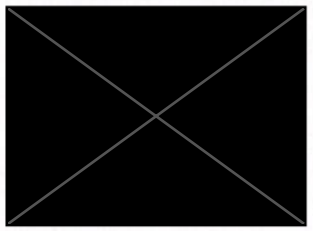

HISTORIES, POWER AND LOSS

Uses of the Past – A New Zealand Commentary

EDITED BY

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BRIDGET WILLIAMS BOOKS

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This illustration by Cliff Whiting invokes the signing of the Treaty of Waitangi and the consequent interwoven development of Maori and Pakeha history in New Zealand as it continuously unfolds into a pattern not yet completely known. WAITANGI TRIBUNAL

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The Future Behind Us

The Waitangi Tribunal's Retrospective Utopia

W. H. OLIVER

I

In 1975 the Waitangi Tribunal was set up to investigate claims by Maori against the Crown. At first only claims relating to Crown activity from the date of the passage of the act could be considered. But this limitation, removed in 1985, was circumvented well before then by an argument that though earlier actions could not be investigated by the Tribunal they could be considered.[1] This provides an early example of the intellectual suppleness which was to characterise Tribunal hermeneutics and history, under the guidance of its second chairman, Chief Judge (now Justice) E. T. J. Durie, a suppleness applied to history as much as to law. As most of the major claims it has heard relate to the past actions of the Crown, for the best part of two decades the proceedings of Tribunal have occasioned, through volume upon volume of evidence and its own hefty reports, a massive expansion of historical research and writing. And more to the present point, the reports exemplify an instrumental but – because never explicitly avowed – elusive way of writing and using history.

Two major reports of the 1990s are considered here for the way in which they provide examples of a historical mentality less concerned to recapture past reality than to embody present aspiration. Their presentist approach does not arise from a postmodernist historiography which dismisses the very notion of 'past reality'. On the contrary, most of the Tribunal's energy has been devoted to 'telling it as it was'. Its reports are Janus-like – not only because they look simultaneously to past and future, but also because they exhibit a curious mix of a commonsense respect for 'the evidence' and, paradoxically, an instrumental presentism which is remarkably evidence-free.

This essay is concerned with the Tribunal's presentism and with the way in which this is shaped by a current political agenda and by the anticipation of

its achievement in the future. The chief sources are two reports, the *Taranaki Report* (1996) and the *Muriwhenua Land Report* (1997), specifically those passages in which the Tribunal considers the essential nature rather than the details of past events.[2] Unavoidably, this is a speculative exegesis, for it draws together a seemingly haphazard and certainly unsystematic collection of statements. The Tribunal, while it has produced lengthy discussions of its jurisprudence, has made no comment upon its historiography. That, of course, does not mean that it has none but only that it may be unaware that it has.

The task of analysis must be carried out without the benefit (or hindrance) of any statement of authorial intentions; in a strict sense these reports are authorless. The names of the members of the particular Tribunal responsible for them do appear, but in their capacity as members of a commission of inquiry transmitting their findings to government, not as authors. It is generally believed that the reports begin with a draft written by an individual, often a member of the Tribunal nominated for the claim in question, to which other members and Tribunal staff contribute. But that person, even if identified by rumour, cannot be considered to be the author; the passage from draft to final text is reliably reported to be both serpentine and determinative.

While no 'author' may be identified, at least an influential 'authority' may be proposed. It is reasonably clear that E. T. J. Durie – chairman of the Tribunal as a whole since 1981 and of the particular tribunals reporting on these two claims – took a major role in determining the tone and the thrust of these (and other) reports. He has made clear his belief that the Tribunal should help to rewrite New Zealand history 'from a Maori point of view'. Such a viewpoint could be expected to show a preoccupation with deprivation and a concern with redress, not only in material ways by the award of compensation, but also through an eloquent story of indigenous loss told to underpin the campaign for a better indigenous future.

That intention need not, but in the event does, lead beyond a description of past sufferings to the delineation of a past which did not occur but might have – to a retrospective utopia. In this alternative past, European settlement in (rather than of) New Zealand is depicted as dependent upon Maori consent and should and could have led to a regime characterised by partnership, power-sharing and economic well-being for Maori as well as Pakeha. In that scenario, colonists become tangata tiriti, the people of the Treaty, and their presence in the country is conditional upon the invitation extended by the tangata whenua, the people of the land, an invitation made by the Maori to further their own purposes. This is the 'future' that was promised in 1840 and, because the promise was subsequently broken, it is the 'past' New Zealand did not have. But it remains the 'future' to which the country may still aspire.

II

A claim made to the Tribunal may be very big (the Crown's purchase of almost the whole of the South Island) or very small (the taking of a small piece of land for roading), largely practical (the pollution of a waterway) or more a matter of mind and spirit (the decline of the Maori language). The investigation of the claim may refer to one or a few past actions (and omissions) of the Crown or to a cumulative stream of acts (and omissions) extending from the beginnings of colonisation to somewhere near the present day. Whatever the character of the claim, a few key questions determine the Tribunal's investigations. First, it asks whether or not the Crown was in fact responsible for those things which it is alleged to have done or omitted to do.[3] Second, if the Crown is shown to be responsible, it asks if the acts were prejudicial to Maori interests, and third, if they were in breach of the Treaty. In practice, though the two categories could theoretically be separated, anything adjudged prejudicial will invariably also be held to be in breach.

The task of answering questions of this kind does not necessarily require the depiction of a better past that might have been. However, that is what in fact happens and it is not difficult to see how it came about. The question of what the Crown did leads necessarily to the question of what it failed to do. The finding of Treaty breaches comes to involve some discussion of what would not have constituted a breach. But if, further, the basic assumptions are both that the Crown *should* have kept its Treaty promises and that the Treaty was not a mere expression of hope but a binding obligation upon the Crown, then it becomes difficult to avoid the conclusion that the Crown *could* have kept its promises and so avoided breaching the Treaty. Ought implies can; the Crown can hardly be charged with a failure to do something it could not have done. This reasoning generates, in a clear if skeletal form, a 'counterfactual' history of policies and institutions which should and could have been put in place but were not, and which therefore constitutes a telling chronicle of 'Crown omissions'. In this way, the answers the Tribunal has chosen to give to the questions it is obliged to ask outline an alternative past.

This picture of an alternative past emerges from the answers to questions asked in order to identify breaches of the Treaty. How, then, does the Tribunal decide whether or not a specific act or omission constitutes a Treaty breach? To explore this we must enter upon the burnt-over country of 'Treaty principles' – the rules which the Tribunal applies in order to determine what the Crown was required to do and not do. Its foundation statute requires it to apply the principles of the Treaty rather than its specific terms. The principles are not set out in legislation; the fourth Labour government's version, issued in 1989, has been ignored and has had few successors.[4] This legislative reticence has left it to the

Tribunal, in response to claims, and to the courts, in response to litigation, to find the principles of the Treaty. Neither has set out a general list of principles; each has stated on a claim-by-claim or a case-by-case basis those principles held to be relevant to a specific matter. From the early 1980s on, and greatly assisted by the Court of Appeal judgment in the *Maori Council* case of 1987, the Tribunal has evolved a fluid body of doctrine to interpret the Treaty and judge the Crown.[5]

Both courts and Tribunal, in accordance with the judicial activism they embrace, eschew the practice of strict construction and 'enlarge' the terms of the Treaty into broad statements of the criteria which they consider to be applicable – and to have always been applicable. The Tribunal itself reflected upon the importance of its choice of this interpretative style. In land purchase matters, it noted, strict construction ('a narrow and technical approach') could lead to the conclusion that the only question to ask was whether the land was 'knowingly sold'; however, through a broad construction, 'the principle from the Treaty as a whole is whether … any sale was fair'. So, too, a strict reading of the Treaty could lead to the conclusion that tribal rights were subservient to citizenship rights. But a broad construction would lead to the conclusion that the Treaty was 'a political agreement to forge a relationship between two peoples'. The Tribunal assumes, quite without argument, that the correct way to proceed is by broad construction.[6]

It is assumed, further, that the principles established by this mode of interpretation may be applied to all the acts and omissions of the Crown relevant to a claim, irrespective of the values and norms of the period in which they were performed (or not performed). Although at one point in the Muriwhenua report it is agreed that, 'as Crown counsel contended', government 'policies and practices should be seen in the light of the standards of the day', it is more forcibly asserted that 'they must also be assessed by the principles and the standards for settlement established in the Treaty of Waitangi'. It is laid down that 'a lower test cannot be sanctioned simply because it later became the norm' and moreover that 'the canons of justice and protection apply to all ages'. The general import of this somewhat obscure passage is indicated by the marginal subheading: 'The principles apply to all ages.' Here, perhaps, a perceived distinction between history and law is pointed to. History, the passage seems to imply, is concerned with 'seeing' and the law with 'assessing'; the former approach is given a 'lower' standing.[7]

Thus, by an appeal to timelessness – which in effect enables it to apply the standards of its own time to the events of an earlier time – the Tribunal was able to establish a basis for ideal colonising policies which, it believes, should have informed government action affecting Maori from the very beginning. In the

event, government policies immediately declined to a lower level when these principles were ignored or forgotten; now, however, they are being revived and reinstated by the Tribunal. The shape, if not the terminology, of this historical scheme is millennialist. There is a fleeting golden age of promise, a fall from grace, a recovery from the fall, and the timeless principles of truth persisting through denial and adversity. It is a shape commonly to be found in the history of prophetic movements arising from the experience of loss. What was lost in the past through the fall is being recovered for the future by the movement towards justice which the Tribunal embodies.[8]

III

The two major 'principles' derived from the Treaty establish the essentials of this loss (and the prospective recovery from it). The tino rangatiratanga guarantee obliged the Crown to recognise and support the traditional structures of tribal government and to accept the sole authority of these institutions over land transactions. The Crown's duty of 'active protection' is expanded into a wide range of 'planning' policies to promote Maori economic well-being. Little effort is made to argue for the feasibility of either programme in the mid-nineteenth century, and no attempt to consider its likely efficacy at the interface of two such dissimilar societies – apart from seeing in that dissimilarity a cause of mutual misunderstanding: a matter which in itself might have prompted doubts. For the most part, it is simply assumed that the Crown could have done what, by this argument, it has been shown that it should have done. That is the basis upon which the retrospective utopia is constructed; it is the reverse side of the coin of culpability.

The Tribunal's identification of Crown culpability varies according to the specifics of a particular claim. In the Muriwhenua report the emphasis falls on Crown failures and errors in not pursuing policies of a broadly economic kind. This implies a need for a fairly activist state. The Taranaki report emphasises as the fundamental failure of the Crown its refusal to recognise aboriginal autonomy, defined as 'rights to manage their own policy, resources, and affairs, within minimum parameters necessary for the proper operation of the State'.[9] This, by contrast, proposes a minimalist state with little to do in connection with Maori except to leave them alone. Though there is some inconsistency in this, it is more significant that in each report the Tribunal asserts that the Treaty guaranteed a major continuing function to traditional tribal structures, and that the Crown acknowledged through the Treaty that its own authority would be limited by that function.

The Taranaki report shows the influence of the revised *Draft Declaration on the Rights of Indigenous Peoples*, issued by the United Nations Working Group on Indigenous Populations in 1994. Aboriginal autonomy and self-government, the central affirmations of this declaration, are equated with tino rangatiratanga and mana motuhake. The International Decade of Indigenous Peoples, 'barely acknowledged in New Zealand', gives the matter of indigenous rights 'new significance'. Since indigenous rights are ineradicable, the location of political power must exhibit duality and limitation: 'on the colonisation of inhabited countries, sovereignty, in the sense of absolute power, cannot be vested in only one of the parties ... sovereignty was constrained in New Zealand by the need to respect Maori authority'. These universal principles of right do not, of course, displace Treaty rights but serve to confirm and commend them: 'The draft declaration expresses with particularity several principles that flow naturally from the Treaty of Waitangi.' The use of these late-twentieth-century formulations serves to underline the presentist nature of the Tribunal's reading of a quite distant set of words.[10]

It is upon late-twentieth-century assumptions that the Taranaki report confidently reconstructs an alternative political past. The political structures and relationships which should have obtained after 1840 are derived from the Treaty's creation of a partnership, one within which the colonial government had a clear but neglected duty: 'The option, never pursued, was to support or develop *customary* institutions to provide a negotiating face' in the land disputes which led to war. There is, perhaps, something curious about the notion of customary institutions being *developed* by an external agency. That on one side, the pre-eminent duty of the colonial government was to keep its hands off Maori politics. 'Rules constraining individual members, expectations that those rules will be respected by third parties, and rights of pan-tribal association are all aspects of the authority, autonomy, or rangatiratanga that the Treaty guaranteed.' The context here is the anti-land selling movement in Taranaki, but there is no reason to suppose that this is not taken to be a general obligation upon government.[11]

The autonomy of Maori institutions arises from a 'prior inhabitant status' which 'was not changed by the recognition given to a new form of governance' – 'the separate authority of governance and rangatiratanga was acknowledged in the Treaty'. As well as being separate, the two political authorities, it is implied, are of equal standing. In the Taranaki conflict 'One [side] sought peace by dialogue on equal terms, the other by domination or by removing Maori altogether'. Further (in discussing the argument that rebellion justified confiscation), the Tribunal declares that 'The Treaty furnishes a superior set of standards for measuring the propriety of the State's laws, policies and practices.

