IN THE WAITANGI TRIBUNAL WAI 1040

IN THE MATTER OF THE TREATY OF WAITANGI ACT 1975

AND

IN THE MATTER OF TE PAPARAHI O TE RAKI (NORTHLAND INQUIRY)

BRIEF OF EVIDENCE OF DR PHIL PARKINSON

Dated 8 September 2010

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PREFACE

Introduction

1. My name is Philip Granger Parkinson. I have been a professional research librarian, working in the Alexander Turnbull Library since 1975. I have been asked by the Crown Law Office to prepare this brief of evidence. The views expressed in this brief of evidence are my own, and do not represent the views of the Alexander Turnbull Library or (necessarily) the Crown.

Personal background

2. I have a BSc (in botany and zoology) from the University of Auckland, a postgraduate diploma of the New Zealand Library School. I have a PhD from Victoria University of Wellington.

3. My doctoral thesis was entitled 'Our infant state: the Maori language, the mission presses, the British Crown and the Maori 1814-1838'. I continued the argument developed in 'Our infant State', in a second work tracing the fate of the Declaration and to be called 'The Anglo-Maori Covenant: the missions, law and sovereignty, 1838-1846' but that work has not yet been published, although some parts of it have been used for a commission of the State Services Commission, and other parts were used for my substantial essay 'Preserved in the Archives of the Colony: the English drafts of the Treaty of Waitangi' which appeared in the 2004 *Yearbook* of the New Zealand Association for Comparative Law, and also in the *Revue Juridique Polynesienne* v. 11 (2005). These have been cited in evidence by others in this inquiry.

4. I am the co-author of *Books in Maori 1815-1900*,[1] which is a comprehensive annotated bibliography of all printed texts in Maori up to 1901 as well as works about the language such as grammars and dictionaries in that period, irrespective of extent.[2]

5. My other publications include (but are not limited to):

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1 P. Parkinson & P Griffith, *Books in Maori 1815-1900, nga tanga reo Maori, an annotated bibliography* (Auckland: Reed, 2004) 1013 pp.

2 In this brief of evidence I refer to *Books in Maori 1815-1900* as "BiM".

5.1 'Strangers in the House: the Maori language in government and the Maori language in Parliament, 1865-1900' in *Victoria University of Wellington Law Review* v. 32 (2001);

5.2 ' "The path of the perfected law": the use of the Maori language in the Government of New Zealand 1840 to 1865' issued with the former as a VUW Law Review Monograph as *The Maori language and its expression in New Zealand law, two essays on the use of Te Reo Maori in government and in Parliament* (2001); and

5.3 'A language peculiar to the word of God' - the Anglican liturgy in the Maori language' in *Publishing History* v. 54 (2003) which deals, *inter alia,* with the translation of the Book of Common Prayer and the translation of both the Old and New Testaments.

My brief

6. In this brief of evidence, I answer the following questions that were put to me by Crown Counsel and which concern the signing of the Treaty of Waitangi:

Evidence of a first draft of the Treaty

1. Evidence has been given to the Waitangi Tribunal (in the affidavit of Mr Rima Edwards, #A25, paragraphs 6.1-6.14) that a first draft of the Treaty that had been translated into Māori was presented by Henry Williams and James Busby to Māori prior to 6 February 1840 in which article 1 stated:

> "ka tuku kia riro wakangaro rawa atu ki te Kuini o Ingarani ake tonu atu te mana katoa a o ratou wenua"
>
> "absolutely give to be lost to the Queen of England forever the Sovereignty of all their lands."

It has also been stated that the rangatira rejected these words because it clearly stated that the rangatira were signing away their mana.

It has been said that the source of this information is partly oral history but also that there is some support for this evidence in the writings of Frederick Manning.

Our questions for you are:

1.1 Are you aware of any evidence that supports the above evidence?

1.2 How possible or likely is it that a first draft was put to Māori in which they were asked to cede "mana"?

1.3 Do you have any other comment to make concerning the above evidence?

Texts of the bible at 1840

2. Various evidence has been given to the Tribunal concerning the meaning of the words "kawanatanga" and "rangatiratanga" on the basis of the uses of those words in the bible. Our questions for you are:

2.1 Which books of the bible had been translated into Māori and distributed by 5 February 1840?

2.2 Is one able to discern any particular meaning of the words "kawanatanga" and "rangatiratanga" from those biblical texts? If so, what are those particular meanings?

