Nouvelle-Zelande*.

Hakiro (son of Tareha, but who on this occasion appeared and spoke on behalf of Titore,* deceased, principal chief of the Ngatinanene Tribe) arose and said, "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."

Tareha, chief of the Ngatirehia Tribe, rose, and, with much of their usual national gesticulation, 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.

[Recognition that a Governor would rule over him]

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

* I may here briefly state, in a note, that Titore was one of the most powerful and best of the many Ngapuhi chiefs of high rank--so much of Nature's true nobility of manner and appearance about him; his voice, too, was mild, yet firm, possessing more of the *suaviter* than the *fortiter*, so contrary to the usual loud bluster of the Māori, especially of those chiefs residing on the shores of the harbour, whose manners were not improved through their common intercourse with shipping and low-class whites. I had visited him on his death-bed (he died comparatively early, from consumption), and, though he was not a Christian, I was much pleased with his demeanour. Our parting was a mournful yet very affectionate one. There is a very fair likeness of him (there called "Tetoro") given as a frontispiece in Captain Cruise's "Ten Months' Residence in New Zealand," taken before the invention of photography.

Page 25

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.

[Recognition of high rank of Governor]

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." *

Tareha was clothed with 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. He was evidently dressed up in this fashion in order the more effectually to ridicule the supposition of the New-Zealanders being in want of any extraneous aid of clothing, &c., from foreign nations. He also carried in his hand, by a string, a bunch of dried fern-root, formerly their common vegetable food, as bread with us. His habit, his immense size--tall and very robust (being by far the biggest Native of the whole district)--and his deep sepulchral voice, conspired to give him peculiar prominence, and his words striking effect: this last was unmistakably visible on the whole audience of Natives.

Rawiri, a chief of the Ngatitautahi Tribe, arose and said (first sentence in English), “Good morning, Mr. Governor! very good you! Our Governor, our Father! Stay here, O Governor! Sit, that we may be in peace.

[Recognition of father relationship; that 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.”

Hoani Heke, a chief of the Matarahurahu Tribe, arose and said, “To raise up, or to bring down? To raise up, or to bring down? Which? which? Who knows? Sit,

* Here I should state that those chiefs, Rewa, Moka, Tareha, and Hakiro, were all from Kororareka, their residence being close to the Roman Catholic bishop’s.

Page 26

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.

[Recognition of father relationship]

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 Māori 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.

[French and rum-sellers reasons for acceptance of Treaty]

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.” (Pronounced with remarkably strong and solemn emphasis, well supported both by gesture and manner.)

[Recognition of father relationship]

Hakitara, a chief of the Rarawa Tribe, rose and said a few words; but, in consequence of several talking (both whites and Natives) the one to the other at this moment, remarking on Hoani Heke’s speech and manner, and from Hakitara speaking low, what he said was not plainly heard. He spoke, however, in favour of the Governor’s remaining.

Tamati Waka Nene, chief of the Ngatihao Tribe, rose and said, “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 Natives of this land, are down low; they are up high, exalted. What, what do you say?

Page 27

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.

[Recognition of Governor father, judge, peacemaker role]

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.”

[Recognition of father relationship]

Eruera Maehe Patuone (the elder brother of Tamati Waka Nene, who has for some time been living in the island of Waiheke, in the Thames, and who only came up from thence a few weeks back) rose and said, “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,

[Recognition of father relationship]

that the French have us not, **[Possible French invasion]**

that Pikopo, that bad man, have us not. Remain, Governor Sit, stay, our friend.”

Te Kemara (who had spoken the first) here jumped up, and, in his usual excitable, lively, and flourishing manner, 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. 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.” * Here Te Kemara ran up to the

* When Te Kemara said to the Governor, “There is no place left for thee,” I said that “my house would be occupied by the Governor;” which intimation served to produce the change in his demeanour—J.B.

Page 28

Governor, and, crossing his wrists, imitating a man handcuffed, 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?” 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.

This incident ended this day’s meeting.

His Excellency then gave public notice that on Friday, the 7th instant, at 10 a.m., the meeting would be reassembled.

Three cheers were then given for the Governor, in which all lustily joined. Soon after the several parties separated, apparently, I thought, pleased.

A truly laughable event (serio-comic, I might call it) happened as the Governor and his suite, with the captain and officers of the man-o’-war, were embarking. The anecdote is too good to be wholly lost. I was one of those who escorted the Governor to his boat, some distance off on the sandy beach below. His Excellency was talking with me, by the way, about the printing of the treaty and other kindred matters. To get to the boat we had to go down a short, easy, though rude pathway in the side of the hill (Waitangi House being situate on high ground). We had arrived near the boat, which the sailors were launching--it being low water--when a Native chief, an elderly man from the interior, who had only just arrived (a few others had also kept dropping in during the morning)--almost another Te Kemara--rushed down the decline, burst before us, laid his hands on the gunwale of the captain’s launch to stop her (the sailors, half-amazed, looking at their chief), and, turning himself round,

Page 29

looked staringly and scrutinizingly into the Governor’s face, and, having surveyed it, exclaimed in ashrill, loud, and mournful voice, “Auee! he koroheke! Ekore e roa kua mate.” (I felt “wild” at him.) The Governor, turning to me said, “What does he say?” I endeavoured to parry the direct question by answering, “Oh, nothing of importance. A stranger chief only just arrived from the interior, running hither to catch you, and bidding you his greeting.” But, as His Excellency’s desire to know was keenly aroused, with that of Captain Nias and his officers by his side, and perhaps that of many of the whites present, including the sailors, who had ceased dragging down the boat, the Governor rejoined imploringly to me, “Now pray do, Mr. Colenso, tell me the exact meaning of his words. I much wish to know it all.” So, being thus necessitated (for there were others present who knew enough of Māori), 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.

In the afternoon a quantity of tobacco (negro-head) was distributed among the Natives, or, rather, was intended to be so, for they soon upset the superintending officer (who was obliged, *nolens volens*, to put up with the loss of his dignity), and so got the tobacco among them, by which, however, some got a large share, and some got little, and others none at all. This occurrence occasioned much dissatisfaction among the Natives, and for some time I feared the result.

Notwithstanding the public notice given by the Governor that the next meeting would be held on the Friday, 7th, it was found on consideration this evening that it would be advisable to hold the same on to-morrow, Thursday, 6th, inasmuch as the number of Natives gathered together was large, and they had no supply of food with them; neither was there any place at hand (or within several miles, and only situate on the opposite shores of the bay) where they might obtain any. Several of the Native chiefs

Page 30

said they could not possibly remain so long at Waitangi; that they should be "dead from hunger," &c. It was therefore proposed that the second meeting should be held on the next day, Thursday, instead of the Friday, as first agreed on, and that the Governor should be made acquainted with this necessary alteration in the day.

SECOND DAY'S MEETING.