This shifts the debate from the legal paradigm where the rules must protect the Government's authority to one where Government and Maori authorities are equal.'[12]

Separate *and* equal – these terms characterise the status thus conferred on the two political authorities. That there were not, in fact, two such parallel authorities was obvious to the Tribunal, but that knowledge merely enabled it to condemn the colonial government for not providing the constitutional forms which would ensure that it was the case. The lack of proper constitutional and legal forms is held responsible for the failure of 'governance' to respect 'rangatiratanga': 'The execution of the Treaty ... is evidence itself that the need for protocols between Government and Maori had been foreseen.' However, these were not established and 'without clear constitutional or other legal requirements, promises are too easily forgotten'. This prefigured but unachieved functional equality reflects present-day agendas for a constitutional structure in which Maori would enjoy parity.[13]

The relationship of traditional Maori polities and the colonial administration should have been one of equality. In passing, the Tribunal remarks that it has adopted the usage of its older Maori witnesses in regarding the monarch as distinct from and superior to the government, so that 'in this report we generally refer to "the Government" where "the Crown" would otherwise be used'. In effect 'the Crown' becomes something other and much higher than the executive arm of government. The Crown becomes a person removed from the iniquities committed by those who acted in her name. Thus the report is able to venture the opinion 'that in opposing Maori authority in this way, he [the Governor] was in "rebellion" against the Queen's word in the Treaty' – perhaps the scare quotes suggest an awareness of an element of hyperbole? Here, of course, a 'Maori view of history' is apparent – the viewpoint of those Maori who persisted well into the twentieth century in appealing to the Crown as monarch to correct the wrongs done in its name by the local executive.[14]

There is no detailed description of an ideal political system in which this equality would have been established, but some of its major features are evident. It would have preserved tribal self-government: 'the problem [with early land purchases] is not only that the Government's answers were wrong but that the Government presumed to decide the questions at all, for it is the right of peoples to determine themselves such domestic matters as their own membership, leadership, and land entitlements'. In buying land the Governor 'was obliged to follow Maori law ... which required that he deal with the collective interests through their representatives'. This autonomy, it is at least implied, would have been territorial. Taranaki Maori had 'had to contend with new layers of authority, exercised by local, provincial, and central government officials.

All came to supplant the rangatiratanga of their chiefs, who were submerged by colonisation.' These 'layers of authority' are interlopers in what should have remained a tribal domain – that is, in the province of Taranaki, or a considerable part of it.[15]

Though, in the context of a report to government, it is understandable that the Tribunal did not think it necessary to translate these generalities into specific policies and to test their practicality, its failure to do so leaves its conclusions in a distinctly vulnerable condition. An examination would have undermined their credibility. Under such conditions land would have been available for settlement only if and as autonomous Maori authorities provided it; colonisation would have been controlled by the indigenous people exercising authority through their traditional structures within distinct territorial realms. It can hardly be supposed that a large and increasing settler population and an expanding capitalist economy would have tolerated such controls. Post-Waitangi New Zealand, had it resembled this model, would not have been a colony in any real sense of the word, and certainly could not have been what it quickly became, a colony of settlement.

IV

The Muriwhenua report concentrates upon the government's interventionist role in supporting Maori aspirations for the future. This contrasts with the emphasis in the Taranaki report upon the government's obligation to leave tribal institutions and practices intact. However, the Taranaki report does note, not quite consistently, that the government had an obligation to 'support and develop' traditional tribal institutions; this is the theme it expands considerably in dealing with the Muriwhenua claim. The principles applied to the Muriwhenua claim are 'protection, honourable conduct, fair process and recognition, though all may be seen as covered by the first'. Sir Robin (since 1995 Lord) Cooke, the President of the Court of Appeal in the *Maori Council* judgment of 1987, is quoted to the effect that 'the duty of the Crown is not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable'.[16]

The principle of protection, as advanced by the Tribunal, would have imposed some heavy duties upon the colonial government. First, because it created a monopoly, its right of pre-emption in land acquisition 'carried a concomitant duty to ensure that sales were understood, and that hapu retained a sufficient endowment of land to meet present and future tribal needs'. Second, because it enjoyed a monopoly, 'the Government should be accountable for its

actions in relation to Maori ... State policy affecting Maori should be subject to independent audit, and ... Maori complaints should be fully inquired into by an independent agency'. Third, Maori rangatiratanga was to be recognised and respected: 'it was undertaken for and by the Governor that Maori custom and law would also be respected. The aspects of rangatiratanga ... include the right to have acknowledged and respected the hapu's system of land tenure and of contracting, and also the hapu's customary preferences in the administration of their affairs or the management of natural resources.'[17]

These passages set out in broad principle the essential character of the policies which should have resulted from what the Tribunal calls 'consensual annexation'. The government should have ensured that sufficient land was left in Maori hands, that Maori understood what was meant by the sale of lands (a portentous requirement in the light of the assertion, in this and other reports, that Maori did not intend to *sell* land at all), that its own actions were subject to independent audit, and that Maori custom in matters of ownership, doing business, law, administration and political authority were preserved. These are considered to be commitments made by the Crown in the Treaty; the failure to meet them is held to constitute a series of breaches of the Treaty.

The programme is admirable, but it is not and has not ever been compatible with colonisation. Certainly, for a time, Maori were more or less unaffected by government in regions where settlement was light or non-existent. That may well, in certain places and for a time, be mistaken for partnership and respect; it could more accurately be described as expediency and caution. Settlement and the power of the settler-state expanded incrementally from the 1840s to the 1870s; it is unlikely that this process could have been impeded by a 'correct' interpretation of the Treaty. It is just as unlikely that the new colony could have been characterised by interventionist policies, governmental planning and direction, a pervasive and efficient bureaucracy, supra-governmental audit and review, and a dominant ideology of biculturalism, all designed to support an autonomous Maori society, polity and economy. The Tribunal does not take into account any argument that would cast doubt upon the plausibility of its scenario for an acceptable colonisation; it is hard to avoid the conclusion that it considers it to have been entirely feasible – that it could have been, as well as should have been, the case.

It insists that 'in the new emerging world [of 1840], several options were possible', including some form of government based upon the partnership 'presaged' by the Treaty of Waitangi. While it concedes that 'the need for some alternative arrangement [to traditional Maori polities?] may be more apparent now than it was then', it rejects the argument 'that alternative modes of operating were unknown'. The (only two) examples it offers of these alternatives are

not compelling. One was 'a form of Maori rule using missionary advisers', the other 'a political confederation of tribes with British advisory opinion' as had been promoted by the Resident, James Busby – i.e. the proposal which led to the 1835 Declaration of Independence.[18] These are flimsy precedents; nevertheless, the basic assumptions are that Maori authority, in the form in which it was exercised before colonisation, was guaranteed by the Treaty, should have been maintained in succeeding years through the recognition of Maori autonomy within a political partnership and, it has to be assumed, would have been capable of implementation.

Only cursory attention is given to the practicability of the functions the colonial government was expected, on this reasoning, to discharge. The Tribunal's reply to the contention in Crown evidence, that 'little long-range planning would have been going on then' is a deceptively simple but essentially evasive statement that 'the whole business of colonisation was about providing for the future. Thus the large land acquisitions, even before the settlers arrived. The entire scheme was future-driven.' This conclusion, true enough in itself, is not sufficient to support the assumption that an interest in the future must entail something like indicative planning. Nevertheless, and wholly ignoring such considerations, the Tribunal condemns the government for its failure to plan settlement in a way that would ensure that Maori would benefit from the new economy. It 'ought reasonably to have seen the need for such a plan'; in buying land 'the Government was planning ahead, at least for Europeans'. The failure to do so for Maori, it is contended, casts doubt upon the validity of land transactions 'for lack of common purpose and design'. Again, this is an admirable ideal, but not one which pays much attention to the realities of colonisation. Those realities, of course, had deplorable consequences for Maori, but that does not establish the feasibility of the alternative set out by the Tribunal.[19]

The Tribunal expects a great deal of the fledgling colonial administration of the 1840s and occasionally sets out the desiderata in some detail. It goes so far as to set out (in a section of the report with a marginal subheading 'Policy and planning generally') the official information base needed for the framing of policy: hapu population, kainga location, and the location and quantity of lands needed to participate in development. Government should have informed itself as to the 'administrative structures necessary for tribal management and individual operations' and should have made provision for 'agricultural training' and 'development assistance'. It adds that 'this was not an inconceivable proposition, since the missionaries had been providing just that'.[20] But it is a long haul from a few mission farms to a nationwide training programme. While the government of the day is censured for not having done these things, the matter of feasibility is not otherwise raised and certainly not the question of

whether such measures would have occurred to government or whether it had the resources to implement them.

The alternative implied by these desiderata is a colony administered by an extremely busy state, highly bureaucratic, very well informed and, further, subject to something that sounds like judicial review. Its acquisition of land imposed upon it 'a responsibility ... to demonstrate its entitlement, to enrol in some permanent record the method by which the land had ceased to be Maori land, and, if ever required to do so, to establish that the alienation was in all respects fair'. Accordingly, there was a need 'for an independent audit of the Government's policy and practice, or for the judicial supervision of individual transactions'. There are no specifics, but possibly a politically independent protectorate is envisaged; perhaps, too, there would have been a judicial tribunal empowered to invalidate government land dealings. 'Active protection' entails a kind of judicial activism devoted to Maori well-being and the preservation of traditional society. This anachronistic vision locates an idealised late-twentieth-century state in the mid-nineteenth century.[21]

This sketch of the general outlines of a past which should and could have been established in the 1840s is one side of the Tribunal's historical coin. The other is an immensely detailed examination of specific instances of Crown actions and inactions: case studies of the land transactions which lie at the heart of colonisation. However, these two historical exercises are not kept entirely distinct; the 'alternative' overview at times questions the cogency of the specific case studies. Three chapters of the Muriwhenua report, over 100 pages, are devoted to specific land transactions. Inevitably, a great deal of irregularity and impropriety is revealed. There is no reason to doubt the correctness of this description; colonisation has never been conducted under conditions of due process, utmost good faith and official accountability – no doubt there would have been a better world if it had been. But these detailed indictments go a good deal further than that. The extremely complicated Mangonui transaction of 1863 provides an example. The episode, it is concluded, 'typifies the resident magistrate's incomprehension of, or disregard for, both the Maori ethic and English legal processes and conveyancing forms'. This magistrate, W. B. White, the account goes on, was neither a lawyer nor a competent surveyor and had no legal authorisation to conduct land transactions. These comments appear beside a marginal subheading 'The disregard for process'.[22] The requirement that 'due process' should have been followed indicates a view that settlement (the rationale of annexation) should have waited upon the availability of a sufficient number of properly and quite highly qualified public servants.

Only with some hesitation can one suppose that the Tribunal really believed that settlement could have been delayed until this condition was met. If it did

make that assumption, its historical reconstruction must be considered defective in failing to consider practicalities before turning what is certainly a matter for regret into a culpable omission. Its interest in the past – for all the minute empirical character of its investigations and discussions – was not to realise the past in its distinctiveness but to indict it for its reprehensibility, and to do that by constructing an ideal (but feasible) alternative. The reasons for this determined projection of an ideal past so at odds with the one that occurred must be sought in an underlying but inexplicit historiography.

V

The passages examined in the preceding two sections take up only a few of the more than 800 pages making up the Taranaki and Muriwhenua reports. Why, it could be asked, pay them so much attention, especially as it is most unlikely that the Tribunal writers intended to get in the business of historiography? But anyone who gives an account of the past is in the business of historiography, and never more so than when not intending to be. Such throwaway remarks (if that is what they are) often yield clues to unstated premises and give guidance as to the true character of a text. The Tribunal is too important a producer of historical writing for its own silence on such matters to be allowed to prevail. On the face of it, it seems quite possible that it adopted some kind of counterfactual strategy to give added emphasis to its critique of colonisation, to reinforce its condemnation of the actual past and to strengthen the case for remedies. A comparison of what was with what might have been would both illuminate and indict the former.