2.3 What effect, if any, would biblical uses of the words "kawanatanga" and "rangatiratanga" have had on Māori understandings on the use of those two words in the Treaty of Waitangi/te Tiriti o Waitangi?

Adequacy of the translation of the Treaty into Māori

3. Dr Manuka Henare, under cross-examination, agreed that in translating the word "sovereignty" into Māori it would have been wrong to choose a word that implied that the Crown owned the land. Do you agree that the translation of the word "sovereignty" needed to separate ownership from authority?

4. Professor Dame Anne Salmond (#A22, pages 24-25) states that the best translation equivalents in Māori in 1840 for "sovereignty" would have been:

4.1 mana;

4.2 kīngitanga;

4.3 ko te kīngitanga ko te mana;

4.4 arikitanga; and

4.5 rangatiratanga.

In your opinion, are any of these words better than "kawanatanga" as a translation for sovereignty?

5. In your opinion, what would Māori have understood the term "kawanatanga" to have meant? Was it an appropriate translation for the word "sovereignty"?

6. Professor Dame Anne Salmond (#A22, page 10) states that Henry Williams was not recognised as one of the better translators among the missionaries. Our questions for you are:

   6.1 Is this correct?

   6.2 Why was Henry Williams asked to translate the Treaty?

Did signatures indicate assent?

7. Professor Dame Anne Salmond (#A22, page 30) has questioned whether the signatures or marks of chiefs "signified assent, when their speeches had expressed a contrary opinion." Do you agree with this statement?

Official version of the Treaty

8. Professor Dame Anne Salmond (#A22, page 57) states that the annotation by Henry Williams on a despatch of Hobson's to Governor Gipps was "an acknowledgement by both Hobson and Williams that the official text of the agreement with the *rangatira* was in fact, Te Tiriti in Māori." Professor Salmond concludes that "it is clear that while the Treaty in English was a draft document, Te Tiriti is the official record of the agreements between the Crown and the *rangatira* at Waitangi." Our questions for you are:

   8.1 Do you agree with these statements?

   8.2 Particularly, do you agree that Te Tiriti (the Māori version of the Treaty) constituted the "official" record of the Treaty?

   8.3 Do you agree that the English version of the Treaty was a draft?

   8.4 What would Hobson have considered to be the "official" record of the Treaty to have been?

Other comment on Professor Dame Anne Salmond's report

9. Do you have any comment to make (aside from the matters above) concerning pages 13-38 of Professor Dame Anne Salmond's report (#A22)?"

SUMMARY OF MY EVIDENCE

7. My evidence relates to the surviving documentation of the treaty-making process and the events which immediately precede and followed it, taking the view that the 'signing of the Treaty' was not a discrete event taking place over two days, but in fact a much more protracted series of events. Certainly the period from Hobson's arrival on the 28th January to the 6th of

February is a part of that, but it is not the whole. In addition to the formal evidence sought from me as specific questions, therefore I have considered it essential to provide an appendix dealing with the creation of the Declaration / Wakaputanga and its reception (based on new and largely unknown evidence).

Consideration of an alleged 'first draft in Maori of Te Tiriti'

8. My response to the suggestion that Busby and Williams met with chiefs prior to the signing of the Tretay and put to them an alleged first draft of the Treaty (in which chiefs were asked to cede their mana) is that there is no evidence at all for the existence of such a document, despite the express instruction of Hobson that all genuine documents, including drafts be preserved in the archives of the colony, which indeed they have been. There is no evidence for the existence of such a document in the writings of Frederick Maning either. Rather, it appears that there is a rather recent oral tradition about such a document, which surfaced in the 1920s and may place reliance in a fictionalised and mischievous tale by Maning about the possibility of the Treaty being buried with Hobson's body on his death in 1842. There is no historical basis to this tale.

9. I do not think it at all likely that Busby and Williams met on the night of the 4th to discuss Williams's translation of the Treaty into Maori. I say this for three reasons. First, there is no evidence (historical or otherwise) of which I am aware of any such meeting. Secondly, we know that on the morning of the 5th Busby asked that the word "huihuinga" in the Maori draft be altered to "wakaminenga". Had Busby met the prior evening, that issue would have been resolved, or we would expect there to have been some record of it not being resolved. Thirdly, Williams and Busby had an acrimonious relationship. One would not have expected Busby to have offered assistance to Williams.