Thursday, February 6th, 1840.--This morning, at 9.30, we (the missionaries) left Paihia Station for Waitangi, a mile and a half distant. On our arrival we found that the Natives were already there--not, however, such a large party as was present the day before. The fierce squabble about the tobacco yesterday, coupled with the remembrance of the sad murderous affray which took place here on the Whananake question,* had sent several to their respective homes. Nevertheless, there were several present--not less than 300, or even 400--scattered in small parties according to their tribes, talking about the treaty, but evidently not clearly understanding it. Time passed by, 11 o'clock came, but no Governor, nor could any movement be discerned on board H.M.S. "Herald" from which it might be inferred that His Excellency was coming; the Natives, too, were becoming impatient. About noon a boat from the ship came ashore, with two of the officers of His Excellency's suite, who seemed surprised at our saying we were there waiting for the Governor, as they said "His Excellency certainly knew nothing about a meeting to be held there this day." It was now evident that a misunderstanding had somehow arisen. A boat was instantly despatched to the ship to let the Governor know; and he soon arrived, in plain clothes, except his hat, and unattended by any of the officers of the "Herald." He assured us he had not the least notion of a meeting to be held this day; but that, as it was, he would take the signatures of the Native chiefs who were present and

* In 1836, when two Natives were killed and several wounded of the Christian and unarmed party by their heathen relatives, on judgment being given against them.

Page 31

desirous of signing the treaty: still, he must have a public meeting on the morrow (Friday), pursuant to the notice he had already given at the close of the meeting yesterday, &c.

We then proceeded to the tent, where, after some little delay and difficulty, the Natives assembled together. Some few necessary arrangements having been entered into for the better and more regular signing of their names, the Governor rose and said, "I can only receive signatures this day. I cannot allow of any discussion, this not being a regular public meeting." At this stage of the proceedings a messenger came to the Governor, informing him that the French Roman Catholic bishop and a priest were at Mr. Busby's house, and that they wished to be present at the meeting, &c.; on which the Governor despatched his secretary to bring them over to the tent. They soon came, and took their seats in the same places they had occupied on the preceding day. His Excellency then proposed that the Rev. H. Williams should read the treaty to the Natives from the parchment (as that read the day before was from the draft on paper), which was done by Mr. Williams.

Here the Roman Catholic bishop made some remarks to the Governor in an undertone, which were not heard by us; and the Governor, addressing himself to the Rev. H. Williams, who was acting as interpreter, 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."

On which Mr. Williams, addressing the Natives, said, "Na, e mea ana te Kawana"--("Attend, the Governor says"--) when he stopped, and, turning to Mr. G. Clarke, of the Church Mission, standing next to him, said something that was inaudible beyond the spot on which they two stood. Mr. Clarke, however, appeared not to understand--at least,

Page 32

not to hear plainly what Mr. Williams had said. Seeing: this, I, who stood next, said to Mr. Williams, "Pray, sir, write it down first, as it is an important sentence." Then Mr. Williams, taking paper and pencil, proceeded to do so. The paper, when written on, was passed to the Governor for the Roman Catholic bishop's inspection, who, having read it, said in English, "This will do very well;" on which the paper was returned to Mr. Williams, who read the same to the Natives.

The slip of paper contained the following words: "E mea ana te Kawana, ko nga whakapono katoa, o Ingarani, o nga Weteriana, o Roma, me te ritenga Māori hoki, e tiakina ngatahitia e ia" ("The Governor says the several faiths [beliefs] of England, of the Wesleyans, of Rome, and also the Māori custom, shall be alike protected by him.") I got Mr. Williams (though with some little hesitation on his part) to insert "me te ritenga Māori hoki" ("and also the Māori custom, or usage") as a correlative to that "of Rome."

[This is sometimes referred to as the 'Forth Article'; it is an amplification of the rights and privileges of British Subjects under Article Three]

All being now ready for the signing, the Native chiefs were called on in a body to come forward and sign, the document. Not one, however, made any move nor seemed desirous of doing so till Mr. Busby, hitting on an expedient, proposed calling them singly by their names as they stood in his (private) list, in which list the name of Hoani Heke (known, too, to be the most favourable towards the treaty) happened to be the first--at least, of those who were this day present. On his being called by name to come and sign, he advanced to the table on which the treaty lay. At this moment I, addressing myself to the Governor, said,--

"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 upon to sign? I this morning"-----

Page 33

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 that 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.'"

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."

Page 34

Here Hoani Heke signed the treaty, on which several others came forward and did the same.

Whilst the treaty was being signed, Marupo, chief of the Wanaurara Tribe, and Ruhe, a chief of the Ngatihineira Tribe, made long speeches against the signing of the same. Both declaimed strongly in true New Zealand style, running up and down, flourishing their hands and arms, stamping with their feet, &c. Marupo was stripped naked to the loins, and continued his oratory and

gestures until he was exhausted. Both, however, of these chiefs subsequently came to the table and signed the treaty. Marupo, having made his mark (as he could neither read nor write), shook hands heartily with the Governor, and seized hold of, and much wished to put on, His Excellency's hat, which was lying on the table. After some little time Te Kemara came towards the table and affixed his sign to the parchment, stating that the Roman Catholic bishop (who had left the meeting before any of the chiefs had signed) had told him "not to write on the paper, for if he did he would be made a slave."

Rewa was now the only chief of note present who still refused to sign, but after some time, being persuaded by some of his Native friends as well as by the members of the Church of England Mission, he came forward and signed the treaty, stating to the Governor that the Roman Catholic bishop had told him not to do so, and that he (the Roman Catholic bishop) had striven hard with him not to sign.

During the signing of the treaty a few chiefs arrived who were not present on the first day from not receiving their summoning letters in time and from the long distance they had to come--of course on foot. They, however, signed the document.

Forty-five chiefs signed the treaty at this second day of meeting. The greater part of them were from the Bay of Islands and its immediate vicinity. Among them, however, were not many chiefs of the first rank. In fact, there were none present from any distance save Tamati

Page 35

Waka Nene and his brother Patuone, from the Hokianga district; and Kauwata, Warau, and Ngere, from the Wangaruru district.

His Excellency appeared to be in good health and spirits, and to be much interested in the scenes before him. As each chief affixed his name or sign to the treaty the Governor shook him by the hand, saying (in Māori), "He iwi tahi tatou" ("We are [now] one people"), at which the Natives were greatly pleased.

All that were disposed having signed, the Natives gave three cheers for the Governor.

His Excellency, on leaving, requested me to attend to the distributing of a bale of blankets and a cask of tobacco to the Natives, which occupied me till late, each chief who had signed the document getting two blankets and a quantity of tobacco. By dint of close and constant management the said distribution went off well without any mishap or hitch.

Friday, February 7th, 1840.--This morning was ushered in with very heavy rain, which continued with hardly any intermission till towards evening. Consequently it could not but be considered as a very fortunate occurrence--as far, at least, as the holding of the second meeting went--that it was held yesterday, on the Thursday; for had it not been held on that day it could not possibly have been held on this day (Friday), as originally fixed, and many of the Natives, who could not have remained together until Saturday (to-morrow), would have returned to their several villages--and, perhaps, displeased and disheartened.

Saturday, February 8th .--This morning H.M.S. "Herald" hoisted a profusion of British colours and fired a Royal salute of twenty-one guns in honour of the new British Colony of New Zealand. At Kororareka, too, there was a great display, &c. The members of the mission went over to Kororareka, but I could not possibly go, being very busy in the printing-office with Proclamations, two treaties, &c.

Page 36

Monday, February 10th .--This morning the Governor and suite and the captain of H.M.S. "Herald" rode to Te Waimate Mission-station, in the interior, where they obtained some signatures to the treaty. On Tuesday, the 11th, they proceeded on to Hokianga, where they obtained a great number of signatures. On Friday, the 14th, they returned to the Bay of Islands and to their ship.