Here 'might have been' is the critical phrase. Unless the comparison is made with a plausible alternative it will merely point to something someone would have preferred to happen. While there are situations in early New Zealand history which might benefit from a counterfactual analysis, they are ones in which the supposed alternative has at least an initial plausibility. Alan Ward points to what he considers to have been the malign impact of the ban on Maori leasing land to settlers rather than selling it.[23] He does not in fact do so, but he might have attempted to project a plausible alternative on the supposition (as in fact became the case in the 1860s) that leasing had been allowed from the outset. By contrast, the Tribunal, however, in outlining a decent sort of colonisation characterised by partnership, power-sharing, consensuality, due process and bureaucracy, presents an alternative which lacks a comparable initial plausibility; it becomes no more than a wish-list.[24]

This discussion of counterfactuality is to the point only in leading to a

conclusion as to what the Tribunal was *not* attempting to do in writing history – it was clearly not writing history within the usual (if not universally observed) academic conventions. It was, perhaps, intending to do something rather more interesting. Certainly its task – to report to the government on certain of its past actions – could, just conceivably, have been discharged in a straightforwardly academic way. Whether or not the Tribunal, which is a commission of inquiry and not a court of law, could have taken an approach to historical investigation that owed less to the procedures of the courtroom and more to the conventions of the seminar is not a question which has been much examined; here it is simply raised and not further pursued. But it does seem reasonably safe to conclude that if it had adhered to a more academic way of doing history, its political effectiveness would have been severely curtailed. The number of 'don't know' responses would have limited the Tribunal's usefulness for those who want a firm decision rather than an inconclusive, even if an enlightening, analysis.[25]

While its belief that it must arrive at a firm conclusion is the most obviously non-academic characteristic of the Tribunal's history, there are other shaping influences. The 'facts' have to be seen in the context of 'the law' – the elastic body of doctrine known as Treaty jurisprudence. They also have to be placed, thanks to the Tribunal's chosen path, in a Maori perspective, an equally adjustable and not precisely defined context. Both mentalities are 'historical' in the sense that they deal with situations which occurred some time ago but, whether for good or ill is not the question here, they do not rely upon the usual conventions of academic history.

The Tribunal's evident unconcern for anachronism helps to identify the character of its history. An awareness of anachronism and of the need to avoid it is an essential component of the sense of the past which characterises the kind of scholarly history prevalent since the early nineteenth century.[26] While postmodernist theory, by reducing the past to an element in present consciousness, renders the idea of anachronism meaningless, the Tribunal is hardly postmodernist; while it constantly uses past 'facts' for present purposes, it vigorously insists upon their past reality, even though (as has been argued here) it takes an inadequate view of what constitutes past reality.

Given that insistence, it would be possible to end this discussion with the finding that the Tribunal had simply got it wrong. But the absence of an awareness of anachronism suggests a more interesting possibility. Its way of putting the past to use may owe very little, if anything, to the norms of conventional scholarly history. Instead, its norms may derive from a dual intellectual ancestry, English common law and Maori tribal history. Each tradition could be expected to be influential in a judicial body dominated by lawyers and hospitable to

Maori ways of rendering their past. Neither tradition is much concerned with the ways in which the past is unlike the present, so that in each past and present can and do merge effortlessly into each other. Inevitably, then, each lacks a sense of anachronism.[27]

The impact of common-law thinking upon the history operational in both the Tribunal and the courts has been analysed by Paul McHugh, in an article tracing what he sees as a shift from a 'vertical' to a 'horizontal' style of 'Crown–tribe relations'. He pays a good deal of attention to a parallel transition in historiography from a Whiggish state-centred progressivism to 'an historiography of encounter ... more attuned to ... contemporary New Zealand political life'. The common-law tradition is credited with the major role in bringing about the historiographical shift he believes that he has detected. The Court of Appeal judgments 'placed the Treaty of Waitangi in common-law time – time without history – and imbued the Treaty with seemingly ageless "principles" ... [which] placed the Crown's relationship with Maori in an eternal present through which incidents of five, 50 or 100 years ago could be viewed without regard for time'. More, the principles which the Tribunal applies 'are not explicit in the Treaty text'; they exhibit 'sleights of time ... characteristic of common law method'.[28]

Basically similar conclusions are reached by Richard Boast in exploring the interface between history and law in Tribunal proceedings and reports. Rather than attempting to discover what the 'principles' of the Treaty might have been to nineteenth-century Crown agents, such as Donald McLean or George Grey, 'the Tribunal has preferred to construct a set of standards which it perceives as valid and relevant at the present day, and to judge the Crown's actions in the past by those standards ... the Tribunal's principles are a modern construct'. This Tribunal practice, Boast considers, 'is present-minded or Whig history with a vengeance ... the Common Law has always been present-minded even when ostensibly concerned with reviewing the past'. While Boast is concerned about the consequences of this 'quintessentially legal approach to the past', his suggestions for their mitigation do not go further than a proposal that the cross-examination of expert historical witnesses be abandoned, in recognition of the fact that the conclusions of historians (including the Tribunal as historian) are not comparable to 'the expert evidence of engineers, pathologists, scientists and so on'. That would indeed be a significant step if it was made in recognition of the necessarily provisional character of the results of historical research. However, that recognition would seriously question the Tribunal's conviction that certainty is attainable through its investigations.[29]

Andrew Sharp, in a 1997 essay on what he called 'juridical history', arrives at much the same conclusion (while raising but leaving on one side the question of whether 'doing juridical history is really doing history at all'). Such history is

'a mode of representing the past so as to make it available to legal and quasi-legal judgment in the present'. In particular, 'the requirements of reparative justice', when there is a long interval between the commission and the correction of the wrong being dealt with, mean that 'juridical history has to be highly casuistical. It seeks, whatever the difficulties, to bring all the acts of agents and all events under known rules to be decided according to these rules'. The need to arrive at an authoritative decision and so to put an end to argument is what most distinguishes Tribunal history from what Sharp describes as 'the prejudices of a professional present-day historian' – itself a sufficiently prejudicial description.[30]

Clearly, neither McHugh's 'common-law time' nor Sharp's 'juridical history' are close to the kind of history that usually goes on in monographs and journals. Though the limitations of a historical activity designed to elicit clear answers from an unclear past are apparent enough, the concern here is not to deplore that characteristic so much as to place it. While that, too, was the intention of McHugh and Sharp, here a further line of descent, an ambilineal whakapapa, is proposed. Tribunal history (and the kind of history generated by the law) is closely similar to the historical attitudes of pre-modern societies – a kind of history in which anachronism is not a relevant consideration, for the differentness of the past does not appear to exist, let alone to matter.

The absence of a sense of historical perspective and so of a recognition of anachronism in pre-industrial and pre-literate societies has often been noted.[31] It has been attributed to a barely perceptible pace of social change, a lack of the means of measuring time, and the absence of a written record to register difference. While in all societies the past is used by some to justify the present, in many that justification is the sole purpose of the orally transmitted record and is not challenged by other ways of recording and transmitting evidence.[32] It is said by Maori that for them the past is not behind but in front of them, that they move into the future backwards.[33] This concept is often advanced as a comment upon Pakeha 'rootlessness' and 'pastlessness' in a place where they are still strangers. More accurately, it contrasts a view of the past which emphasises continuity and ignores change with one which is more sharply aware of difference and is characterised by perspective.

Maori at the turn of the twenty-first century, of course, remember the massive change by which their country was taken away and their day-by-day living radically altered. But this memory, for all that it signals an abrupt and severe break in continuity, does not seem to have affected the integration of past and present; rather, it has fostered an intensified self-identification with a 'recovered' and mythologised pre-colonisation past on the other side of the fissure. Maori have, perhaps, two pasts: one of change and discontinuity imposed upon

them by external force, and another of changelessness and continuity to which they adhere with all the more resolve because the imposed change has been so radical. Even as extreme a change as conquest and colonisation is discounted by insisting upon its externality, its superficiality and, apart from providing grounds for reparation, its irrelevance.

This insistence is of a piece with a parallel revivalistic enthusiasm for traditional arts, customs, rituals and belief systems; these have been all the more vehemently asserted as Maori have become more and more integrated into the urbanised, capitalist and technological mainstream. Conjecturally, but still conceivably, this could be considered as a historical trauma of the kind explored by David Lowenthal; such a radical 'breach with the past ... maroons us amidst a valued but ever less familiar legacy'. To take this conjecture further, it may be suggested that in this paradox, 'traditional' Maori and heritage-minded Pakeha occupy some common ground. Pakeha, prompted by a less painful but still unsettling discontent with a troublesome present, exhibit in their own ways many of the manifestations of this historical culture of nostalgia – not, of course, a proposal to revive, or to appear to want to revive, an entire former society, but rather that quest for life-enhancing items retrieved from a studied past known as 'heritage'. This shared appeal to an arduously recovered 'tradition' creates a historical enterprise (or set of enterprises) in which its practitioners, of both or all ethnic inheritances, could be seen as 'ministering to a culture terrified by the fragility of the contemporary, and seeking in chronicle an inverted form of augury'.[34]

This judgment will almost certainly seem outrageous to those who so confidently urge upon their hearers the merits and the necessity, as well as the practicality, of their campaign to recover and to reinstate the culture that flourished on the other side of the colonial fissure. Linda Tuhiwai Smith, in *Decolonizing Methodologies*, sees in this reclamation the essential use of history in the contemporary struggle of Maori. Reclamation is much more important than new information and interpretations and even more important than the challenge it offers to the settler master narrative. 'It is not simply about giving an oral account of or a genealogical naming of the land and the events which raged over it, but a very powerful need to give testimony to and restore a spirit, to bring back into existence a world fragmented and dying.'[35] There is a poignant duality in this utterance, set alongside the phrases used a few lines back to characterise this use of history: 'fragility' is surely a term which could be aptly applied to a dying world; still, that world becomes the shape of the future, an 'inverted form of augury'.

In all this there is an element of the paradoxical. Just as the Tribunal sets about the work of 'restoration' equipped with the weaponry of the common law,

so Smith goes about her task with the demolition tools of the poststructuralist ideology she explicitly endorses. Common-law history and poststructuralist methodology are both gifts of the repudiated west, the products of the world of discourse of the colonisers and the appropriators. The boundaries between colonised and coloniser have become obscured by the traffic which flows from one side to the other. And not just in one direction; the quest for pre-industrial and pre-modern values and beliefs, integral to the Maori revival of 'tradition', appeals strongly to those on the coloniser side who gratefully welcome in this retrieval what they take to be the virtues of the irrational, the instinctive and the 'holistic'.

It is not the purpose of this diversion to suggest that the Tribunal has been off on a nostalgia trip. But it may well be considered that nostalgia for an imagined past is a powerful way of expressing present discontents and at least a plausible way of setting about remedying them. For the Tribunal, within the scope of its assigned (and self-assigned) tasks, adopts positions consistent with this traditionalist revival, especially in asserting the continuing vitality of pre-modern tribal polities and the values they express. It is, indeed, the central argument of this essay that it is 'seeking in chronicle an inverted form of augury'. It asserts that change in such basic values as self-identification with ancestral land could not (and in fact did not) occur as a result of colonisation. It contends that traditional forms of political authority remained sufficiently intact at least up to the 1860s for equal-to-equal dealings with the new government and declined only as a result of settler-state aggression. It looks for a revival of traditional tribal polities in the twentieth and twenty-first centuries through the creation of a tribal economic base. Even methodology is called into service by elevating, as less prone to error, the oral over the archival record. From a more perspectival point of view, all this is not so much a matter of doing history as of defying it – of reasserting, to the point of reinventing, the evidences of continuity and denying the significance, if not quite the actuality, of change.

VI

Here an attempt has been made to extract a 'Tribunal historiography' from a handful of otherwise perplexing utterances thrown up in the course of the Tribunal's laborious task of recovering 'the facts'. They are commonly to be found in sections of the reports in which principles are being defined and findings or conclusions established. This placement does not give the impression that they are random musings; and even if they were, they would not lose their significance. These ideas are not to be found only in the Muriwhenua and

Taranaki reports; they are present, in one way or another, in most of the Tribunal reports of the 1990s.[36] They may reasonably be seen to arise from a pre-modern way of thinking about the past which reflects the influence of both the common-law and Maori tradition.

Both the common-law and the Maori ways of putting the past to work in the present lead to an insistence upon the presentness of past events, from broken promises to wartime atrocities. They also lead, so it is argued here, to the non-events which are advanced by the Tribunal as both past and present possibilities – in effect, such non-events are a back-projection of present goals. So, while the past is given a location in the present, by a reversal of direction the present in the form of its hopes for the future is given a location in the past. This retrospective reconstruction has a utopian character: a vision of the future and a present programme designed to realise it is reinforced by the discovery of its essential characteristics in the past.

If past, present and future coexist in a seamless 'history without time', there is no reason why these conventional categories should not be collapsed into each other. Consequently the past is used to shape the future, not simply in the form of grievances demanding present remedy, but additionally in the form of real but unrealised 'possibilities'. A future, already shaped by the prospective reversal of a history of loss, is discovered in the past, not (except by way of its denial) in the past that occurred but in the past that was promised. Both the promised past and the to-be-achieved future are characterised by self-determination, partnership, power-sharing, prosperity and stability, all within the parameters of an enhanced tribal polity. This is the most spectacular way in which the Tribunal has made itself the mouthpiece of the deprived. It is not altogether strange to find in its history some of the elements of a religion of the oppressed and the promise of delivery from bondage into the promised land.

This vision, not at all coincidentally, is a reversal of a very different redemption history – one in which Maori were seen as a people in need of the benefits of religion and civilisation and lucky to have received them at the hands of the British. The Tribunal, especially in the Muriwhenua report, strenuously depicts Maori as a numerous, resourceful, prosperous and formidable people. Far from being primitive, their ways of regulating their lives were 'law' and their institutions 'polities'. This pre-European golden age could have been preserved and strengthened by a self-regulated injection of new economic opportunities and skills. Maori accepted from settlers new forms of economic enterprise and practised them with conspicuous success.[37] At most, they sought no more than assistance in making the transition to a capitalist market economy.