10. It is, I believe, even less likely that Williams, together with Busby, met a delegation of chiefs to discuss a draft Maori text of the Treaty on the 4th. That would have been most improper. Hobson certainly did not ask for any such discussion with chiefs to take place. One would have expected a record of it having taken place. It is inconceivable that any such meeting took place on the night of the 4th.

Consideration of Biblical and non-Biblical texts available for Maori to 1840

11. The biblical texts that were available for Maori to read in Maori in 1840 were the New Testament (available complete in 1838), a few fragments of the book of Genesis (Chapters 1-3) and some other fragments (12 pages only), from Genesis chapters 1 to 9, intended to teach reading and writing and issued in 1837. The Psalter (Psalms) was not available until November 1840 and no other Old Testament texts appeared in print until 1845, apart from brief extracts in 1842. Of considerably more importance in the Treaty context than these were the gospels of Matthew, Mark, Luke and John with their references to political personalities such as Roman Governors (Pilate, Quirinius), Emperors, kings and tetrarchs (Augustus, Tiberius, Herod the Great, Herod Antipas etc) familiar to Maori from the gospel nativity stories, and to some extent from the epistles of Paul. But of even more significance for Maori readers were the much more widely used texts of the Book of Common Prayer, used for daily services and in use since 1833, where the Church Catechism also appears. The inclusion here of the prayers for the Maori Chiefs, copying the form of the State Prayers of the English liturgy is of no small account because it helped Maori to see an interface between the ways of the English Church and their own missionary one. The great popularisation of reading and writing among Maori comes not so much from the New Testament of 1838 as from the Prayer book of 1833 with is associated catechisms and hymns, which were bound with a selection of scriptures.

12. I have also drawn attention in this evidence to secular texts in Maori which are of importance up to 1837 and which contain political language, such as the circular letters printed by Colenso for Busby and the two printings of the Declaration / Wakaputanga, as well as the few diplomatic documents in Maori and English such as the letter from Goderich of 1833 and Busby's address to the chiefs on his arrival, all of which are important sources for political ideas and neologisms.

Linguistic considerations of 'kawanatanga'

13. In this evidence I discuss the term 'kawanatanga', drawing upon the (1840) established precedents in usage to explain the familiarity of concepts of Governors and Governorship at that time. In my opinion, on consideration

of all this evidence, as well as the personal knowledge chiefs had acquired of British ways from their incidental secular intercourse with missionaries and traders, the chiefs in Northland knew quite well what a Governor / Kawana was and they also knew that interposition of gubernatorial authority was necessary. What they remained uncertain about, as we can deduce from their suspicions that the governor would be 'above' them in status and authority, was that they were anxious as to the relative extent of that authority. That was a reasonable anxiety for them to express, especially given the rumours being spread by the malcontents warned by the proclamation of 30 January that their land claims would not necessarily be upheld when the claims were investigated. I conclude, along with Mr Carpenter and Professor Ward, that 'kawanatanga' was the appropriate term in Article 1 and elsewhere in the Treaty / Tiriti to convey the idea of sovereignty, not so much as an abstract 'sovereign power' but as civil authority, a concept lacking in the Maori world of 1839. Furthermore I would reject the alternative terms 'mana' or 'kingitanga' or 'ko te kingitanga ko te mana' or 'arikitanga' or 'rangatiratanga' as potentially adequate 'translations' of 'sovereignty' or 'sovereign power'. Those suggestions simply would not have worked:

13.1 'Mana' would have been unsuitable. It is difficult to give an exact translation into English of the word 'mana', let alone what the word 'mana' meant in 1840. Mana has many contextual meanings often expanded in a phrase and often expressed in conjunction with another word such as rangatiratanga. As a broad concept, mana certainly connotes power and authority, and would have done so in 1840. Its exact meaning would have definitely been context specific. In my view, mana would have been too generalised and all-embracing a term to translate the reasonably complex concept of sovereignty. It certainly would have conflated the authority that was to be ceded in Article One with the guarantee of property rights in Article Two. The word mana was used in a January 1840 conveyance between Panakareao and Taylor (which I discuss in this evidence). There Taylor sought both authority and ownership of the land in question. But the Treaty intended something more sophisticated: the cession of

authority without prejudice to continuation of property rights. Furthermore, mana connoted the special status that certain people, such as rangatira, had in Maori society. It would have been most odd for a rangatira to have ceded his personal mana. No rangatira would have done that and that was not what Hobson was asking them to do in ceding sovereignty. The 20 January 1840 conveyance, however, provides an instance where "te rangatiratanga me te mana i taua whenua" was given up.