The total number of signatures obtained at Waitangi, Te Waimate, and Hokianga was about one hundred and twenty.

END

Meaning of Treaty expanded

As the result of elaboration and Crown undertakings recorded during the speeches of 5th and 6th February 1840, and the invitation to chiefs, all being admissible extrinsic evidence, the composite meaning of both Treaty texts can be expanded:

Preamble

Add to purposes:

- Averting French invasion.
- [A chief sent by the Queen of England] ... to be a Governor for us both.

Article One

Add to reasons:

- Ceding of sovereignty necessary to protect the chiefs, etc.

Article Two

Addition of Governor or proxy undertakings:

- Governor will secure possession of lands not sold.
- All lands unjustly held will be returned.
- All claims to lands purchased after the date of the Proclamation (30th January 1840) will not be held to be lawful.

Article Three

Rights and privileges of British Subjects amplified:

- Protection and freedom of subjects subject to not transgressing law.
- The several faiths [beliefs] of England, of the Wesleyans, of Rome, and also the Māori custom, *shall alike* be protected.

How the Tribunal interprets the Treaty

The Tribunal website sets out how it interprets the Treaty. The approach to Treaty interpretation set down in the 1987 *Report on the Orakei Claim* ⁴² “has influenced many Tribunal inquiry panels”:

- a) The **primary duty** of a tribunal charged with interpreting a treaty is to **give effect to the expressed intention of the parties**, that is, their intention as expressed in the words used by them in the light of surrounding circumstances.
- b) It is necessary to bear in mind the overall aim and purpose of the treaty.
- c) In relation to bilingual treaties neither text is superior.
- d) Given that almost all Māori signatories signed the Māori text, considerable weight should be given to that version
- e) The *contra proferentem* rule that in the event of ambiguity such a provision should be construed against the party which drafted or proposed that provision (in this case the Crown) applies.
- f) The United States Supreme Court “indulgent rule” that treaties with indigenous people (American Indians) should be construed ‘in the sense which they would naturally be understood by Indians’ supports the principle above.
- g) Treaties should be interpreted in the spirit in which they were drawn taking into account the surrounding circumstances and any declared or apparent objects and purposes.”

Giving primacy to the intentions of the parties is markedly divergent from the methodology of the *Legislation Act*: i.e. “The meaning of legislation *must* be ascertained from its text and in the light of its purpose and its context”. Primacy on intentions is an invitation for speculation at the expense of the structure, and ordinary meaning of the words of the Treaty.

Of direct significance is how the Tribunal determines meanings for ‘tino rangatiratanga’, ‘kawanatanga’ and ‘taonga’.

Rangatiratanga

Orakei Report ⁴³

[11.5.5] p185 “Rangatiratanga” by *Williams Dictionary [1985:323]* means “evidence of breeding and greatness”. The Tribunal cites *Williams* 1985 not 1852-92 editions: *Rangatiratanga being synonymous with Dominion*.

[11.5.19] p188 “...to give effect to the *apparent* understandings of **both** Williams and the Māori, we *render* ‘rangatiratanga’ as ‘authority’, ‘tino rangatiratanga’ as ‘full authority’... and to give it a Māori form we use ‘mana’.

As noted on page 25: ‘tino rangatiratanga’ is confined to a ‘right of property possession and use’.

Kawanatanga

Orakei Report ⁴³

[11.5.22] p 189 Contradictorily...“the Crown was given ‘Kawanatanga’ in the Māori text ... the right of governance...(being)... less than the sovereignty ceded in the English text” ... whereas ... “contemporary statements show well enough Māori accepted the Crown’s higher authority and saw themselves as subjects be it with the substantial rights reserved to them under the Treaty.”

The Tribunal fails to bear in mind the overall aim and purposes of the Treaty, including the expressed intentions of Hobson on 5th February 1840. In the Colenso account, Hobson made clear that he could not protect Māori authority and property unless sovereignty was ceded. All chiefs that spoke about the Governor’s status acknowledged that the Governor (would be) ‘up high’ and they ‘down low’ in relation to him.

Taonga

Orakei Report ⁴³

[11.5.20] p188. “*William’s Dictionary* renders it as ‘property, anything highly prized’ (1985:381)”.

Again the Tribunal selects *Williams 1985*, not *Williams 1844* where ‘taonga’ are confined to ‘possession-properties’:

“We emphasise here, as described in our earlier reports, that “taonga” is not limited to property and possessions. Ancient sayings include the haka (posture dance) as a “taonga” presented to visitors. “Taonga” may even include thoughts. We have found it includes fisheries (*Te Atiawa Report* 1983) and language (*Te Reo Māori Report* 1986)”.

To give effect to the understanding of Williams (past tense) **the Tribunal was obliged to consult Williams 1844** and coincident English dictionaries, **NOT Williams 1985**.

Conclusions

Six chiefs who spoke for or against the Treaty recognised that the Governor would be ‘up-high’ in relation to themselves. That is, the Governor would “rule”, be superior, “rule like in a penal colony,” be of high rank, a “father, judge, peacemaker”. This was recognition they would be inferior to the Governor. This was reason for them either rejecting or agreeing to the Treaty.

Of those who spoke, nine agreed to the Treaty and signed; nine spoke against but signed; Tareha and Wai spoke against — with no record of subsequent signing.⁴⁴

According to Colenso forty-five chiefs signed the treaty on 6 February 1840.

Overwhelmingly the tūpuna of northern hapu ceded sovereignty to the Crown at Waitangi.

Inexplicably the Tribunal came to these conclusions: ⁴⁵

- “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.
- 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.
- 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.
- 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.
- 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.”

Whereas, in the words of the Tribunal “the fullest written account of the proceedings at Waitangi was by Colenso”. He recorded *two explanations* by Hobson that acquisition of sovereignty was necessary to protect Māori interests. The Tribunal’s fourth conclusion over land transactions is the only one supported by the Colenso record of proceedings. The remaining conclusions are not supported by the Treaty texts, Colenso or Williams’ accounts.

Unlike court decisions, there is no *ratio decidendi* or necessary steps given by the Tribunal in their report that led to their conclusions. They dealt with highly contradictory evidence. No methodology to their decision-making is evident. The conclusions appear disconnected from, and not founded on, the balance of their report. The Tribunal disregards the property context of Article Two and substitutes the sovereignty/full authority role of Article One. This defies both Treaty structure and inter-relationships between Articles.

The Tribunal’s conclusions are disingenuous, reflecting what the claimants wanted, rather than evidence and the Treaty. The failure of successive governments to respond to the Tribunal’s findings has led to highly divisive assertions of unceded Maori sovereignty. Rejection of the Tribunal’s findings can be the only course for responsible government.

There is pressing need to draw the Tribunal back to its founding role as an objective Commission of Inquiry *if it is to remain in existence*.

Partnership and co-governance

The world of the treaty was upended in 1987 when the Court of Appeal released its decision on what commonly become known as the *SOE Lands Case*.⁴⁶ “*This case is perhaps as important for the future of our country as any that has come before a New Zealand Court*”. Their decision halted the transfer (sale) of assets by state-owned enterprises, pending provision for the interests of Māori claimants.

In 1986 the *SOE Act* was amended to read (s6)

“Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi”.

This led to the *SOE Lands Case*. This was the first time ‘the principles of the Treaty’ were addressed by the courts. It was a seminal New Zealand legal decision marking the beginning of the common law development of ‘the principles of the Treaty of Waitangi’.