That programme, so the Tribunal's chronicle of acts and omissions implies, was the prime duty of government after 1840: to assist in tribal economic

development while supporting traditional forms of tribal political authority and promoting European settlement only within that context. Because government policy took precisely the opposite course, the past that has been experienced by Maori becomes a story of deceit, iniquity, deprival and loss punctuated by one lost chance after another. Loss is more than simple deprivation; it is the loss of the self-determined future which was possible in 1840 and is still to be achieved. At the heart of the Tribunal's depiction of a 'possible' past is a 'known' future, a kind of paradise lost at the dawn of colonial time.

This utopia has a paradoxical resemblance to a radically opposed nineteenth-century vision of a decent kind of colonisation – the settler vision of a new chance in a new world for the deprived of the old. The belief that the new land provided (indeed, providentially) colonists with an opportunity for a life like that in the old country but shorn of its defects and impurities, is something of a commonplace in 'settler history'. The Tribunal's utopian past is a mirror image of this imagined 'better Britain'. It, too, supposes an imperial outcome without the vices of imperialism. Neither such settler expectations nor the Tribunal retrospect show much resemblance to the harsher realities of colonial New Zealand.

VII

Even though the matter of practical outcomes is not the main concern of this paper, it may reasonably conclude with some reflections upon the relationship between the Tribunal's historiography and its effectiveness in discharging the task of identifying Crown acts and omissions which have breached the Treaty. It is quite apparent that its way of doing history does serve one positive purpose: it enables the Tribunal to arrive unfailingly at emphatic and straightforward conclusions. But that outcome is achieved at some cost; part of that cost may be a sense of diminished credibility.

This discussion of the kind of history informing two major Tribunal reports leads to the conclusion that it is a genre which lacks a sense of perspective, which deals peremptorily with the distinctiveness of the past, and which ignores the impact of that context upon past actors, especially those acting for the Crown. Outside the claims process – a limited environment and indeed (as it sometimes can seem when one is inside it) a claustrophobic one – this way of doing history runs the risk of failing to convince any but its practitioners and beneficiaries. Rhetorical gestures towards timeless truths – and the appeal to 'timelessness' to disarm dissent and bypass exegesis – will not dispel the suspicion that the Crown and its agents are being short-changed, primarily by insisting that they should,

in the larger issues of policy and administration, have heeded rules of which they were unaware and performed tasks which would never have occurred to them. More, some consideration of context would surely require a more careful consideration of the texts and the 'surrounding circumstances' of the Treaty itself than is required by the assumption that it supplied and still supplies a straightforward political blueprint. If it is represented as what it patently is not – a simple guide to simple action – its real significance must be sought elsewhere, and perhaps sought anxiously, for fear it might not be found.

One consequence bears upon the Tribunal's position within the debate about colonisation. As the Crown was the prime colonising agent, there is little in the colonisation of New Zealand which it did not promote or endorse or permit. As colonisation necessarily produces results prejudicial to the colonised, the Crown cannot be separated from these consequences and is available for constant condemnation. But, because 'saving the honour of the Crown' by righting the wrongs done in its name in the past is a paramount consideration (and a convenient fiction), this connection cannot be taken as unavoidable or irreversible. The Tribunal tries quite strenuously to avoid the conclusions that it is anti-Crown and anti-colonisation.

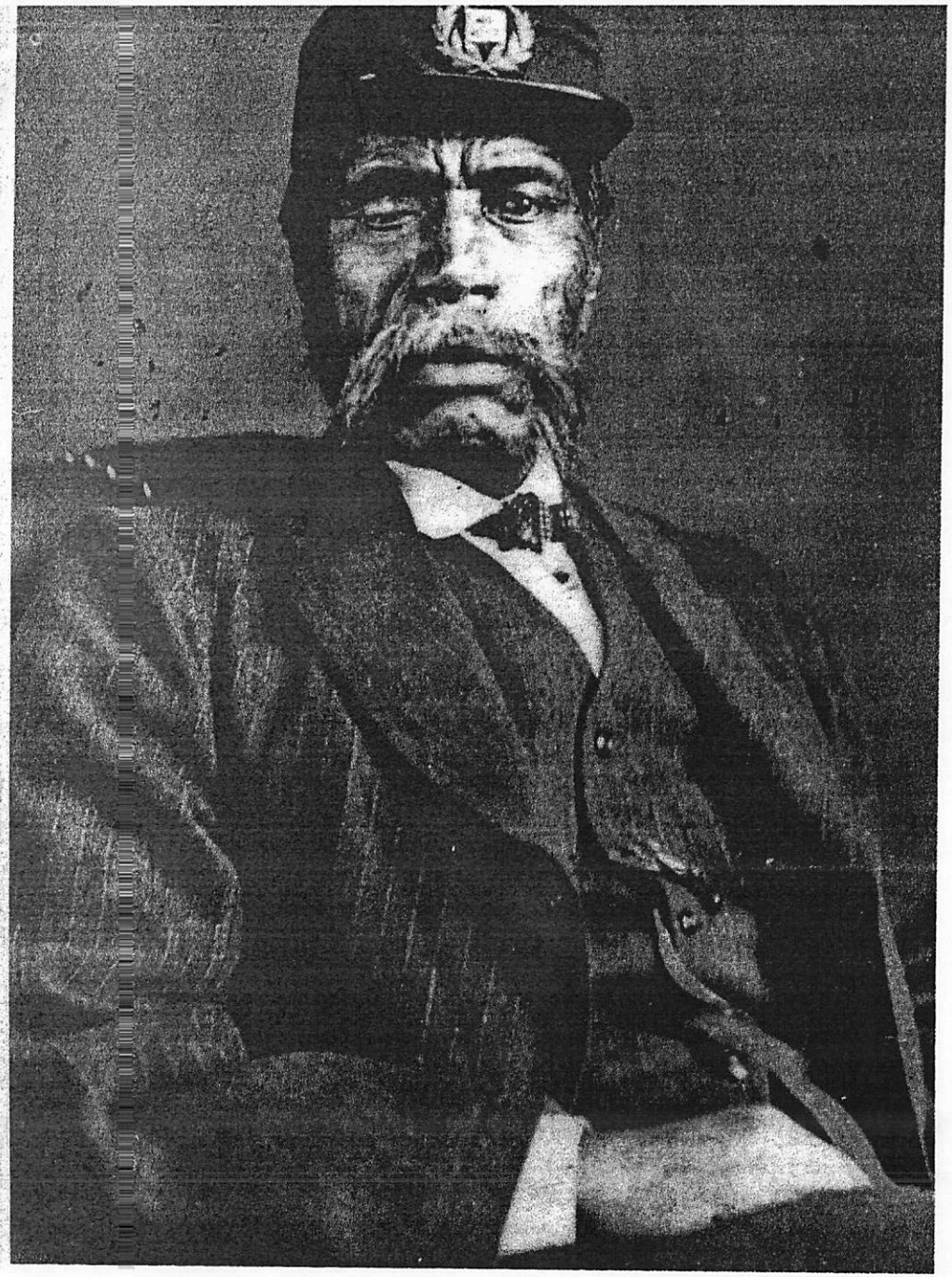
Its version of the past and its proposals for the future – the one arguing that the Crown's faults were avoidable and the other proposing ways in which they may be reversed – appear to enable the Tribunal to avoid a total attack upon colonisation. It can locate itself closer to the centre of decolonisation discourse and at an apparent distance from those for whom colonisation was a simple act of aggression – and for whom, too, the Tribunal itself is an instrument for propping up the beneficiaries of that aggression. The Tribunal can hardly allow itself to adopt these thoroughgoing anti-colonialist positions; it is the creation of what in that ideology is the 'settler-state' and must rely upon it to maintain its powers, to sustain its operations and to implement its recommendations.

The Tribunal's way of avoiding this awkwardness is to condemn the consequences of colonisation while maintaining that colonisation should and could have been better managed, and not just in marginal ways, such as a more enlightened approach to, say, reserves, prices, leasing and tribal title. Primarily by fostering institutional structures within which Maori could exercise political power over it, colonisation could have been carried through acceptably. In the Muriwhenua report, the Tribunal insists that through the Treaty Maori consented only to the colonisation they were led to expect, one considerably under their own control. But it does not ask if it was likely, or even possible, that anything resembling that could have taken place. In the end, the Tribunal's avoidance of an anti-colonialist position does not work. The elaboration of an alternative past which postulates a function for 'the Crown' which could not

conceivably have been discharged is of no help in its primary task – the identification of Crown breaches of the Treaty. On the contrary, its unreality is in essence counter-productive.

The Tribunal's evaluation of the nature and extent of the Crown's Treaty breaches and so of the Crown's culpability is further thrown into question by its habit of examining Crown actions solely in the light of timeless principles and without the qualifications that might arise from taking 'surrounding circumstances' into account. In this the Tribunal is a good deal less than consistent. When it is a matter of explaining the way in which it interprets the Treaty, it insists upon the importance of such circumstances but in the event limits them to a largely speculative reconstruction of Maori expectations only, and a decontextualised discussion of Lord Normanby's instructions. This is a thin reading of the circumstances of 1840. By contrast, when the Tribunal looks at the situation of Taranaki land-selling Maori, it gives them the benefit of a solid account of the 'surrounding circumstances' which caused them to take up that position.[38] That consideration, given to the Crown agents whose activities are so rigorously evaluated, could at least qualify the extent of their culpability and would certainly lead to a higher level of historical understanding.

While these considerations would leave intact the conclusion that the Crown did not live up to the aspirations of 1840 – which were certainly a real part if not quite the whole of its annexation policy – they would add a rider that it is hard to see how in fact the Crown could have done so.[39] This by no means remarkable conclusion would not detract from the case for reparation; this could be grounded, surely firmly enough, upon the characteristics and consequences of Crown policy and administration. These are sufficiently observable – perhaps more clearly so – without an ideology that convicts the Crown of diverting the course of history. The matter of remedy could be pursued effectively enough, perhaps more effectively, in an atmosphere less clouded with retrospective recrimination.



Renata Kawepo (1808?–1888), Ngati Te Upokoiri and Ngati Kahungungu leader.
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5

The Pursuit of Modernity in Maori Society

The conceptual bases of citizenship in the early colonial period

LYNDSAY HEAD

I *Introduction*

Modern writing on the subject of nineteenth-century Maori defines itself against an older, discarded tradition. Now, autonomy is the organising principle of the analysis of nineteenth-century Maori experience. Maori who resisted government by the British, to the point of going to war, are admired. Those who did not take up arms, or who fought as government allies, are occasionally demonised but more frequently ignored.

Decisions against rebellion in the 1860s have implications for the present. The Waitangi Tribunal has supported a climate of judgment in which the heroes and patriots are all on the other side. People who see the Treaty of Waitangi as the permanent measure of justice regard the term 'rebellion' as pejorative, and it has largely disappeared from accounts of political history. This is confusing. Where the possibility of rebellion against the state becomes inadmissible, loyalty and legitimacy become empty concepts. Membership of, or exclusion from, the state no longer function as explanations.

The disappearance of 'rebellion' from the lexicon is indicative of a wider revisionism that has implications for the search for historical justice. Where past Maori action against the government is subject to excessive praise, descendants of loyalists and neutrals will have no easy route of claim against the Crown. Yet colonial predation was not restricted to tribes in rebellion; it fell, like the biblical rain, on all alike. Neutrality and loyalism are penalised nearly a century and a half later because responses to colonisation have changed. The power of definition lies with a political culture and a historiography that continue to divide Maori into good and (if almost parenthetically) bad. Dominance may be harder

to perceive, but for all today's aspirations to a 'de-colonised' approach to the past, it seems that a dominant central perception still rules. Leaving aside the questions raised by a legal claims-culture where Maori are perceived only as the foil for the evils of imperialism, Maori citizenship poses a problem for such a reductive historiography. The language in which many Maori in the early colonial period expressed a sense of their being does not illustrate easy dichotomies. While rebels against the government were known to both sides as the 'side of New Zealand', Maori who did not fight, or fought for the government, were variously called neutrals (kupapa), queenites (kuini), government supporters (kawanatanga) – or Europeans (Pakeha).[1] However, one result of war was that the ideas that 'New Zealand' meant Maoridom and not the settler colony, or that Maori might think of themselves as Pakeha, were already on their way to their current inconceivability. By 1866, the chief who in 1860 described loyalists as 'lickplates' would have fought with the Pakeha against his own relations,[2] and the intellectual driving force of the King Movement would have spent the last year of his life petitioning the government to clear his name of the stain of rebellion.[3] The time when identity did not wholly rest on ethnicity lasted less than thirty years, but it suggested interesting political possibilities.