13.2 'Kingitanga' is not an appropriate translation for sovereignty, when a Queen is the sovereign and in 1840 would have been ineligible for that reason. But the more important practical reason was that the Queen was far away and in fact would never visit her realm of New Zealand, and others would act on her behalf by delegated authority, just as was currently the case in New South Wales and as, the scriptures informed Maori, Caesars had used local plenipotentiaries called governors. A 'kawana' was a monarch's local representative and Maori in Te Tai Tokerau, at least, understood that well by 1840.

13.3 'Ko te kingitanga ko te mana' is merely a phrase combining the two above ideas and does not express 'sovereignty' in any meaningful way.

13.4 While 'arikitanga' continued in the mid 19th century as a genelogical idea concerned with whakapapa, it had long since ceased to hold practical political significance, and the word had been taken over under Christianity to become an exclusive aspect of Christ as "Te Ariki". Had "arikitanga" been used, there may well have been some confusion as to whether the Crown was asking Maori to agree somehow to the replacement by the Crown of Jesus Christ or Christianity more broadly.

13.5 'Rangatiratanga', which I discuss more fully below, was also unsuitable. In 1840 this was the normal term for chiefly authority or chiefly 'rule' which was not generally despotic but rather was conciliatory through *runanga* and the *whaikorero* on *marae*. It thus

provided a workable model for self-management of Maori communities alongside pakeha communities. The interface between the communities was more problematic as these communities had very different communal customs. As colonisation expanded attempts were made to build connections, usually through missionaries, but 'integration' through Maori becoming Europeanised took a very long time and this was never well understood until it was too late. The interpretation of 'rangatiratanga' as 'equivalent' to either 'sovereignty' or 'independence' does not work except in a specialised and semi-spiritual context, and disqualified 'rangatiratanga' as a candidate to express 'sovereignty'.

13.6 In addition, the word "rangatiratanga" in 1840 would have conveyed a sense of the mana that rangatira had. It would have been most odd indeed for the Crown to have asked rangatira to give up their rangatira-tanga, i.e. their chiefly status. As with mana, no chief would have considering doing that. There was also the obvious problem that the word 'rangatiratanga' was to be used in Article Two, which was concerned specifically with property rights. As such, it would have been absurd to have asked the chiefs to have ceded rangatiratanga in Article One.

Linguistic considerations of 'rangatiratanga'

14. Distinct from my discussion above on the word 'kawanatanga', the situation with the expression 'rangatiratanga', however, is much more ambiguous because that word and its associated expressions 'rangatira' and 'tino rangatira' had multiple meanings for Maori, and care needed to be taken to establish what meant what in particular secular and religious contexts. While this might have been fairly clear to communicating Maori at the time, it is anything but clear to present day commentators, in no small part because of a general lack of familiarity with scripture and its interpretation in the present. This arises in large part because the legal context in which these matters tend to be discussed is quite independent of the long-fostered belief among Maori that the Treaty of Waitangi arrangement was not so much a matter for legal scrutiny, as a solemn and sacred covenant between Maori

and the Crown which the Crown has wilfully breached. And that covenantual agreement was crucially guaranteed by its effectual creator, Henry Williams, who advocated the cession of sovereignty using a mixture of political and spiritual language in terms which would have been more evident at that time than they are today in a largely post-Christian world.

15. As to the adequacy of the translation of the Treaty from an English draft text into a final English draft preliminary to a final Maori text (both done by Henry Williams, and both preserved in the archives of New Zealand), I ***do*** agree that in the translation of the obscure word 'sovereignty' (an alien concept for the chiefs), it was necessary to distinguish the ownership of property (article 2) from political authority (article 1). That was effected by naming the latter as 'kawanatanga', in a sense which was already familiar to the chiefs who had been involved with the Declaration of 1835, and separating it linguistically from the expression 'te tino rangatiratanga o o ratou wenua o ratou kainga me a ratou taonga katoa' as taken directly from Henry Williams's holograph manuscript of his duplicate translation of the Treaty, authenticated by the cipher of Hobson's secretary James Stewart Freeman, and contained within the duplicate despatches at Archives New Zealand.