The SOE Lands Case

The *Lands Case* focused on ‘the principles’ arising from the Treaty, rather than the texts.

“**The court held** [in part] that . . . “the Treaty signified a partnership between *Pakeha and Māori* requiring each to act towards the other reasonably and with good faith. The relationship between the Treaty partners creates responsibilities analogous to fiduciary duties. The duty *of the Crown* is not merely passive but extends to active protection 47 Māori people in the use of their lands and waters to the fullest extent practical”...⁴⁷

This represents such a profound shift that some consider it being beyond the legitimate role of the Courts. It is antithetical to the ordinary meaning of the words of the Treaty.

The President of the Court Cooke P recorded:

“Instead of repeating the two texts scheduled to the 1975 Act, I set out what a distinguished Māori scholar, Professor Kawharu calls his “attempt at a reconstruction of the literal translation” of the Māori text ⁴⁸ ...The differences between the texts and the shades of meaning do not matter *for the purposes of this case*. What matters is the spirit.” ⁴⁹

Note the distinction made by Cooke P: “for the purposes of this case”. It was only for the purpose of determining the principles of the Treaty in regard to the disposal of commercial SOE assets, not in other circumstances. However this has not inhibited Government from attributing ‘partnership’ to every aspect of Crown-Māori relationships.

Wide application is not sanctioned by this judicially-derived law

Subsequent enactment into law of ‘principles of the Treaty’ and ‘partnership’
are legal and political fictions

Somers J felt it unnecessary to discuss the differences between the two texts:

“They are issues best determined by the Waitangi Tribunal to whom they have been committed by Parliament”.⁵⁰

The reason for weight being given to judicially inferior Tribunal opinion is that Government had delegated to the Tribunal the power to decide Treaty meaning, being the prerogative of Parliament. The Treaty texts thereby became incidental to the courts and Government.

The terms ‘parties’ and ‘partners/partnership’ are indiscriminately interchanged throughout the *Lands Case*. ‘Partnership’ is variously described as “something akin to” or “in the nature of” partnership. Further confusion arises from who the ‘partners’ are, either the Crown or Pakeha, and Māori. Whereas the Treaty was an action by a state, not by race or ethnicity.

It *is* accurate to describe the Crown and Treaty signatories as parties. It is *not* accurate to call them partners. Hobson invited the chiefs, as did the Preamble, ‘to concur with its terms’. The chiefs had no part in Treaty formulation — it was presented as ‘take it or leave it’. This is not unlike an invitation to be a party, not partners, to an insurance policy. If there was any negotiation it was on the evening of 5th February, of which there is no record. Some claim there was a meeting between Hobson and northern chiefs. Again, there is no record. Hobson was not present on the evening of the 5th.⁵¹

All of the above provides an unsound basis for attaching
constitutional importance to this decision

It was inevitable that introducing into law a concept of ‘partnership’ outside of the business partnership that the judges referred to in their deliberations, that a Treaty partnership was destined for misapplication.

In the public mind, and for successive governments, it was a ‘Partnership akin to Marriage’ that was born, with an inherent connotation of 50:50 equality.

Judges had misgivings

In post-Lands extra-judicial comment Richardson J expressed some regret: “the terms ‘partner’ and ‘partnership’ in relation to the Treaty. In the judgments the expressions were used perhaps a little loosely.”⁵²

Richardson J⁵²: “Regrettably, in some quarters more was drawn from references in the judgments to ‘partners’ and ‘partnership’ as extending somehow to equal sharing, than was never intended by the Judges. That misapprehension led the Court sitting in 1989 *Forests Case*, with the same judges, in a judgment delivered by Cooke P, to record”:

“In the judgments in 1987 this Court stressed the concept of partnership. Partnership certainly does not mean that every asset or resource in which Māori have some justifiable claim to share must be divided equally. There may be national assets or resources as regards which, even if Māori have some fair claim other initiatives have still made the greater contribution”.

Richardson J: 52 “The message had not got home when we heard the arguments in the *Coal Case* a few months later, where Cooke P made two points. First, he stressed that ***the principles of the Treaty “are of limited scope and do not require a social revolution”***. The second was that:

“As regards those Crown assets to which the principles do apply, this Court has already in the *Forests Case* [said] that ***partnership certainly does not mean that every asset or resource in which Māori have some justifiable claim to share must be divided equally***”.

New Zealand does not *require* a revolution
but this is what has been unleashed

Conclusions

There is nothing in the texts of the Treaty stating or implying sharing of power, in any proportions, between the Crown and Māori by way of partnership, co-governance, co-management or other iteration.

The Court of Appeal has repeatedly disavowed
the notion of equal sharing of power

It is difficult to believe that successive governments have
not received Crown Law advice on these Court of Appeal cases

Promotion of a ‘principle of partnership’ and co-governance has taken off throughout every department of state and government-funded body. These include much of the news media, which are obligated to promote partnership as a condition for government funding.

Unelected and publicly unaccountable faces are appearing at every level of decision-making in central and local government with the sole claim to entitlement being ancestry.

This is the epitome of racism* — unless one subscribes to a reversed polarity
– objection *to* racism *is* racism*

* racism | ˈreɪsɪz(ə)m | noun [*mass noun*] the belief that different races possess distinct characteristics, abilities, or qualities, especially so as to distinguish them as inferior or superior to one another”: *Apple Dictionary* Version 2.3.0).

Partnership and co-governance are expressions of political agenda,
not obligations under the Treaty

What the Treaty means

The English and Māori texts, although different in length and some content, have the same meaning

Article One

- Sovereignty and kawanatanga have the same meaning
- The scheme of the Treaty requires the ceding of kawanatanga to the Crown

Article Two

- Tino rangatiratanga is a property right not a statement of independence
- Only property capable of possession, to the exclusion of others, is protected by the Treaty

Land and 'other properties' are protected *while in Māori ownership* subject to pre-emption. There is no residual Treaty interest in lands once sold. There are no proprietary Treaty interests in sea fisheries. Nor in precipitated, tidal, flowing and evaporating water. Nor in undomesticated flora and fauna. All these are incapable of possession. *Intangibles such as language, beliefs and knowledge are not 'Treaty taonga'*.

While a right of exclusive pre-emption in the English text is not expressed in the Māori text, the purposes of the Treaty required pre-emption to exist.

Article Three

Granting of British subject-rights and protection is *the consequence* of ceding kawanatanga. The Treaty would not exist without these dual provisions.

There is no special Crown–Māori relationship, except for rectifying proven Treaty breaches by the Crown.

Māori otherwise benefit from the same rights and duties of equal citizenship as other New Zealanders. That is *equality* between individual citizens, *not equity* between races.

Admissible extrinsic evidence of Treaty signing extends the meaning of the Treaty to include:

- Individual protection and freedom is subject to not transgressing the law
- The several faiths [beliefs] of England, of the Wesleyans, of Rome, and also the Māori custom, *shall alike* be protected.
 1. Freedom *of* religion must also entail freedom *from* religion

From the Treaty and relevant court decisions:

- There is nothing in the texts of the Treaty stating or implying any sharing of power between the Crown and Māori — by partnership, co-governance, co-management, etc.
- The Court of Appeal has repeatedly disavowed equal sharing of power.