The majority of Maori either supported, or, more likely, did not actively oppose, the European government of New Zealand. This was the case even though the proximate cause of war, the forcing through of the Waitara purchase against opposition from Wiremu Kingi, was almost universally deemed unjust by them. Decisions against fighting were partly dictated by tribal autonomy. One tribe's fight was not another's, and most tribes crossed the line to war only when it was waged on their own territory. But all war decisions in the 1860s were made in the light of a new choice – whether to organise as Maori, and all were expressed in the terms of a new reasoning that made western-style law the arbiter of justice. In short, whether to give allegiance was at this juncture a central question of Maori modernity.[4]

This study examines the conceptual bases of Maori allegiance to the political community created in 1840 by the Treaty of Waitangi until the 1860s.[5] It is, that is to say, confined to the period before – in Maori eyes – the Treaty of Waitangi defined the Maori relationship to the Crown. The wars reassured the government that Maori did not have the capacity to destroy the colony.[6] Most Maori were of the same opinion, and this realisation reconstructed their understanding of citizenship.[7] It was at the point when alternatives to colonial authority became politically inconceivable – and only when that point had been arrived at – that the Treaty document acquired an independent Maori life. Beginning with the 'Repudiation Movement' in the 1870s, subsequent formulations of political kotahitanga (unity) included adherence to the Treaty, as the Pakeha

understood it, in their constitutions.[8] Before the 1860s, by contrast, the Treaty document was an abstraction, with little perceived instrumentality in the Maori search for participation in the new political community. In Maori perception, the Treaty consisted of a relationship, worked out with Pakeha day by day in real-life situations. Assessment of its authority was based on the performance of governors and officials. It was not a monument, but a possibility.

Maori participation in the pre-war state is an under-studied subject. In recent decades it has been bizarrely confined within the limits set by the textual analysis of the Treaty of Waitangi. That analysis largely excludes the motivations of chiefs in signing it, reinforcing the suspicion that they had little idea of what they were doing. Even the idea that they signed for a blanket still stands. Such apparent lack of Maori purchase on events provides a fragile, content-less base for Maori colonial history – one which is, logically speaking, possible only in the terms of the coloniser. As a result, the whole idea of Maori citizenship looks strained.

The view that the Treaty has become the straitjacket of Maori history is the starting point for the present study. My aim is to help release Maori meanings from confinement in the document, as a step towards a model of citizenship which is grounded in neither 'fatal impact' theory nor current romanticism.

II *Intentionality in pre-Treaty Maori political thinking*

The Treaty of Waitangi's semantic shadow falls both ways, dominating analysis of the ante- as well as the post-Treaty period. It therefore seems necessary, in a study in pursuit of Maori meanings, to begin with an abbreviated glance at the Maori political context of its signing.

When Europeans stepped into the southern dawn, the people who had thought of themselves as constituting the whole human world found that they were one of its fringes.[9] This was the huge – and potentially hugely undermining – perceptual change that opened the relationship between Maori and European. Assertive and risk-taking in cultural personality, Maori fought to eradicate their fringe status by pursuing modernisation, including the political modernisation that would create a path to the Treaty ground. The first documentary engagement with modernity was the 'King's Letter' of 1831. This sought greater British involvement in the policing of their nationals in New Zealand and protection for Maori from other foreigners, for which read the French.[10] The 'Letter' was a small step with huge implications. The chiefs' capacity to threaten Europeans was at its apogee in 1831, when Maori society was still organised as a set of fighting units. It is often observed that Maori could have forced all

resident foreigners to leave, or that they could have destroyed them.[11] Yet the 'Letter', which led to the establishment of a British Residency, was at the peaceable end of chiefly options. The question then becomes why, when they were so strong, did Maori invite the British in?

The answer that the missionaries talked them into it comes reasonably to mind. This triggers the almost reflexive response that Maori were duped.[12] This is the uneasy basis of much analysis of any interaction between Maori and the British, for example in the work of redemptorist Waitangi Tribunal historians. University-based writing tends to repackage perpetual innocence into a thesis of perpetual independence. The claim is that Maori culture remained 'intact' – minimally affected by foreign contact, changed by judicious choosing and ingenious re-working, boldly expanded, but to traditional ends.[13] The most interesting exposition of the thesis remains that of Ann Parsonson, who reads western contact as the expansion of opportunities for inter-group competition. Parsonson captures the entire Maori engagement with Europe for tradition in the arresting phrase 'the pursuit of mana'.[14] Her work corrected Harrison Wright, whose influential book appeared to usher Maori from the stage in 1840.[15] However, Parsonson's thesis puts nineteenth-century Maori culture into stasis. Her interpretation also has a destabilising contradiction at its core: the implication that Maori were collectively protected from westernisation while vigorously pursuing it.

Subsequent writers have failed to resolve the contradiction. James Belich believes, for instance, that inter-group rivalry was the 'age-old' dynamic of post-contact Maori development. In his view, Maori means were autonomous and their goals traditional. He writes that Maori were 'exploiting a technologically formidable Europe that thought it was exploiting them, separating Europe and its things like a fool and its money'.[16] Speaking of early trade, he says that 'Maori selected [the European goods] they valued most highly, ensured that adjustments were subsequently made to the range offered, and adapted the functions as well as the form of those they selected'. This is platitudinous: it is difficult to imagine any free people doing otherwise. However, the admiration of 'autonomy' suppresses a crucial point: the changes that Maori made in the pre-Treaty period were all in one direction, and irreversible.[17]

The problems with the current historiography, then, can be stated as follows. 'Innocence' makes Maori action effectless, and consigns their history to the unanalysable limbo of victimhood; 'enclosure in tradition' or 'cultural independence' cannot deal with change that is not simply quantitative. Both theses respond less to Maori experience than to political filters. A more objective historical stance would suggest that the Kerikeri chiefs' support for the 'King's Letter' was not only a rational act, but that it drew upon an understanding of the likely responses.[18]

Early, hostile encounters with foreigners had created a relationship that threatened European revenge in the future. The power of European weaponry and the established willingness of Europeans to fight gave Maori a strong reason for seeking an agreement with the British. This reason could be accommodated within existing Maori cultural practices. There was also, however, a non-traditional rationale, and it is equally key to explaining why chiefs belonging to the most powerful tribal grouping of the day allied themselves with the British. It does, however, require putting aside the curious emphasis in the literature on the helplessness of the missionaries. The 'King's Letter' silently acknowledges that most of the foreigners in New Zealand in the pre-Treaty period were not drawn into the Maori intellectual and social world. They paid it attention only when circumstances dictated. At the mixed settlement of Kororareka, chiefs kept order among Maori, while Europeans organised themselves into a town council and dealt with their own affairs.[19] In the case of the most interactive group of resident Europeans, the missionaries, not acting like Maori was precisely the point of their vocation. Mission stations were always naive portraits of English life, and by the 1830s most had established a substantial independence.[20]

Unless Europeans were incorporated into Maori culture, Maori civil sanctions could not operate among them. This was the predicament that prompted the questing Maori spirit of the 1830s – not simple curiosity, or avaricious dreams, but political need. It is significant that serious interest in Christianity among the free population began in 1833, two years after the 'King's Letter'. Many were to be baptised. That missionaries were successful in moving the chiefs politically before they convinced them religiously does not suggest that Maori were enclosed in traditional thinking. Rather, they were vulnerable to suggestion because so much was happening. Questions of governance were a pre-Treaty Maori concern. They generated a sequence of changes of which the 'King's Letter' is both example and portent.

Cultural change can have insidious beginnings. The defence of tradition is as likely as external pressures to trigger it; one example must suffice here. Because Maori society was organised around the chance of war, the initial effect of the introduction of muskets was indeed the expansion of tradition. Serial wars followed from the idea of their possibilities. Soon enough, however, war became an agent for its own collapse. Nga Puhi's raids were predatory larks, fought for neither territory nor strategic advantage. One-sided battles between the unequally-armed destroyed the symmetries of tribal relationships, anonymous killing eroded values attached to the warrior-as-hero, and slave-taking by the thousand wrecked the more modest premises of slavery. Firearms were outside the normal ethos of society, and war became banal.

Inter-group warring declined to virtual extinction in the 1840s. Belich offers the explanation that it stopped when arms parity was reached between the tribes.[21] This explanation is too small and too static. Not only was it a break with tradition for tribal warfare to stop, but the terror of the gun caused social disruption analogous in principle to that of current world ethnic strife. From Auckland to Whangarei was empty. The Hauraki tribes fled inland, and Ngati Kahungunu to the tiny edge of their vast territory. Modern Taranaki was deserted, and some of its displaced people virtually exterminated the Chatham Island Moriori. Ngati Toa, forced into pre-emptive migration, ravaged the south – the list is representative but not exhaustive. Similar things had occurred in the history of most tribes, but there is no previous evidence of near-total war. A detached modern historiography lists battles, but makes the musket wars events without real effects.[22] Yet the wars were a modern catastrophe for Maori, not a traditional one.

The view that the wars were fought on entirely traditional terms silences Maori history at the point at which it in fact began to speak with a new voice. Expansionist factors of political change generated within society by an over-stretched tradition were augmented by the new possibilities of a 'civil' life. While these were modern wars, they were also the chief obstacles to the pursuit of civil modernity – that is if one takes civility as an expanded and increasingly personal ownership of wealth created by trade with foreigners. War and its ethos threatened civility. The incompatibility between the honorific values of the revenge cycle and the drive for modernisation meant that, by 1830, northern Maori consciousness was deeply split. Both intrinsic and extrinsic factors prompted the search for a value system that would delegitimise inter-group fighting – one that would create the conditions for the development of a civil society which repressed warfare.

In the 1830s northern Maori sought meaning in their post-contact experience through understanding how the foreigners ordered their world. This was a period of rational and intellectual response to European culture in which Christian teaching became a political primer for change. Consciously replaying the conversion of the barbarians, the missionaries taught that peace was the condition of political and social modernity – that is, of a European-style society. This impacted heavily on culture, because tribal histories were almost exclusively histories of war. Fighting was central to the social identity of Maori. In setting up peace as the condition of modernity, therefore, Christianity proscribed one way of life, and prescribed another.[23]

Conversion required a new framework for political mores. Utu, the local principle of justice, was re-clothed as the retributive justice of God. In itself, this did not involve a major paradigm shift in Maori thinking. What was new was

that God's law was efficacious in the area where traditional society had nothing to say: it dispensed utu without war. Christianity offered a model of governance where peace was protected by law, and where revenge was the responsibility of the state. These ideas were revolutionary. Their foreignness created an unfilled political space that would draw Maori into support for union with England.

From the missionaries' point of view, the changes in Maori attitudes were as gratifying as they were unexpected. Writing home about Maori as agents for the spread of Christianity, William Williams said, 'We have literally stood *still to see the salvation of God* [original emphasis]'.[24] Such celebration of the dawn of light dominated the historiography for at least a century. It is less obvious that it also dominates the post-colonial literature. There is a simple reversal: Maori are said to have raided Christianity like a trade store, but the result was unimpaired independence and expanded tradition. Missionaries and the orthodox faith are casualties of the neo-orientalist premise of the 'autonomy' thesis. Yet, as the evidence brought forward in this study will show, it is difficult to make sense of change in nineteenth-century Maori society without attempting to understand the intensity of the relationship between Maori and the Christian faith.

From a Maori standpoint, the 1830s were not so much a new dawn as the culmination of decades of traffic between themselves and Europe. This experience, long enough to have its own genealogy, created the conditions where northern chiefs felt that a choice of futures had to be made.[25] Their attention to the missionaries, and subsequent support for a treaty with the British, was not without history, but a response to lived change. By this reading, then, a possible basis of Maori citizenship was rational choice.

III *Words of power: The Declaration of Independence and the Treaty of Waitangi*

The rationality of the chiefs has been obscured by the rationality of the British side of the Treaty, which entirely dominates the literature. The 'King's Letter' (1831), the 'Declaration of Independence' (1835) which elaborated the theme, and the Treaty of Waitangi (1840) itself are monuments in the English documentary graveyard rather than the vivid efflorescence of Maori life of the times. Though too, there are many and extremely various histories of the Treaty, recent writing is a testament only to the historical meanings of *the transfer of sovereignty*.[26] This is an example of the domination of Maori history by externally imposed categories, in this case the category of the significant document. It therefore seems impossible to proceed with an examination of the post-1840

situation without attempting to lure the dragon of the 'sovereignty documents' from the path.

The debate about the meaning of the Treaty has centred on accuracy of translation and linguistic integrity. Its goal has been to define the limitations of the sovereignty which Maori transferred to the Crown. The case has largely been argued ahistorically, signified most dramatically by the great authority scholars are willing to award to present-day Maori language and culture when interpreting that of 1840.[27] The following analysis is confined to consideration of the Maori texts of the documents and their immediate contexts; a study with broader parameters is urgently required.

A chief, like a biblical or medieval king, exemplified mana, an indwelling sanctity and efficacy possessed by certain people, objects or events. Mana, the sign for success, strength and nobility, was a word that was rarely uttered but everywhere expressed. Chiefly behaviour was mana, but it was the actions of chiefs that were celebrated in song and story, mana acting within them as silent ontological confirmation of the orderliness of the world. It is a paradox that the power of mana is indicated by its absence from the text. In *Nga Mahi a nga Tupuna* (1854), the seminal collection of traditional narratives published by Governor Grey, it appears solely in religious contexts, and then only in one ritual chant, and two stories about supernatural powers.[28] The word mana is in such common use now that its extreme rarity in early Maori writing is difficult to grasp as a significant fact. The difficulty is itself evidence of the linguistic essentialism which has characterised analysis of the language of the Treaty.