On the quality of the translations by Henry Williams

16. Henry Williams arrived in 1823 and had superintended the Church Mission for almost 20 years by 1840. Ruth Ross said in her influential article 'Te Tiriti o Waitangi' (1972) that "Neither father [Henry Williams] nor son [Edward Williams] was an experienced translator, but those who were - William Williams, Maunsell and Puckey among the Anglicans and Hobbs of the Wesleyans – were not at hand in the Bay." For civil and political matters, Henry, as the senior missionary, took the lead in translation and that is why Busby asked him to translate the Declaration in 1835 and why Hobson followed the precedent in 1840. It would have been very odd indeed to have asked anybody else. The reasons that Henry Williams was less involved in *scriptural translation* than his brother William and Robert Maunsell is that the New Testament was translated from the Greek text (which Williams could read) and the Old Testament was translated from the Hebrew text. Henry did not read either Greek or Hebrew, and neither did

Yate, who had translated most of the 1833 Prayer book into Maori from English. Maunsell was the only missionary who was fluent in Hebrew. W. G. Puckey had been brought up in New Zealand and was initially the most fluent in Maori, but knew no languages other than Maori and English. He did translate the Psalter from English into Maori and was well regarded for his knowledge of the Maori idiom. In translation there was simply a practical division of labour, with each lay or clerical contributing his skills. All collaborated as the need arose.

17. Henry Williams was the person Hobson particularly sought to undertake the translation of the Treaty because Henry was the senior missionary, with the best political connections, and because he was a person of mana. There is no doubt that Henry Williams was both fluent and capable in the Maori language. Busby could not be used, although he was 'consulted' on an early draft when Henry was not available. In the absence of Henry Williams the only other person who could be drawn on was the printer (Colenso) who did some translation for Hobson and Shortland in 1840, such as the letters to Te Tirarau and Nopera Panakareao. The more recent criticism of Henry's ability as a translator is partly derived from remarks of Ross and partly from Moon and Fenton. In my opinion, their views are ill-informed. Henry Williams' translation was more than adequate and conveyed into the Maori language the essence of the English text. In particular, the term kawanatanga was the only appropriate translation to use as a translation for sovereignty in the context of 1840.

On Tohu indicating assent

18. A fairly standard procedure had been developed in the 1830s when the missionaries began to record deeds, using literate Maori youths (*kaituhituhi*) as scribes and as witnesses, who could explain to the chiefs the nature of the agreements. Many such deeds, with the *tohu* are extant. One which I have featured in my evidence is that for the Muriwhenua. A mark in such a context does, clearly, indicate assent. The practice had been in use for over a decade in the north. In my view, there is no doubt that the chiefs who gave their tohu to the Treaty assented to it, irrespective of the comments they may have made in the debates preceding the signing.

'The official text' of the Treaty in English and in Maori

19. On the matter of the 'official text' of the Treaty in English there has been a great deal of historical confusion, both by historians and archivists, and it was to address this issue that I compiled 'Preserved in the Archives of the Colony'. I will summarise the conclusions as briefly as possible. There are several draft texts in English and Hobson had ordered that all be kept. The whole sequence has been transcribed in 'Preserved in the Archives of the Colony'. For the avoidance of doubt, these documents are numbered in order as described in that work. The various drafts are these:

19.1 notes in Freeman's hand;[3]

19.2 a first draft by Busby;[4]

19.3 a second draft by Busby, sent to Hobson;[5]

19.4 Hobson's holograph preamble;[6]

19.5 the now greatly altered text became the 'third draft' to be delivered to Henry Williams by Hobson himself. The original document given to Williams (and probably written out by Freeman) has been 'lost', as has the file copy which must have been retained for official reference. Hobson himself took one copy to Henry Williams for translation on the afternoon of 4 February. Three transcripts of this survive. Two of these are currently in Archives New Zealand and the third copy is now in Washington. All bear the date 5 February, the actual date of the meeting at Waitangi, rather than 6 February, the day the Treaty was first signed. For the variations between the three transcripts (one by Henry Williams himself at Archives New Zealand G 30/1, 29-31, one by Samuel Grimstone at Archives New Zealand G 30/1, 75-77, and the third an attachment to James Clendon's despatch no 7 (July 1840) in the State Department, Washington) see the Appendix to 'Preserved in the Archives of the Colony' document. For the provenance and

3 Document 1, at Archives New Zealand.

4 Document 2 at Auckland Museum.

5 Document 3, at Archives New Zealand.

6 Document 5, at Archives New Zealand.

shipping history of these documents see the same work pages 26-30, with shipping details covered in footnotes 17-20, and at page 64 in the case of the Clendon transcript. Copies of all three will be found on evidence tabled; and

19.6 the English text of 6 February sent to Gipps about 12 February 1840 in Hobson's despatch no. 3 and printed in GBPP (1840) (560) pp. 10-11, and printed in London 29 July 1840.[7]

20. The translation by Henry Williams occurred *after* the 'third draft' which begins "Her Most Gracious Majesty, Victoria, Queen of the United Kingdom of Great Britain and Ireland".