Inescapable conclusions

Senior Barrister Gary Judd KC: ⁵³

“The Treaty, a very short document, enshrines equality both by importation of the rule of law and explicitly. It has only three Articles with fewer than 200 words in the Māori text, just over 200 in the English text, and only about 500 in total... It was prepared and translated in days. It is succinct and quite elegant. By contrast, Tribunal reports are verbose and convoluted, and take years to reach a conclusion. If the Treaty really did contain the principles the Tribunal says it has, that could be demonstrated by clear and compact language grounded on the words used in the document.

“Any Tribunal report, any court decision, which argues for unequal treatment based on an alleged Treaty principle must reconcile that position with the contradiction inherent in the Treaty also bringing equality before the law to New Zealand – both through the rule of law and explicitly in the Treaty’s text.

“The explicit endorsement of equality is plain to see in whatever version of the Treaty one cares to look at.”

“Either a failure of scholarship or willful distortion is at the heart of modern attempts to give the Treaty a meaning it does not have”

“It suits some to ignore our constitutional and legal history, to ignore the constitutional fundamentality of the rule of law, and to advance the fiction that the Treaty says something it patently does not. Some may do this because they think remedying historical disadvantage justifies it. Some may consider themselves entitled because their ancestors were here before others. Others may aspire to superiority, and the ability to lord it over others. Others again may see it as a way of taking what has not been earned.

“Whatever the reason, pretending that something is other than it is, is a form of dishonesty which in this case is a ticking time bomb waiting to explode in our faces”

“We run the risk of our already fractured society descending further into a place where disorder and chaos become habitual and endemic. This is not hyperbole. The signs are everywhere to be seen, from disorder in the House, to Ministers of the Crown disregarding legal obligations, to crime on the streets, to breaches of the law being condoned, to unequal treatment under the law.”

“Her Majesty . . . 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. . . ” ¹

Endnotes

- 1 Treaty of Waitangi Amendment Act 1985: being amended First Schedule to 1975 Act. Known as the Waikato-Manukau Sheet which is a variant of another English draft.
- 2 The Treaty of Waitangi Amendment Act 1985: being amended First Schedule to Treaty of Waitangi Act 1975. Text in Māori replaced by section 4 ToW Amendment Act 1985.
- 3 *Wi Parata v The Bishop of Wellington* SC Wellington [1877] NZJurRp 183; (1877) 3 NZ Jur (NS) 72 (SC); 1 NZLRLC 14 (17 October 1877).
- 4 PM Ardern made this comment in 2021, which I recorded at the time, but have not located the source.
- 5 *Newshub*. 21 August 2022. *Prime Minister doesn't know the Articles, Jacinda Ardern stumbles when asked to recite Treaty of Waitangi articles*.
Newshub. 21 January 2023. <https://www.newshub.co.nz/home/politics/2023/01/chris-hipkins-unable-to-name-all-three-treaty-of-waitangi-principles-while-christopher-luxon-can.html>
- 6 *Newshub*, 20 August 2022. <https://www.newshub.co.nz/home/politics/2022/08/jacinda-ardern-says-governance-is-key-to-upholding-treaty-of-waitangi-obligations.html>
- 7 Parkinson, Phil. 2010, 8 September. *Brief of evidence to Waitangi Tribunal hearing W1040 # D1 33*.
- 8 Doutré, Martin. 2005. Littlewood Treaty Found. 21, 22.
Also <http://www.treatyofwaitangi.net.nz/TreatyBook/>
And Phil Parkinson (2004) "Preserved in the Archives of the Colony" *The English Parts of the Treaty of Waitangi*. p 62 [RÉvue Juridique Polynésienne/New Zealand Association for Comparative Law, II (2004), Special Monograph, RJP/NZACL Cahier Special]
- 9 *New Zealand Herald*. 11 September 1992. *Draft puzzles experts*. Also Doutré 2005. 11-13
- 10 *New Zealand Herald*. 12 September 1992. *Treaty expert cool on draft find*. 23 September 1992. *Author of treaty a mystery*.
- 11 Dr Phil Parkinson to Jeremy Cauchi, Archives NZ. 25 February 2004.
- 12 Dr Phil Parkinson. Personal comm. 13 June 2024.
- 13 Dr Phil Parkinson (2004) 'Preserved in the Archives of the Colony' *The English Drafts of the Treaty of Waitangi*. p 30 [RÉvue Juridique Polynésienne/New Zealand Association for Comparative Law, II (2004), Special Monograph, RJP/NZACL Cahier Special]
- 14 Doutré, Martin. 2005. Littlewood Treaty Found. 49, 50.
- 15 **Ned Fletcher's 'The English Text of the Treaty of Waitangi'** [2022, Bridget Williams Books] is an extreme example of prevailing contemporary Treaty scholarship. It represents everything railed against in 'Both Versions' [pp 11, 12].

"Fletcher's will quickly become the favoured mainstream interpretation of the Treaty. But this doesn't mean it's correct"

- 16 REVIEW '*Waitangi: Ned's 'slippery' Treaty.*' Peter Cresswell. 2024.
This is an unashamedly libertarian response to Fletcher (citing Adam Smith, John Locke). As '*Both Versions*' argues, ideological 'lenses' or 'frames' and historical analysis are unnecessary, and are in fact perilous in determining the meaning of the Treaty. Such aspects are excluded from the excerpts below:

“With 528 pages of text (plus notes and Appendices [723 total]) his argument seems well buttressed. And for the most part (at least until page 329, see below) it is well made. Since it overturns much previous thinking, it needs to be. In short, what Fletcher argues is that the Māori and English texts *do* reconcile; and that what was promised to rangatira in *both* languages was continuing inter-tribal self-government. The first argument – and it is meticulously litigated – overturns the scholarship and teaching of more than 50 years; the second emerges more as opinion, as we’ll see, and it will be much debated in coming years

“...there is much to like. Fletcher’s is a new view, one that needs to be grappled with. For decades now, the understanding of the Treaty/Tiriti has been framed by Ruth Ross’s argument — taken to mean that there are two versions which need to be reconciled — as well as Claudia Orange’s position that Te Tiriti sets up an ongoing relationship between government and Rangatira, and the Court of Appeal’s declaration that this relationship is “akin to a partnership.”

“The principal conclusions of his thesis are, in his words:

- 1 that rather than being at odds, the English and the Māori texts of the Treaty reconcile;
- 2 that British intervention in New Zealand in 1840 was to establish government over British settlers, for the protection of Māori;
- 3 further, that British settlement was to be promoted only to the extent that Māori protection was not compromised;
- 4 that Māori tribal government and custom were to be maintained, and British sovereignty was not seen as inconsistent with this plurality in government and law;
- 5 And that Māori were recognised as full owners of their lands, whether or not occupied by them, according to custom.

“These propositions are what was offered and agreed to, he claims. It is Propositions 2 to 4 where Fletcher’s radicalism quietly hits the road. Ever since Labour’s *He Puapua* document we’ve been debating co-governance – and then along comes Fletcher to tell us that the Treaty, the English version, insists upon a *plurality* of government, with colonial government only ever to be over settlers, with that government’s *primary aim being the continuing and ongoing protection of Māori*.