Mana was the immanence, but not the form, of traditional Maori authority. Authority was vested in the person, not in an abstraction. For Maori, as for other traditional societies, the person had a sufficiency that modern societies have nearly lost sight of.[29] The chief was not defined as ruler or territorial magnate, the Maori language having no verbs for 'rule' – of either people or place.

The earliest printed Maori (apart from language instruction manuals) consists of passages of the Bible, whose translations show strong fidelity to the emphasis on the personal in Maori political thought. For example, English verbs 'to rule' and 'to reign' become Maori nouns: 'king', 'chief' and 'governor'.[30] At the same time, however, translators of the Bible were shifting the language in the other direction. The need to express concepts of territorial sovereignty and rule as distinct from the person of the ruler was answered by making derived nouns from existing or introduced nouns: rangatiratanga, from rangatira, 'chief', for 'kingdom'; kingitanga from (introduced) kingi, 'king', for both 'kingdom' and 'kingship'; kawanatanga from (introduced) kawana, 'governor', for 'rule'.[31]

James Busby, the British Resident, faced similar challenges in the 'Declaration of Independence', by which New Zealand was declared to be a sovereign state.

His translator, Henry Williams, used mana to fill in the content of the authority Busby claimed on Maori behalf. For its form, he borrowed kingitanga from the Bible. Putting form and content together, he came up with 'te kingitanga me te mana i te wenua' to describe 'all sovereign power and authority within a territory'.[32] This was indeed a significant step into the future. By mentioning authority and land in the same phrase, Williams unwittingly coined a term that, in the compressed form mana whenua, would define Maori territorial sovereignty into the twenty-first century. By attributing 'sovereign power' to a people whose 'independence' alone was evident, Williams inadvertently created a language for modern Maori nationalism.[33]

Shifting attention to the Treaty of Waitangi, one of the two major debates on its language pivots on the absence of mana: the argument being that if mana had been used for the kawanatanga which they ceded, no Maori would have signed.[34] This view is not well grounded in 1840 evidence. Speeches made at the Treaty hui (meeting) show that chiefs greatly feared loss of status and authority.[35] However, no speaker phrased his fears as 'loss of mana'. For the reasons indicated above, this would not have been an appropriate language. The absence of mana from the text of the Treaty does not in itself make a case for failure of Maori understanding. Nevertheless, this hypothesis has achieved such canonical status in modern Treaty analysis that it seems useful to address the question of why the translators, Henry and Edward Williams, did not use mana in conjunction with kawanatanga, in the same way that Williams had paired it with kingitanga in 1835.

A plain and rational answer struggles to make itself heard among more loosely speculative theories, such as an implausible linguistic incompetence and an implausible conspiracy to deceive. For the Williamses, father and son, Maori was the language of communication in a cross-cultural environment.[36] Semantic improvisation would have been a common feature of everyone's speech in the world they lived in.[37] The Europeans who translated their world into Maori were innovators by definition. However, the learning went both ways. After seventeen years in New Zealand, Henry Williams, leader of the Church Missionary Society mission, boat-builder, sailor and (non-combatant) member of long-range Nga Puhi war parties, was no longer an Englishman abroad. He lived among chiefs; he was treated like a chief. The starting point for assessing his translation of the Treaty must be the supposition that he was able to think about mana in the terms of the day.

Williams was, at the same time, a conscious agent of change in respect of New Zealand society, both as a missionary and as a settler with a large family. Familiarity with Maori society and an interest in the Treaty that was local and expedient were the contexts of Williams' Maori version of the text. His translation is

as functional as his personality seems to have been. It was so externalised, in fact, that it seems possible to follow his thinking in the words he chose for the task. Busby's Declaration of Independence had declared the existence of two sovereign peoples, British and Maori, in appropriately lofty and distancing language. By contrast, the Treaty of Waitangi was describing a situation in which distance was to be collapsed, through the political union of Maori and the British in New Zealand. For Williams, the localisation of authority separated the effective and dignified functions of government; the one was present in New Zealand, the reference of the other retreated to England – to the person, and mana, of the Queen. In this situation, neither mana nor kingitanga were plausible choices for a sovereign authority that Williams wished to convey to Maori as local, delegated power to govern.

'Delegation' works in terms of the functions of government, and is the word Williams used: kawanatanga. Kawanatanga is derived from kawana (governor). Maori would have understood the first in terms of the second, whom they saw in the flesh at Waitangi: a man of higher status than the existing role model, the self-styled kaiwhakarite (functionary) James Busby, but lower than the Queen.[38] Maori also knew kawanatanga from the Bible, where it appears in strong contexts of rule.[39] Kawanatanga was a borrowed European concept for a specific mode of authority. It did not mean mana, and was not measured against it. It does not seem, therefore, that these two words, mana and kawanatanga, constitute the critical issue of Maori understanding in the Treaty.

The second major debate concerns the term rangatiratanga. In 1835, Busby wished to express 'independence' as an aspect of the sovereignty advertised in the 'Declaration'. Maori language had no word for 'independence', but his translator achieved one by equating it with the most remarked quality of the actual behaviour of chiefs (rangatira) – their independence. Hence rangatiratanga, as in 'He Wakaputanga o te Rangatiratanga o Nu Tireni', 'A Declaration of the Independence of New Zealand'.[40] 'Independence' extended the meanings of rule and sovereignty for which rangatiratanga figured in the Bible. The Treaty of Waitangi would further add to the range.

Rangatiratanga appears in the preamble of the Treaty to confirm the Queen's will to protect the 'just rights' of Maori, and in the second article to confirm the 'full, exclusive, and undisturbed possession' of Maori property.[41] Modern analyses have concentrated on 'literal' meanings of the Maori text, as if literality were the same thing as historicity, when, in fact, the distance between past and present seems clear. Distance is, for example, indicated by the near absence of the term rangatiratanga in early oral narratives, even though they are appropriate venues, as recitations of the deeds of chiefs. Rangatiratanga occurs only four times in *Nga Mahi a nga Tupuna*, where it means generosity of spirit and

deed – which was, of course, behaviour worthy of a chief.[42] It does not appear as an overarching concept of chiefliness, let alone an abstract authority.[43] The rarity of rangatiratanga is not the same case as the rarity of mana, discussed above. In fact it is the opposite case, because the explanation lies not in tradition, but in innovation.

Nga Mahi was written in the late 1840s by chiefs, of whom Wiremu Maihi Te Rangikaheke is representative.[44] Educated, Anglophile, needless to say Christian, and a prolific writer, he freely employed rangatiratanga to speak of the authority of queen and governor. The contrast between frequency of use in European contexts and scarcity in traditional ones in texts by the same writer is striking. It suggests that rangatiratanga, in any context of meaning in the Treaty, was a new usage; that it was coined or re-coined by European translators, on the same principles that created the other abstractions of rule. Attempts to express the biblical and European political universes in Maori had a printed history of nearly a quarter century by the time Te Rangikaheke was writing. These universes fed into Maori usage. However, rangatiratanga was still a relatively foreign mode of expression. It fitted the new world better than the old, hence its scarcity in accounts of the former.

A post-contact origin for rangatiratanga echoes the wider evidence that the language of the sovereignty documents is the language of pre-Treaty modernity, not pre-Treaty tradition. This suggests a conclusion that the Maori language of the Treaty is now routinely referenced to a world in which it did not exist.

It remains to explore what Williams might have meant in Article 2, which confirmed Maori in the tino rangatiratanga of everything they possessed. The aim of the Treaty was not to protect Maori culture; on the contrary, Williams believed that the processes of modernisation were active and sufficient agents of its transformation.[45] It strains belief that, having transferred sovereignty to the Crown in the first article, Williams would posit a principle of omni-applicable Maori authority in the second, yet recent analysis is dependent on this being the case. The British did, of course, care about securing the colony's land base. This is logically why confirmation of tino rangatiratanga is paired with advice on how to go about selling the land.[46] The logic, and the crudeness of the pairing, point to tino rangatiratanga's referring not to culture in the sense of *Maoriness* itself, but specifically to land and resource ownership.[47]

Linguistic evidence offers support for this view. As we have seen, translators bent rangatiratanga to the expression of a variety of aspects of western ideas of authority, for which there were no existing Maori terms. Authority over land therefore fits easily in this category. As for evidence offered by context, one example must suffice here. It cannot be overstressed that anxiety about their future authority over the land was the most common theme of chiefs' speeches

at the Treaty hui. There was, therefore, good reason for the Pakeha to make a strong affirming statement not only of Maori ownership of the land, but of their continuing power of decision over its alienation.

It needs to be said that confining rangatiratanga to land ownership does not diminish the contemporary importance of Article 2. Land was the Maori stake in the colony. First, it was the commodity with which modernity was purchased. Second, by owning the land, Maori also controlled the most important boundary to state power. Nothing, therefore, was of greater importance than the confirmation of ownership. However, a crucial difference between current and historical meanings remains. In 1840 tino rangatiratanga did not distance Maori from the state, but fulfilled the logic of the Treaty's concern with land.

In sum, Henry Williams translated the Treaty of Waitangi for his day, not for posterity. If the task was too lightly and amateurishly approached, this does not seem to require a paranoiac analysis. Within the narrow confines of the translators' perceptions, word choices in the Maori texts of both the 'Declaration' and the Treaty suggest only a striving for precision.[48] It seems to have been forgotten that the audience for the proclamation of these texts was Maori, and that this provided a powerful incentive to be precisely understood. Politics at their most serious in Maori society turned on publicly spoken words, the meanings of which were minutely dissected; there was a hermeneutic search for meanings which lay beneath the surface. That Maori understood the language in Williams' terms is signposted by the evidence offered above. To review this: the Maori language of authority evolved in a religious literature published before Maori could read. When they did learn to read, or (more often) heard their language read out, they heard words coined to express foreign meanings. The language of authority was new because it expressed a new thinking about society. Therefore the answer to the question of whether Maori would have understood the language of authority in the 'Declaration' and the Treaty in European terms is that there were no other terms.

IV *The moral seriousness of the Treaty of Waitangi*

Maori assumed that the European and biblical worlds were contiguous. This, plus the strangeness of the political arrangements of these worlds, suggests that Maori thinking about sovereignty and government in 1840 was fragile. However, interest in novel arrangements of state did not intrigue them in such a way as to drive them unwillingly towards the British. They moved in this direction voluntarily. It was another way to become actively involved in the European, or modern, world. The idea of government seemed, like Christianity, to express

the inner connectedness of things as disparate to the European eye as books, potatoes and iron manufactures. Signatures to the Treaty, therefore, expressed an impulse for an integrated world. Most of all, it was a vote for the new. Modernity was the critical idea in the Treaty as far as Maori were concerned.

To emphasise modernity is not, however, to suggest that signing the Treaty was a light matter. The approach of the Nga Puhi chiefs was very far from blithe. Tamati Waka Nene was once held up as the type of the 'progressive' chief (but his sun is now in eclipse for the same qualities). Nene proposed a 'fatal impact' model of the incursion of Europe. He regretted that chiefs had not exercised more control over cultural change, or limited the numbers of foreigners; failure to do so had produced the situation where Maori culture could not provide a social order adequate to the new reality. Such was the straightforward rationality of the first loyalist, and it is too easily forgotten that Nene's views, which he held for the rest of his life, were judged to sway opinion towards the Treaty.

All chiefly opinions on the Treaty, however, are drowned out – not only by the roar of the subsequent calamities of colonial history, but also by the long historiographical tradition of undervaluing Maori opinion. Montagu Hawtrey's eloquent opposition to the Treaty is more often quoted than the opinions of the Maori who signed it.[49] Yet Hawtrey's disquiet belongs to the history of humanitarianism, not to Maori experience; failure to confine evidence to its proper category is a subtle but pervasive denial of Maori as actors in history.

An example that bears strongly on the foundations of Maori citizenship is the analysis of the signatures to the Treaty undertaken by D.F. McKenzie.[50] McKenzie shows that most of the Maori signatures were mere squiggles on the paper – a squiggle of signature length maybe, but only a simulacrum of the real thing, because the chiefs could not write. This provides a jolting reminder of the limited ability of Maori to function in the world of which the Treaty was emblematic. In the frame set up by McKenzie, the marks look sad and duped, emptied of significance. It is, however, the wrong frame. It should be replaced with a Maori one, which would give a dignified weight to the chiefs' signatures. This would allow a neglected significance of the Treaty to re-emerge.

Names created the organisational structure of Maori society, a chief's name advertising his people, place, history and strength. To this day, Maori do not directly enquire the name of a chiefly speaker at a hui, as ignorance demeans both parties. In 1840 a functioning chief's agreement to a course of action was still of very great weight. As one of them put it: 'Our lands are already all gone. Yes, it is so, but our names remain.'[51] The signatures of the chiefs represented the power arrangements of the *ancien régime* at the moment the sun set on them. This helps explain the strong sense of drama that pervades eye-witness European accounts of the signing, but the focus of the chiefs themselves was

more likely to have been on the step into the future. By being expressed in the foreign medium of writing, the signatures were an acknowledgement of modes of power in the new world.[52] The chiefs offered to the British the *power of their names*, which was the effective form of their authority. This gives an idea of the weight of the world the chiefs hoped to gain, and constitutes the Maori authority of the Treaty. Restored to their Maori context, therefore, the 'signatures' give moral seriousness to the Treaty of Waitangi.