21. Translating, Williams deleted "most gracious" and also the Royal Style formula so that his Maori text started 'Ko Wikitoria Te Kuini o Ingarani' He also eliminated the redundant phrase 'estates, forests and fisheries' either deliberately or inadvertently. His final English language version, in his own handwriting and preserved at Archives New Zealand G 30/1, 29-31, preserves the "Her Most Gracious Majesty, Victoria, Queen of the United Kingdom of Great Britain and Ireland" commencement, but omits 'and estates, forests, fisheries' and says instead "[. . .] the full | exclusive and undisturbed possession | of their Lands and other properties | which they may collectively or | individually possess [etc]." (dated as the 5th day of February). This he then translated as "te tino rangatiratanga | o o ratou wenua i ratou kainga | me o ratou taonga katoa." (dated 6 February, at Archives New Zealand G 30/1, 25-27, also in Henry's writing, with the authenticating cipher of Freeman). Both texts were included in the duplicate of the despatch to Gipps.

22. The text in Henry's hand in English is thus the only 'final draft' of the Treaty in English. The so-called 'official text' (i.e. 'Her Majesty Victoria, Queen of the United Kingdom' with "and estates forests, fisheries and other properties" included) is basically the penultimate Freeman draft with a different commencement and – perhaps just an error – the "and estates forests, fisheries and other properties" restored. The Grimstone and Clendon transcripts of the draft dated the 5th February are copies, carefully

7 Document 6, the so-called 'official text' beginning 'Her Majesty, Victoria Queen of the United Kingdom'.

made from the now lost Freeman text originally given to Henry Williams and in which the 'most gracious' phrase, the Royal Style and the date of 5th February confirm that they are transcripts of a true draft prior to translation by Henry Williams. At some point Freeman has copied the wrong text; probably because the English text was secret from the opponents of the infant government. Clearly there was more than one 'official text': there were official Maori and English texts, including official drafts in English, and a sole official text in Maori, with multiple copies of each, which, fortunately has allowed the reconstruction of the translation to take place. Hobson and Henry Williams authenticated variant texts prepared by Freeman not noticing the secretary's scribal errors. A more detailed set of answers to the formal questions put to me is set out later in this evidence.

23. I could not agree, however, with any suggestion that the Maori text of the Treaty somehow constituted, by itself and in the absence of the English text, the "official" text of the Treaty.

Other linguistic aspects of the Treaty

24. I was asked to comment on aspects of pages 13-38 of Professor Salmond's report, where various linguistic comments are made on the Treaty. I agree with Professor Salmond in some respects and consider her interpretation of *tuku* (gift exchange – the Queen giving *kawanatanga* to Maori in exchange for the British concept of civil government, and Maori giving the Queen sovereignty over them in exchange for a guarantee that their rights and property would remain theirs) to be quite correct. But, her idea that the phrase 'tino rangatiratanga' means 'unfettered chiefly powers' is mistaken, as is Kawharu's idea of 'unqualified exercise of chieftainship'. Both ideas are mistaken because they suppose maintenance of a despotic power separate from civil government. Not even the Queen, the sovereign, had 'unfettered' (or 'unbridled' or 'unqualified') power, because she was a constitutional monarch, under the rule of law. Her *kawana* also operated under the rule of law and his first actions were steps to prevent the abuses of the selling of land with the attached perquisites such as *rangatiratanga* and *mana*. In my conclusion to this report I think it is particularly appropriate to return to the term *mana* which features in both Mr Rima Edwards's and Professor Salmond's strong assertions that no chief could possibly consider giving up

his *mana*. And yet we discover, in the Muriwhenua deed between Nopera Panakareao and Richard Taylor of 20 January 1840, that the former delivers to the latter: "a portion of land to keep forever, and all the trees and whatever is growing upon that land, and all things below that land, and the chieftainship and power upon that land" expressed in Maori as:

> tetahi wahi oti tonu atu me nga rakau katoa me nga aha aha noa me nga aha noa katoa e tupu ana i taua wenua me nga mea katoa o raro o taua wenua **me te rangatiratanga me te mana i runga i taua wenua**.