“...he [does not] mention the 1860 Kohimarama conference, not the briefest reference – yet that crucial month-long meeting was a reaffirmation by 112 Māori chiefs of their understanding of the document they’d signed and lived under for 20 years thereafter. True, Fletcher’s role is to expand our understanding of the English text, not the chiefly understanding of it, but when he relies for his conclusion, in part, on the minimal accounts of discussions at various Treaty signings, it seems strange that he wouldn’t call at all upon the more substantial accounts by many of those same parties (including clear statements by the sovereign power) after two decades of experience with the Treaty in operation.

“ It was in Chapter 19 that I began making notations under the heading “Slippery.”

“The book has several errors. Well, I would call them errors.

“He has Hobson claiming Tamati Waka Nene expressed “confidence” at Waitangi that (in Fletcher’s words) “the Governor would be a ‘father’ to Maori and would protect their customs.” But this isn’t what Nene said. As Colenso records, he called the Governor “a Father, a Judge, a Peacemaker.” These are two [three] different things – the latter providing much less support for Fletcher’s notion of ongoing and active government protection.

“He misunderstands satire. Looking for support for his thesis of Maori self-government under British protection, he cites what he calls the New Zealand Company’s “supportive” opinion of the Treaty in their *25 April 1840 Gazette* as (in Fletcher’s words) “an arrangement of ‘union’ and ‘confederation’ between ‘a civilized and a savage stage by Treaty’.” At this point presumably Mr Fletcher would like us to forget the Company’s famously hyperbolic statements such as the one by which he titled his original thesis: that the Treaty was merely “a praiseworthy device for amusing and pacifying savages.” The notion of “union” and “confederation” seemed to be offered to us by the Company more for our amusement than our enlightenment.

“He assumes the absence of specific wording means something isn’t ruled out. Most egregious on this count is his argument that in *not* containing any “explicit recognition of Māori self-government and custom”, the Treaty nonetheless offers “textual pointers” towards this conclusion. This is laughable. One of these pointers, he says, is that “the promise of ‘full, exclusive and undisturbed possession’ recognises [his word] that Māori society was to be left free to regulate itself.” This is a farcical confusion of a

property right with a sovereignty right — the right to a monopoly of force (which is what government is) with the right to the peaceful enjoyment of property (the basis of English common law). It's the sort of confusion that you would expect a practising lawyer to avoid. (That said, he is a prosecutor.)

He also strangely ignores the general principle of British-based law, permitting any action to an individual citizen unless strictly *prohibited*, but action to government only when specifically *allowed* by law – setting out the “moral space” in which an individual may act. We see this when he assumes, for instance, that Lord Russell’s instructions calling for “*due regard*” to unspecified Maori custom meant *legal protection for them all*, rather than (as Russell specified in his December 1840 instructions) that these were to be “borne with, until they shall be voluntarily laid aside by a more enlightened generation.” Equally, “*no clear support*” for “*interference with Māori tribal organisation and customs*” (from those same instructions) strangely becomes, in Fletcher’s view, *clear support for their ongoing and permanent legal protection*.

Odd. Or intentional?

“His conclusion ... that “the Treaty was understood to leave intra-tribal government undisturbed,” and to grant to all Māori “an additional and special status.” “Perhaps the most compelling evidence” for this view, he offers (asking that word “perhaps” to do a lot of work) “is found in the explanations given at the Treaty signings ... discussed in Chapter 19.” But his adduced evidence here is far from compelling. It was in this chapter that I began making notations under the heading “Slippery.”

“That word “perhaps” features heavily in the book’s final chapter ‘The Meaning of the Treaty.’ You would expect that after 500 pages his conclusions would by this stage be nailed home. Instead it is littered with phrases and words like “perhaps,” “may well be,” “indicates,” “not inconsistent with,” “it is quite possible to read,” and “suggests.” Hardly the firm grounding one would expect to support the startling argument that the framers intended Māori to enjoy self-government as a permanent institution, despite those framers never once saying that anywhere explicitly.

“In other words, the case is not strong.

“The book is a joy to read. And it remained a joy right up until page 329 – right up until I read, right out of the blue, that “in the speeches at the Treaty signings” the “language of ‘protection’ and ‘guardianship’ was conspicuous.”

“Conspicuous? If there is anything “conspicuous” here it is that Fletcher includes this claim directly under the heading “The purpose of British intervention” – conspicuously intending us to take a meaning that doesn’t follow from the adduced evidence. (Not least because it’s British intentions rather than Māori reactions that is supposed to be his focus.)

“Since I’d just finished re-reading Colenso’s account of the first Treaty signing, this came as something of a surprise. It’s true that in a September 1840 letter to “principal chiefs”, Hobson “again speaks unto you” saying “I the Governor will protect and direct you – Yes, I will indeed be to you a Guardian.” And Fletcher certainly adduces this to help support his claim. But if we search Colenso’s account of the Treaty signings themselves, the most substantive extant account, we find the word “protection” used just twice (and it was only Hobson who used them), and “guardianship” (or even “guardian”) is not used at all.

“What to make of this? I hasten to add that there are, of course, many words from the assembled chiefs about this new Governor being a *father* to them. But in what sense was this meant?

“Commentators should beware of taking words too literally. I read the repeated use of the “father” figure less in the sense of someone to care over their every need, but more in the sense of either stern judge and a peacemaker, echoing the words of Tamati Waka Nene (harking back perhaps to the need for a mediator after recent wars) and also in the sense of being a teacher or wise adult from the outer world to allow them to learn and grow. Pumuka, for example, chief of the Roroa Tribe, has this sense when he says: “I wish to have two fathers – thou and Busby, and the missionaries.” From the latter two he and his colleagues have already learned “Christianity and the Law,” he says (a major theme later at the Kohimarama conference), and they’ve seen and embraced the cultural change. It’s *this* that these smart fellows, eager for modern learning, are asking for more of. For the protection of law, not for a bag of sweets and a paternalistic pat on the head.

“It was at this point that I added in my own copy an index entry for “Slippery.” It is not exhaustive, but at present it refers to similar sleight-of-hand appearing on pages 330-332, 470, 471, 474-5, 476, 479, 488, 490, 494, 500, 523, 524, 526, 527, and 529 (these last nine in the chapter ‘The Meaning of the Treaty,’ where conclusions are oft drawn together based on earlier sleight-of hand.)

“Fletcher has his work cut out for him in making words seem what they’re not. He admits himself on page 526, as he nears his work’s end, that “[t]he English draft of the Treaty contains no explicit recognition of Maori self-government and custom.” Which is true, but it’s the opposite of the conclusion he has been labouring for the previous 526 pages to prove.

“Telling us then that we should look instead to what he calls “textual pointers within the Treaty” that turn this explicit meaning inside out, he cites passages in both the English and Māori texts that, he says, “*may well be* a reference to custom,” which “*suggests* an additional and special status for Māori,” which “*indicates* that they would retain not only their identities and status but also their distinct property interests according to custom.” These weasel words – all of them in just one paragraph [p. 527, emphases mine] indicate sufficiently, I think (perhaps even suggest) that even Mr Fletcher is not fully persuaded of this artifice. That he has, quite simply, misunderstood the nature of the protection being offered”.

16 *Waitangi: Ned’s ‘slippery’ Treaty* Peter Cresswell. [<https://newsroom.co.nz/2024/02/06/waitangi-neds-puzzling-treaty/>] [Full review at <https://app.box.com/s/0yombfill3r7gurg02zrc1nyw4tz6zv7>].