V *The kinship model of unity*

On 6 February 1840 the Governor-elect declared that signing the Treaty made Maori and Pakeha 'one people'. As a symbol of unity, the *documentary* Treaty had a life as long as the hui, and Maori were left to get on with the modernising project that had marshalled them at Waitangi. Nga Puhi, the definitive Maori of the western imagination, faded like old gods following the transfer of the seat of government to Auckland in 1841. The analysis of Maori citizenship must also decamp from the Treaty ground.

'Citizenship' was a new cultural ontology in which Maori made steps towards viewing themselves and Pakeha as members of the same group. These steps are preserved in the language of address.[53] Queen Victoria was called to tatou Kuini, 'our Queen', to tatou signifying 'belonging to both Maori and Pakeha'. Governors were called to tatou matua, 'our father', matua being a term of status within a kinship relationship. Officials were addressed variously as hoa, 'friend' in the biblical sense of 'one of the brethren', koro, a term of respect for an older family member, or tama, 'son'. Maori might similarly describe themselves as the parent of a Pakeha, or a son – a tamaiti aroha, 'loving child', of the Governor. They often described themselves collectively as the 'children of the Queen'.

The familial idiom of relationship extended beyond address. Government was seen as a genealogy, stemming from God, the founding ancestor of the law, and devolved through Queen Victoria to the Governor: 'Your laws, which you have established for us, are descended from God to the apostles, and from them to the Queen, who has given them to the bishops and ministers and to you also.'[54]

In Maori society people were stringently divided by genealogy into enemies or friends. In the terms of this cultural patterning, the Treaty made Maori and Pakeha 'friends'. As explained by the British, it united them under the authority of the Crown. The term for 'unity' was introduced to Maori by the missionaries, who coined kotahitanga (from the Maori cardinal number [ko]tahi, 'one') to express it.[55] Unity was the conceptualisation of the meaning of the Treaty: 'He iwi tahi tatou.' Hobson's oath expressed the Maori position exactly.

The unity of a notional shared genealogy which Maori offered Pakeha implied a shared culture. The tie that bound them into political kinship was aroha, 'love' in the sense of the warmth and duty of care owed to family. 'Ka nui toku aroha ki a koe', 'great is my love for you', was the commonest opening salutation in letters, whether to officials or family members; 'We love [the Pakeha] and they love us' was a statement of political harmony.[56] The goal of unity was modernity, conceived as the peaceable and orderly community. All its models were foreign.[57] Nevertheless, the modernity of the post-Treaty period presents an archaic exterior to the twenty-first century, because the primer for its practice was not that biddable servant, the Treaty, but the Bible.[58] In a society that believed in the connectedness of all things, Christianity did more than refit religious observance. It acted as an entire formulation of society, affecting ideas about politics as much as religion. Paora Kaiwhata could argue for unity on its premises: 'Kapiti, Mana and Aropawa stand apart! These mountains are each a different place. Our situation was exactly similar: each tribe on its land, with its own politics. Then the good news of God appeared, and we were said to be one in the Gospel.'[59] Te Arawa proverbialised it: 'New Zealand is the house, the Europeans are the rafters on one side, the Maori are the rafters on the other side, God is the ridgepole against which all lean, and the house is one.'[60] Nuitone, raised in a society where foreigners were the next tribe, made it the basis of an inchoate internationalism: '... my love goes out to all the peoples of the whole world, because I have heard the word in the Book which says that love binds to love.'[61]

A familial language expressing faith in unity with Pakeha; acceptance of the authority of a Pakeha government through belief in God? It sounds like a letter home from a missionary, but the anodyne surfaces mislead only when external meanings are read into them. Both its premises and mode of expression may have been naive, but support for the church and state was the attempt to understand the world outside the terms of the tribe. The universal society preached by Jesus, and the monarchical model of government – even of empire – depicted in both Testaments, valorised subjecthood. God-instituted law posited an equality among the governed that enabled Maori to think of *Pakeha* as a political rather than an ethnic category. Hori Taumata, a court official, saw his job as to 'work to suppress evil amongst both Maori and Pakeha'.[62] According to Patoromu, by accepting law 'we become part of the Government, and one with the white man'.[63] Te Wetini described King Potatau as 'a Pakeha' on the strength of his wish to remain the Governor's friend.[64] Tamihana Ruatapu insisted that he was 'he Pakeha, he Pakeha motuhake (a Pakeha, a total Pakeha)'. His protestation was coolly received by his relations, because of his recent Hauhauism: 'How beautiful are Tamihana's words,' observed Paora Kate, while

Renata Whakaari suggested he hold his tongue 'until his government name got longer'.[65] 'Being Pakeha' was an image of citizenship. It signalled assent to government where government expressed the systemisation of modernity. Inconceivable in the terms of the past, it was based on an attempt to understand underlying principles of western civilisation.[66]

VI *The mana of modernity*

Citizenship was a contestable proposition, subject to discrete acts of choice. Government certainly operated among Maori by their consent, but the exercise of choice is too selectively read as evidence of continuing Maori 'sovereignty'. Political advocacy obscures a more complex historical relationship, in which mana was also expressed in citizenship. For example, when Captain Brown of New Plymouth was arraigned for attacking Te Whiti with a whip handle, the chief's relations rode into town and danced a haka to sharpen the magistrate's deliberations. The Maori party were thereby reinforcing the rule of law, not setting it aside.

The formation of the King Movement offers many examples of the exercise of choice on a variety of premises. In 1857 Wiremu Neera Te Awaitaia opposed Wiremu Tamihana's proposal for a king:

> I promised the first Governor when he came to see me, and I promised all the rest, that I would stick to him and be a subject of the Queen. I intend to keep my promise, for they have kept theirs ... Why do you bring that flag here? I know there is trouble in that flag. I am content with the old one. It is seen all over the world, and belongs to me.[67]

Wiremu Neera's support for the Crown seems to express an old mana – the mana of success and the necessity of power. Wiremu Tamihana, by contrast, was searching for a way Maori might survive the future. In visualising a Maori state under a king, he was standing against the two available models of political organisation – the Maori past and a present in which Pakeha held the power. After Wiremu Neera spoke, a silence that lasted a full half hour descended on the thousands present at the hui. Then Wiremu Tamihana stood and said, 'I am sorry my father has spoken so strongly. He has taken away my life.' This was a moment of cleavage. Both the silence and the sorrow of Tamihana's reply reflected the awareness of all present that the experiment of unity – the supra-tribal, bi-ethnic polity that was the Maori hope of the Treaty of Waitangi – was seriously challenged by the new movement. It would eventually make war against the Pakeha thinkable – hence the silence. Neither side, however, was seeking

to restore the arrangements of the pre-Treaty past; the point of connection between government supporters and proponents of the King was acceptance of modernity.

Maori thinking about citizenship was characterised by a kind of nervy consciousness. Choosing to be governed took courage, and courage was mana. For example, a consequence of accepting Governor Grey's 'new institutions' (of local law) was the erection of jails in Maori villages. In traditional terms, this was like letting an enemy build his pa (fortified village) on your territory.[68] Speaking in favour, Te Rira sought to overcome fear by logic: 'We are a Pakeha tribe, therefore I wish for a jail; let us build it at once'.[69] By 1862 (when Te Rira was speaking) the rival models of the state and the fighting in Taranaki had begun to draw in the boundaries of citizenship. A word Maori used to express this sharper-edged allegiance was Pakehatanga, 'Englishness'. Pakehatanga was not simply propositional, but a mana that carried the expectation of being treated in terms of that mana – namely, as a European. When officials visited pro-government Ngati Mahanga to discuss proposals for a local court, draped over the meeting house was a large flag bearing the legend 'Mahia te Pai' (Do what is Good), where 'good' was a synonym of peace.[70] Political flags were mana. This one was both Ngati Mahanga's politics and identity, advertising the decisions of a people who had chosen their destiny.[71] What they expected in return was the civil government that their flag acclaimed.

Allegiance is only made possible by the existence of choice, and self-taken decisions put mana at the heart of Maori choices to support the state. Treaty or no Treaty, tribes might choose citizenship. Once chosen, it was mana, a treasure that a chief described as a 'pirau nahu' – a jewel lying among ancestral bones.[72] Allegiance was, however, not a straightforward choice between British Queen or Maori King, because the Christianity that informed both, equally allowed both to be rejected. Maketu affiliates of Te Arawa (who did not sign the Treaty) met to discuss their relationship to the colony in 1846. Subsequently they wrote to Governor Grey to say: 'if we can understand your customs we will dwell under the sign [flag] of England. If we are unable to comprehend them, then we will sit under the banner of Christ.'[73] Wanganui Christians turned down a request from the Governor to help fight their relations who were besieging the town, explaining that they had been 'tapued [dedicated] to the Lord'.[74] The suspicion of more complex motives only strengthens what both cases illustrate – that Christian belief was politically empowering, to the point of sanctioning conflict with the state.

Because heaven was a higher power than queen or governor, secular allegiance was contingent on God being served. There was no obligation to hold God and government together where the latter was judged to be in error.[75] Maori

could, therefore, be faithful to modernity and independent of Pakeha at the same time. The King Movement offers clear examples. Perhaps a majority of Tainui initially agreed to Potatau not as 'king' but in the mission terms of 'father', bound in aroha to the Queen and her representatives.[76] After the Governor's actions at Taranaki, God was said to have 'become the enemy' of the Queen, and the 'protector of New Zealand' (i.e. Maoridom).[77] The independence of Christian belief also explains why the important, but largely unstudied, kupapa position, a faith-based 'third way', might equally result in thoroughgoing loyalism or armed nationalism.[78] Neither missionaries nor governors anticipated its subversive potential, but Christianity gave Maori a way out.[79] The choice to remain citizens of the Crown, therefore, was an ever more deliberate one. Why most Maori made that choice requires further examination.

VII *Law as the institutionalisation of trust*

'The greenstone door' – beauty and strength closed against war – was an image of paradise on earth. In 1860, following the first Taranaki war, the ancient trope was revived to chastise the Pakeha. The Governor had opened the door on a view of a terrible future, in which all Maori were coerced and marginalised. Yet most Maori did not join the nationalists, and most did not fight on either side. It takes a steady nerve to analyse the Treaty as a symbol of the drive for modernisation without placating the monsters of hindsight. It remains true that in 1840 Maori could not accurately predict the colonial future; in particular, they did not foresee the 'thousands of Popokura' who were coming from England to settle.[80] Maori had to take on trust that Pakeha spoke the truth.[81] Trust was an inadequate shelter for what, within twenty years, would become a minority people, but an analysis of Maori citizenship, rather than of the Pakeha structures of government which formed its boundaries, is nevertheless an exploration of the nature of trust.

Trust in a westernised future had many monuments. Huge native churches were one. The building of small utopias was another. Peria (after biblical Berea) was the village built by Wiremu Tamihana.[82] It had lighted streets, groves of peach trees, and the Ten Commandments displayed on a post.[83] Yet another is the documentary record. Declaring his loyalty, Wiremu Kingi Te Rangitake said, 'There is only one way, that of the Queen and the Governor.'[84] Karaitiana Takamoana said, 'I am sincerely grateful to you [McLean] and the Governor and to all the magistrates laying down the system of government for us to learn.'[85] Wiremu Neera Te Awaitaia observed that as far as knowledge of the European world was concerned Maori were pikari, birds just out of shell.[86] In whatever way

the ideal of trust was expressed, however, its goal was cultural transformation: 'My friends, fully trust the white man. All our good things come through them. Don't you remember when they gave us flour first, we objected to it, and said it was pumice stone. Ploughs, horses and everything came through them ...'[87]

Citizenship in a colony of the Crown called for massive expansion in the boundaries of social trust. Whereas Maori related on a face-to-face basis with nearly related others, the kinship of citizenship had to encompass distance – a distant Governor and a vastly remote Queen – and to negotiate 'blood ties' that were merely notional. How were Maori to trust?

The answer was, through belief in the law. Understood as the arbiter of a universal civilisation, God was its author, the Bible its template ('when our ancestors accepted the gospel, they accepted [laws] too'), and European society its exemplar.[88] 'Noah was saved when the world was drowned, because he had an ark. The white men will be saved, even if the Maoris drown – because they have an ark. The law and order is their ark. Therefore let us turn to the white man, and get into his ark ...'[89] Law was a clear alternative to 'custom'. When a chief argued that the killing of settlers was a justifiable act of war, Hamiora Ngaropi replied: 'If you can justify such acts then I say such conduct is the road back to your teeth ... If you can justify murder by reference to Maori law, you can justify cannibalism on the same ground.'[90]

Equal treatment in a race-blind society governed by law was the original political 'partnership' between Maori and the British. In 1840 Maori had a theoretical understanding that the Governor would form a political community ruled by British law. Subsequently, there was little law; the reach of police and courts was short, and custom continued to govern most Maori lives. While lack of law might suggest that, in practice, Maori citizenship was voluntary or even chimerical, this was not the case, because of the effect of Maori ownership of the land.