RELEVANT CONTEXT

Introduction

25. This section of my evidence sets out relevant context to the questions that were put to me. Further relevant context concerning the Declaration of Independence is set out in the appendix to this evidence.

26. A formal engagement between a small number of the chiefs of Northland and the remainder of the North Island (everything south of the Auckland Isthmus) had been pursued, with reluctance on the British part, since at least 1831. By 1839 the lamentable failure of the British Resident to achieve practical results had become notorious. Leaving the country under de facto missionary management was not a solution either, and it was evident to all parties by 1839 that something different would need to be attempted. Literacy had been introduced and the advantages of that and of trade were seen by Maori, but the expensive advantages of civil government were only going to be forthcoming once a civil government was set up.

27. The signing of a treaty on various occasions from February to May 1840 was to clear away obstacles to the creation of a civil government, called kawanatanga or 'governorship' headed by a Kawana (Governor) where none had existed previously. He would introduce civil and legal authority on behalf of the remote Queen. Only then could the Queen (but in practice the Kawana on her behalf) assert British sovereignty and begin to set up a civil administration, to be done as cheaply as possible. 'Governorship' was not a wholly new notion, at least in Northland, as such figures had existed for decades in New South Wales. The process took over a year before an

infant colony was to emerge, in February 1841 when the formal processes to establish the Colony of New Zealand was formally proclaimed.

The importance of archival evidence

28. The evidence itself comes from extant documents in public and private archives, the institution of a Registrar of documents being one of the earliest acts of Hobson's government. The existence of the documents in both New Zealand and British archives enables us to be certain that certain events were done and certain words used, because those pieces of evidence are largely extant and can be used as evidence for this enquiry; they are documented in the evidence provided herein. The popular discourse and secondary literature relating to the period, however, with few exceptions has not enquired deeply into these sources of evidence.

The inception of Kawanatanga

29. No doubt the Tribunal will be well aware of the events concerning the drafting and signing of the Treaty from other evidence. I have also detailed that process in my published work 'Preserved in the Archives of the Colony' referred to above. In summary, however, on his arrival at the Bay of Islands, Hobson relieved Busby of his authority as British Resident as diplomatically as possible and asked for his cooperation in the preparation of formal proclamations (in English only) that Hobson had taken over as Consul and Lieutenant-Governor, and that no further land claims would be recognised until they had been approved by the new authorities. The CMS mission printer, William Colenso, was asked to prepare these and also to prepare a printed circular letter (in Maori only) to the 'high chiefs' of the 'United Tribes' announcing that a 'rangatira' from the Queen of England had arrived 'hei Kawana hoki mo tatou' (to be a governor for us). The chiefs were invited to meet Hobson on the next Wednesday at Busby's house at Waitangi. Busby's drafts and his correspondence with the mission printer Colenso have survived, as has Busby's file copy of the letter to the chiefs and Busby's annotated copy of the printed Declaration with the names of chiefs from 1835 (without Waikato) which acted as the list by which chiefs were called up to sign on 6 February.

The drafting of the Treaty

30. Hobson and his Secretary, J. S. Freeman, prepared some notes for a treaty of cession to be signed by the chiefs who were to meet. This happened most probably on 31 January the day after Hobson landed and assumed office.[8] The draft was taken for comment to Busby on about 31 January 1840, either as a courtesy or because there was nobody else about, Henry Williams being away from home. Busby said that it would not answer to the purpose, and offered to improve it. This was done on 3 February and resulted, on a second attempt, in a Treaty of three clauses with a long and cumbersome explanation of what it meant. Hobson was not satisfied with that, added an explanatory preamble, taking advice from Henry Williams, but retaining the three articles as Busby had drafted them. He cut a swathe of other Busby content, and finished the document with a short attestation clause saying that the Treaty was made by the "Chiefs of the confederation of the United tribes of New Zealand, being assembled in congress at Victoria in Waitangi on the 5th of February" with a further similar paragraph to cover all the other chiefs who were not members of the confederation. As Henry Williams was back, he was given the result on paper to translate late on 4 February, so it could be used, in both English and in Maori the next day. A small change suggested by Busby (one word[9]) was substituted and the Maori text was now complete. It was copied afresh overnight by Taylor on parchment.