17 *The Spinoff*. 6 March 2021. Scott Hamilton

18 *Ngai Tahu. A Migration History. The Carrington Text*. 2008. Bridget Williams Books in association with Te Runanga o Ngai Tahu.

Tipene O’Regan: “This book is the culmination of many generations of scholarship. It brings together important traditions and early texts, a central group of Ngāi Tahu whakapapa, and a carefully prepared narrative of Ngai Tahu’s history in the South Island” (p7).

“All history, it is sometimes said, is political, dependent always on perspective. For Māori, one can take the argument further. Accounts of others outside the kin group are irrelevant, because historical accuracy is secondary to maintaining tribal prestige. Objectivity is not the issue. Māori readers also tend to look past the narrative and concentrate on the relationships between protagonists. This is an interesting aspect of how Māori view the past” (p17)

“It was fortunate for Ngai Tahu, and any surviving Ngati Mamoe, that Europeans arrived on the scene for, as Athol Anderson concluded, “to some extent, the coming of takata pora (the ship people) was a factor in the ending of hostilities, the novelty of the people and their fascinating possessions being a powerful distraction from warfare” (p152) “Ngati Mamoe, if not exterminated, (were) absorbed by Ngai Tahu and dispossessed of their lands; and thus was the Ngai Tahu invasion of the South Island was brought to its successful conclusion after about one hundred and fifty years of strife” (p159)

“...the most populous and fertile of Ngai Tahu’s territory were largely abandoned, only ten years before beginning of Crown purchase” (p183)

“A current view of events does not negate Carrington’s, “may it never be said with truth that the white man, and his superiority in many things, has treated the brown, as Ngai Tahu treated Ngati Mamoe or as Ngati Toa treated Ngai Tahu” (p200).

19 <https://mch.govt.nz/2021-prime-minister’s-awards-literary-achievement-winners-announced-and-live-online-literary-panel> [retrieved 26 September 2022]

20 Dawson, Richard. 2005. *Waitangi Translation and Metaphor*. <https://sites.otago.ac.nz/Sites/article/view/63> [retrieved 26 September 2022]

21 Colenso, William. 1890. *The Authentic and Genuine History of the Signing of the Treaty of Waitangi*. Capper Press Reprint. 1971. 16.

Also: <http://www.enzb.auckland.ac.nz/epubs>.

22 *Waitangi Revisited: Perspectives on the Treaty of Waitangi*. Oxford University Press. 1989). Also www.waitangi-tribunal.govt.nz/treaty/kawharutranslation.asp [retrieved 28 May 2012].

23 Kawharu. Footnotes 8 and 11. www.waitangi-tribunal.govt.nz/treaty/kawharutranslation.asp [retrieved 28 May 2012].

24 *Te Ara - the Encyclopedia of New Zealand*. <http://www.TeAra.govt.nz/en/1966/hongi-hika> [retrieved 28 April 2023]

“In 1821 2,000 Ngapuhi, armed with 1,000 muskets, laid siege to pa at Tamaki. It was taken with great slaughter – Te Hinaki and 2,000 of his men, as well as many women and children, being killed. The victorious force remained on the battlefield eating the vanquished until they were driven off by the smell of decaying bodies” [this was just the start of hostilities that engulfed all of the North Island and extended down the South Island] “...it is perhaps worth noting that the European settlements in the Auckland isthmus later, in large measure, insulated the Ngapuhis from the vengeance of their southern enemies when they, too, obtained firearms.

Crosby, Ron. 1999. *The Musket Wars; a history of Inter-lwi conflict 1806-45*. 2015. *Kupapa. The bitter legacy of Māori alliances with the Crown*. 2020. *The Forgotten Wars. Why the Musket Wars matter today*.

Richard Taylor’s 1868 ‘*The Past and Present of New Zealand*’ provides first-hand accounts of Maori society pre and post Treaty [locate 1868 - Taylor, Richard. *The Past and Present of New Zealand* at: <https://www.enzb.auckland.ac.nz/epubs>

Due to inconsistency with current 'correct narratives', the Musket Wars and most preceding history have been omitted from the new school history curriculum. "*Aotearoa New Zealand is on a journey to ensure that all ākonga in our schools and kura learn how our histories have shaped our present day lives*". The Ministry of Education have substituted 'Aotearoa' for the Treaty's 'Nu Tirani,' and excised everything that happened since earliest known Polynesian colonisation until formal British colonisation in 1840. "*The study of [only the most recent 180-year snapshot post-Treaty] history helps ākonga develop critical thinking skills and become informed citizens*" [<https://www.education.govt.nz/our-work/changes-in-education/aotearoa-new-zealands-histories-and-te-takanga-o-te-wa/>] [retrieved 17 October 2022]

Racism, injustice and violence are universals what-ever the age, however to New Zealand educators it appears that anything with elements of adverse consequence *only* happened after European colonisation. Pupils are to be spared learning about 500 years of classic Māori culture derived from Polynesian colonisation (c.1250 AD). Growing population, leading to competition and diminishing food resources, destruction by burning of most of the eastern north and south island forests (from dated charcoal deposits and pollen analysis), **25** fauna extinction (revealed by middens and archaeological digs), displacement, conflict and war are out of the curriculum. "In deference to child-needs", especially "developing critical thinking", they are to be spared exposure to the Musket Wars (1806-1840) which preceded and shaped acceptance of the Treaty, and greatly exacerbated inter-hapu-iwi tensions that survive today.

The record of environmental destruction is little different from that of any other colonisation of a new land, and just as rapid as the British (similar extent of forest destruction and bird extinctions within first 100-year time-frame). There was no evident wisdom of kaitiaki guardianship in practice – just moving from one depleted resource to the next (moa—other large birds—shell fish—fernroot, et al.). Restraints on destruction were late in developing in both cultures.

"Many who talk about the environmental destruction which has gone on for the last 150 years also paint a paradisiac picture of the pre-Cook Maori. They are depicted as pre-industrial Greens, conserving the biota, inflicting minimal damage on the environment, and treating all living things with great reverence....A mature nation does not need the myth of Golden Age, an Earthly Paradise when all was well, to accentuate its present plight." **26**

25 *New Zealand's Indigenous Forests and Schrublands*. Robert B. Allen, Peter J. Bellingham, Robert J. Holdaway, Susan K. Wiser. P36. https://www.landcareresearch.co.nz/assets/Publications/Ecosystem-services-in-New-Zealand/1_2_Allen.pdf p12

26 Anderson, Atholl. 1991. "*Current Research Issues in the Study of Moas and Moa-hunting*. [" <http://www.doc.govt.nz/globalassets/documents/science-and-technical/sr37.pdf>. p11]

27 Dr Phil Parkinson. Personal Comm. 13 June 2024.

28 Roger Evans. '*whakahonore te tiriti*'. Personal Comm. 25 June 2024.

29 https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68494556/ReportonOrakeiW.pdf p188 [Retrieved 15 February 2023] *11.5.22 Manukau Report* (1985:8.3)