The aroha through which Maori included Pakeha in their categories of relationship was not simply the metaphysics of consent to be governed. The object of Maori political consensus was always action; therefore aroha required demonstration. Aroha to the state was demonstrated in land-selling. It was 'a sign of love to the Pakeha', a 'freely-given' return for the aroha of the Governor 'in respect of his good policies'. Taonui's succinct statement expressed a commonly held position: 'This is my love to you – I sold you land.'[91] On the ground, this opened a sustained dialogue between Maori and the government. Officials had to negotiate with Maori proprietors, but it was equally the case that Maori accepted the officials' competence to act. Each land deal, therefore, reified the authority of the Governor.

It was the *known outcome* of land sale that settlers would be established, in whose train marched the infrastructures of government and economic

development. But while land sales fulfilled the purposes of the state, willing Maori sellers also felt included in them, through their anticipation of future benefit. Te Hapuku, a seller on a grand scale, operated out of *policy*: 'I decided in my heart to engage in land sales; I gave my land permanently to the Pakeha ... The land went to the Pakeha, for we are all within the government.'[92]

Political aroha was axiomatically not sentimental. Maori paid jealous attention to every detail of sale, from the description of boundaries through verification of ownership to the distribution of payments. Though land sales were a robust demonstration of the tradition of highly defended rights, this does not mean that they were enclosed in that tradition. Rather they burst its bonds. It was outside the capacity of the conflictual society of the past to form valid agreements involving the rights of many people. Law made land sales possible by providing an alternative to custom. The post-Treaty situation, in which the government bought land ahead of settlement, had a theoretical quality that contrasts with pre-Treaty deals Maori made with Pakeha living among them. Successful colonial land deals were therefore a triumph of trust in law. It was law that provided Maori with the capacity to act as citizens – to make political decisions for themselves, but also significantly to monitor those of the government.

Law was assumed to be God's reflection in a series of earthly mirrors. Unlike custom, which was based in a collectivity of human experience, law was anchored in God. Over twenty years, this influenced Maori perceptions of their relationship to the state. In the same way as mana detached from the person and emerged as an abstract 'authority', aroha to the state evolved from a quasi-kin relationship into a more abstract notion of law-based citizenship. In such a citizenship, there was, crucially, no necessary link between gaining modernity and selling land.[93] This was a sophisticated position. It adds to other evidence that the Maori response to Europe was a strongly intellectual and modernising one. It did not merely imitate Pakeha models, but absorbed them.

Law-based citizenship helps explain why Maori emerged from a state of political tutelage within twenty years.[94] It explains why Maori were able to base armed opposition to the government on the violation by that government of its own principles, rather than on tribal values. At the outbreak of war in 1860 decisions about citizenship were about a modernity which already had a tradition. The peaceable community, with law its guarantor and prosperity its goal, had become the intellectual and cultural heritage of Maori. This suggests that the reason why most Maori did not abandon citizenship in the decade of war was that it no longer seemed a reasonable choice.

VIII *The citizenship of Hawke's Bay Maori*

After the death of King Potatau, the King Movement redrew the boundaries of the state to exclude Pakeha. Led by the prophet-king, Tawhiao, the movement's followers became attached to a mystique of race learned from the Bible. In 1864 they recreated their identity as the children of Israel, waiting on God in the certain hope of deliverance. The King Movement's wartime history commands sympathy, but it was not the history of the majority. The colony did not, as Belich contends, 'squeak through' because of the degree of British military superiority, but because most Maori did not abandon the modernity they had aspired to and practised for generations. The remaining section will illustrate the conclusions reached in this study through an examination of the political views of Renata Tamakihikurangi (Kawepo), a member of Ngati Kahungunu of Hawke's Bay, known to historians as a loyalist tribe.

Because land sale was the main Maori experience of government, it was also the most sensitive measure of the trust Maori had invested in citizenship. In 1859 Governor Thomas Gore Browne arbitrarily altered the policy of no purchase without full consent in order to secure the Waitara block north of New Plymouth, which had been pursued unsuccessfully since 1840. He paid a few willing individuals – of whom there were always some – and in early 1860 deployed imperial troops to enforce his claim. Browne thus broke what Hone Heke had once called 'te kupu kotahi o te pai (the one word of peace)', which was the categorical imperative of modernisation.[95] Maori were almost universally appalled; they were incredulous, angry and fearful.[96] In the words of one Christian to another: 'He mate tenei (here is death)'.[97]

In November 1860 Ahuriri (Hawke's Bay) Maori met the Provincial Superintendent to discuss the Taranaki situation. The opinions expressed by Renata Tamakihikurangi, at whose pa the hui was held, were published the following year in a bilingual pamphlet.[98] As a critique of the performance of the colony after twenty years, this unique document offers insight into the thinking of a strategically important tribe. Ngati Kahungunu's support for the King would have drawn the whole East Coast south of Te Mahia into the nationalist camp. However, despite strong overtures from the King Movement, Ngati Kahungunu neither erected boundaries against the spread of European settlement nor rejected the Governor's authority.

Twenty years' experience of government enabled Renata to look at the King Movement through Pakeha eyes. His sympathy was unillusioned. Addressing the Governor's professed fear of 'my little king', Renata asked a weary question: 'Is he a veritable king in your eyes?'[99] While he was targeting Pakeha attitudes, Renata had himself rejected the King, for reasons that reflect the flux and clash of culture in the early colonial period.

The Bible was a textbook for living that allowed nothing to be foreign to Maori. A devout Christian such as Wiremu Tamihana could believe in a Maori nation led by a king. The incentives for more secular thinkers, such as Renata Tamakihikurangi, to join the King Movement were less obvious. On the side of tradition, the unforced acceptance of the territorial authority of a non-related chief was highly problematic; it asked too much of most chiefs. On the side of modernity, the King Movement was in theory about unity. In practice, however, its Old Testament thinking and militarised rituals always threatened disorder, especially among the young men. The 'Treaty model' of the state, by contrast, was the peace model that had created a bridge for chiefs to cross between tradition and modernity. It was therefore attractive to Maori on Maori terms.

The bridge of modernity was the idea of foreignness itself. Foreignness created political space for Maori, because the British system of government was unentangled with their own labyrinthine political history. On the principle of the blank slate, chiefs did not need to relinquish mana to reposition themselves as citizens. While this is a simplification of a larger case, loyalists were Maori who found a point of equilibrium between the old world and the new. For most it was a more comfortable position than 'joining' the King Movement, which was new in principle and aspiration, but old in terms of inability to govern.

Renata Tamakihikurangi's sense of place in the colony could hardly have been further from the King Movement's goal of a Maori state. He was proud of Ngati Kahungunu's contribution of land to the development of the colony. Making an oblique comparison with tribal disunity in Taranaki, he said that all sales of Ngati Kahungunu territory were 'chiefly': 'none had been made by a common person'.[100] Renata was thinking in two worlds. He found mana in land sales because no commoner had beaten the chiefs to it; but he also found it in modernity, because he viewed land selling as Maori ownership of the purposes of the state.

Renata was a realist. His political descent was from Tamati Waka Nene. As he spoke at the meeting, he held in his hand a whalebone patu, a chiefly weapon of war that had been sent by Ngati Raukawa to invite him to attack Napier, while they simultaneously attacked Wellington. The patu's meaning was clear to everyone present: all Maori were threatened by the Governor's action at Waitara; if they should fight in combination, they would unravel the colony. Renata rejected the plan on a long view: regardless of the unity of purpose they might achieve in opposing injustice, the Governor knew 'perfectly well' that in an all-out war, 'the Maori will be beaten': 'Who is the Maori that is such a fool as to be mistaken about the sovereignty and power of the Queen? Or who will throw himself away in fighting for such a cause?'[101] It was not that Renata was unable to conceive of British and Maori interests being so irredeemably opposed that

all Maori would choose war. His 'European' grasp of sovereignty shows in his comment that 'had it been a fight for supremacy, probably every Maori in the country would be in arms'.[102] Renata, however, dismissed the idea that Taranaki was such a case: 'No, it is for the land; for land has been the prime cause of war among Maori from time immemorial down to the settlement of Pakeha in this island of ours.'[103]

Current interpretations of the utility of the Treaty of Waitangi as the basis of the redress of historical wrongs have produced a reading of the wars that has little place for loyalists. The silence is accusatory: in terms of the sovereignty thesis, loyalists cannot be patriots. Renata's restriction of the cause of the Taranaki fighting to land offers the basis of an interpretation of patriotism that does not exclude the experience of loyalists. The heart of Renata's position was that the Governor had resorted to force *in a civil matter*.[104] The war was illegitimate precisely because it was a war over land.[105] The separation of sovereignty and land therefore emerges as the point of his argument.[106]

The centrality of the rule of law to Renata's position once more draws attention to the bases of Maori modernity. The organisational difference between past and present, or between tribal organisation and citizenship in a colony of the British Crown, was that the latter was consistent with a notion of a civil society that lived without fighting. This enabled land transfer to become an agreement between consenting parties rather than an evidence, or trial, of tribal strength. Law was the bulwark against the rejected alternative of endless tribal conflict. Its universality was the protection of the Maori future against domination by governors and settlers. For citizenship to have meaning, then, the law must deal with the Waitara dispute. Backing Waikato's call for a civil investigation of the Governor's conduct, Renata said that the only acceptable battlefield was the courthouse.[107] His reaction to the Taranaki war was entirely within the terms of his status as a citizen. For him, it was a civil war, not a war against a usurping power.

Removing the issue of sovereignty from the causes of the war did not downgrade its seriousness. It reinforced it. Resort to war had disturbed the heart of Maori citizenship. It signalled the beginning of a revolution in membership and boundaries. Yet in the present, when the loss of land crowds all other significances from perceptions of Maori history, it seems difficult to convey the courage that acceptance of the disciplines of citizenship demanded of Maori. Perhaps, though, it can be glimpsed in the following chilling vignette. At a meeting to push forward the notion of a Maori king, a supporter called Paetai recited a list of Pakeha offences against Maori. In this action, Paetai was rethinking the post-1840 period in warrior terms of unavenged reasons for war.[108] The list was the past sitting in his head against the day that modernity failed. This suggests

both the fragility and the achievement of Maori political change. The psychological twist to the story is that when war actually happened, it would not be Maori but a British Governor who precipitated the failure of the unified Maori–Pakeha state. Once the basis for trust was gone, Renata Tamakihikurangi looked at the colony in the bare terms of settler self-interest. In 1831, tapu fighting chiefs drew their moko (facial tattoo) on the 'King's Letter' to show support for British protection from the chance of French designs on New Zealand. Now, Renata said: ' ... the Treaty of Waitangi has been breached. The Treaty was said to protect Maori from foreign invasion, but those evil nations never came to attack us; it was you, the people who made that Treaty, who made the attack.'[109]

Law had a further, interior, dimension in the shaping of Maori citizenship. In the old culture, where politics turned sharply on insider/outsider distinctions, Pakeha had been defined (and often protected) by foreignness. The Treaty expunged foreignness by making Maori and the British joint insiders of the new political community, while Christianity gave both peoples the same God and moral framework. By 1860 the 'other' against which Maori measured difference and defined themselves was their own past. It had become a place of darkness, while citizenship was pictured in images of light that enrolled Maori psychologically in the ranks of the modern.[110] At its sharpest, the sense of leaving the past behind was – inevitably – expressed in a figure of war. King Potatau told his followers, 'Formerly your god was Uenuku the man-eater. You have a different God now, the great god of heaven.'[111] This saying was a declaration of allegiance to peace – to its necessity and nobility as the foundation of modernity.

When Renata accused Superintendent Fitzgerald of destroying the peace, he returned repeatedly to the potent image of cannibalism:

> Uenuku-the-man-eater used to be my god; but when the clergymen came to this land I was told to put away my god, for the Pakeha's God was the true one: Jehovah, the preserver of man ...[112]
>
> When I accepted your God, I thought we [i.e. Maori and Pakeha] would judge wrongs great and small. When it came to this wrong [Waitara], I was the only one left to worship the Governor's God, while he went off to pick up my god, Uenuku the Cannibal, that I had left behind me.
>
> And now, there he is, the Governor, the foundation of Jehovah, risen up and taken Uenuku the Cannibal to Taranaki, as his god for the extermination of the people![113]

The appearance of this traditional imagery in political debate was not mere local colour, but a profound expression of betrayal. What stared Renata in the face was the thought that the Governor's real aim might be Maori genocide. To the suggestion from Fitzgerald that Taranaki people were children who must be

'chastised', he replied: 'What part of the children do you mean to leave alive to feel your chastisement?'[114]

What did Renata have left? His internalised belief in modernity. He continued to support the rule of law, not because he trusted the Pakeha, but because it was part of his culture.

IX *Postscript*

The majority of Ngati Kahungunu remained edgily neutral in the war years ahead, objecting to the stationing of government troops in their territory and continuing to resist pressure from the King Movement to join to fight the Pakeha, and to believe that God was on the King's side. They pursued civil occupations, tendering for contracts to build roads and bridges, developing a farm economy, litigating in the courts and even organising race days to raise funds for community development. In 1865, the arrival of armed bands of Hauhau in their territory presented a double challenge, threatening as it did both the culture of Christian modernity and tribal sovereignty. The two challenges meshed, and in 1866 Renata Tamakihikurangi and other Ahuriri chiefs fought with colonial troops against their Hauhau relations.