30 WT-Part-1-Report-on-stage-1-of-the-Te-Paparahi-o-Te-Raki-inquiry.pdf. p137

31 WT-Part-2-Report-on-stage-1-of-the-Te-Paparahi-o-Te-Raki-inquiry.pdf. p353

32 WT-Part-2-Report-on-stage-1-of-the-Te-Paparahi-o-Te-Raki-inquiry.pdf. p354

33 WT-Part-2-Report-on-stage-1-of-the-Te-Paparahi-o-Te-Raki-inquiry.pdf. p354

34 WT-Part-2-Report-on-stage-1-of-the-Te-Paparahi-o-Te-Raki-inquiry.pdf. p354

35 WT-Part-2-Report-on-stage-1-of-the-Te-Paparahi-o-Te-Raki-inquiry.pdf. p354

36 WT-Part-2-Report-on-stage-1-of-the-Te-Paparahi-o-Te-Raki-inquiry.pdf. p364

37 Colenso, William. 1890. *The Authentic and Genuine History of the Signing of the Treaty of Waitangi*. Capper Press Reprint. 1971. pp25, 26

38 <https://teara.govt.nz/en/biographies/1c23/colenso-william> [retrieved 23 October 2022]

39 Carleton, Hugh. 1877. *The Life of Henry Williams*, Vol. II. pp13-19. *Williams*: "Hone Heke was the first chief who signed the treaty, telling the people he fully approved, as they all 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. Certain chiefs under the influence of the Popish Bishop and Priests stood aloof, and there was some opposition to the protection of the Queen. Captain Hobson expressed to me his fears, lest they should not sign the treaty. I cautioned him against showing any anxiety, but advised him to recommend it for their consideration, and say that he would meet them in three days to hear their decision. Some interruption was given by certain Europeans.

"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 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.*

"The people, on being dismissed, after many had spoken, to consider this grave question, were requested to re-assemble on the third day to declare their views, as the question was for their own benefit, to preserve them as a people.

"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" ..

In regard to the protection of faiths:

"In the course of a few minutes, the French Bishop, attended by one of his priests, passed forward to the side of Captain Hobson, and requested "that the natives might be informed that all who should join the Catholic (Roman) religion should have the protection of the British Government." Captain Hobson, with much blandness of gesture and expression observed, – "Most certainly;" and expressed his regret that he had not made known his wish earlier, as "your desire should have been embodied in the treaty." Catch the idea. This was to be a stipulation between the Queen of England and the natives of New Zealand. At this date, Captain Hobson was under the delusion that the Roman Catholics carried the sway amongst the Maories. Captain Hobson, after his reply to the Romish Bishop, requested that I would explain the desire of M. Pompallier to the chiefs."

"I observed to Captain Hobson, I presumed the same protection would be afforded to all. He said, certainly. I asked, what need then such an announcement, if all would have protection alike? Captain Hobson observed that, as the Bishop wished the communication to be made, he should feel obliged by my delivering the same to the meeting.

I accordingly commenced, but could not proceed, finding that it was somewhat of a tough morsel, requiring care. I therefore took paper, and as this very grave announcement was for the benefit of all, I wrote as follows, taking the various Missions in their order of establishment in the country.

"The Governor wishes you to understand that all the Maories who shall join the Church of England, who shall join the Wesleyans, who shall join the Pikopo or Church of Rome, and those who retain their Maori practices, shall have the protection of the British Government."

"This paper I handed to the Governor, who passed it to the Romish Bishop. Having perused it, he said, "Oh yes, that will do." I then 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. M. Pompallier then rose, bowed to the Governor, and retired from the meeting."

40 https://www.aucklandmuseum.com/collection/object/am_library-manuscriptsandarchives-10946 [retrieved 14 October 2022]

41 Colenso, William. 1890. *The Authentic and Genuine History of the Signing of the Treaty of Waitangi*. Capper Press Reprint. 1971.

42 https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68494556/ReportonOrakeiW.pdf p 208

43 https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68494556/ReportonOrakeiW.pdf. pp185, 188, 189,

44 Orange, Clauda. 2020. *The Treaty of Waitangi. An illustrated history*. pp 393-434

45 WT-Part-1-Report-on-stage-1-of-the-Te-Paparahi-o-Te-Raki-inquiry.pdf. p529

- 46** *Lands Case*. New Zealand Māori Council v Attorney-General [1987] 1 NZLR 641
- 47** Cooke P. New Zealand Māori Council v Attorney-General [1987] 1 NZLR 642 line 47
- 48** Cooke P. New Zealand Māori Council v Attorney-General [1987] 1 NZLR 661 line 35
- 49** Cooke P. New Zealand Māori Council v Attorney-General [1987] 1 NZLR 663 line 45
- 50** Somers J. New Zealand Māori Council v Attorney-General [1987] 1 NZLR 691 line 16
Note: The Waitangi Tribunal's 'exclusive' role in determining the meaning of the Treaty is only for the purposes of the Treaty of Waitangi Act. The Courts are not absolved from determining the meaning of the Treaty in judicial cases.
- 51** Colenso, William. 1890. *The Authentic and Genuine History of the Signing of the Treaty of Waitangi*. Capper Press Reprint. 1971. pp 28, 30
- 52** Richardson J. In Good Faith. 29 June 2007. 13. Deciding The Case: Recollections. Citing: Tainui Māori Trust Board v Attorney-General [1989] 2 NZLR 513. New Zealand Māori Council v Attorney- General [1989] 2 NZLR 513, 521
- 53** Judd, Gary KC. 12 June 2023. *The Treaty does not trump democracy: if it did, it would be self-contradictory and meaningless*. <https://garyjuddkc.substack.com/p/the-treaty-does-not-trump-democracy> [retrieved 27 April 2024]

For most of his life Bruce Mason has been committed to the welfare of New Zealand's outdoors and that of its public users.

In the 1970s he was involved in Walkway establishment then professionally in establishing a network of public reserves for an Otago Goldfields Park.

Since the mid 1980s public assets have come under concerted attack – everything being liable to corporatisation and privatisation. This inevitably led to full-time commitment in defence of public spaces and rights.

This resulted in involvement in review of state asset allocations, and high profile campaigns on the Queen's Chain, South Island high country, public roads, foreshore and seabed. This has been via several NGOs, including Public Access New Zealand which he founded.

Increasing references to a 'partnership' with Maori whetted his interest in the Treaty of Waitangi. In 1993 he published an examination of a so-called 'partnership' over public lands. This rebutted the course that the Department of Conservation was embarked upon, being the State sector leader for 'partnership', later morphing into 'co-governance'. He predicted the subjugation of citizen involvement in policy and public land management, and the subversion of the purposes for which lands and protected species are held. This has come to pass.

DOC disregarded Court of Appeal findings brought to their attention in 1993 regarding 'partnership'. These are reiterated in *'Both Versions'*.

Refer: www.archivedmason.nz

“I really enjoyed the text. I thought that the premiss you are putting forward came over clearly and comprehensively. I am sure your work will find a keen audience, as it deserves to do”

Copy Editor

“I have just finished reading your work, which I greatly enjoyed doing. Congratulations on your textural analysis which seems to me to be spot on. I consider that you have approached the text in exactly the right way, by considering meanings of words at the time of the Treaty. As you correctly point out, the preamble is very important for it sets out the linguistic context for the three articles

I agree with your general approach, subject to one very important exception. I would suggest a different foundation for your textural analysis and examination of extrinsic evidence”

King’s Counsel

For decades governments, Waitangi Tribunal and courts, have been hung-up on the differences between English and Maori versions erroneously believing they are irreconcilable
They are not

Both texts mean the same

‘Both Versions’ demonstrates that ideological ‘lenses, frames’ and historical analysis are unnecessary, and are in fact perilous, in determining the meaning of the Treaty

The texts can speak for themselves