31. The mission printer, William Colenso, took down the proceedings on the 5th and 6th so they could be sent to the CMS and his draft manuscript has survived, as well as what appears to be an almost verbatim transcript of Hobson's introductory speech.[10] These words are given in the manuscript 'Memoranda of the arrival' and (in an edited form) in Colenso's *Authentic and genuine history* published in 1890.[11] Colenso sent a copy of his draft

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8 Parkinson, 'Preserved in the archives' p. 22.

9 At Busby's suggestion, the word "huihuinga" (for gathering) was replaced with "wakaminenga" (for the Confederation).

10 The holograph is in the Hawkes Bay Museum, Napier. In the 'Memoranda' the last paragraph was omitted but a preliminary paragraph as an introduction was added. There is an expansion of the words abbreviated (see above) in the *Authentic and genuine history* pp. 16-17. Hobson's address, 5 February 1840, is also transcribed in W. Colenso, Diary April 1837, ATL-MS-0582 p. 32.

11 Colenso, W. (1890) *The authentic and genuine history of the signing of the Treaty of Waitangi, New Zealand, February 5 and 6 1840; being a faithful and circumstantial, though brief, narration of events which happened on that memorable occasion; with copies of the Treaty in English and Maori, and of three early proclamations respecting the founding of the colony.* Wellington: Government Printer, 1890. 42p.

manuscript to Busby for further correction. The final corrected manuscript, with some later corrections or variations, was doubtless sent to the Government Printer to be marked up for printing in 1890, but that original no longer survives; Colenso seems to have been annoyed that his original copies of the set of printed proclamations were not returned to him.

At the meeting on the 5th February

32. Some bystanders in 1840 objected that Henry Williams was not translating accurately into English, but nobody offered to do any better, and others complained that they could not hear, but as Henry Williams was translating the speeches for Hobson's benefit, not for that of the bystanders, that is of no matter. Colenso provides a discussion of the substance of what the chiefs said in response.

33. The skeleton staff of four Hobson brought with him was not a functional administration, but the whole tenor of his instructions shows that a necessary expansion of his authority must follow as soon as practicable, once cession of sovereignty was achieved. That could not happen until New South Wales and the Crown had approved the new territorial acquisition and the new sovereign status.

34. In February 1840 all arrangements were interim, and finality was not achieved until early 1841, when the apron strings linking New Zealand to New South Wales were cut. Then we were on our own, as a separate Crown Colony, albeit still without an Attorney General or legal advisor. Busby's invitation to the chiefs had called Hobson a 'rangatira': "me tetahi Rangatira ano kei runga" (with a chief on board), "no te Kuini o Ingarani ia, hei Kawana hoki mo tatou." (from the Queen of England, to be a Governor for us [all]), emphasising 'tatou' an inclusive pronoun. Busby does NOT say 'to be a Governor for the Europeans' – they were not invited to the meeting except as onlookers. Busby meant that Hobson was to be a Governor for the Chiefs, as well as the settlers, for the settlers already owed sovereign allegiance to the Queen by reason of birth in Britain. And hence Hobson's words to the signing chiefs 'He iwi tahi tatou' ('We are one people now'), although well-intentioned, were legally and practicably a bit premature until sovereignty was proclaimed later.

The parchment sheet

35. Richard Taylor reports (on the night of 5 February 1840) "I sat up late copying the Treaty on parchment and kept the original draft for my pains."[12] The Maori language draft by Henry Williams taken by Taylor has been lost, but an authenticated copy of Henry's holograph text in Maori of 6 February 1840 is extant, as are extant copies in his hand of the English draft from which he prepared his translation, and authentic transcripts of the English language drafts, as described in my account 'Preserved in the Archives of the Colony'.[13] All of the other drafts are extant, although some related documents, chiefly letters about signing arrangement and getting copies of the various signed sheets back have been lost by the supposedly responsible archival authority. Even of those, however, copies survive. There are no 'missing' drafts of the Treaty of Waitangi in either English or Maori – they have all been accounted for. It is unfortunate, of course, that most of them are now damaged, after being lithographed for preservation in 1877 – a warning to all librarians and archivists not to assume that a mere facsimile can replace an original document.

The printing of the Treaty

36. The first sheet of the Treaty was then taken to further meetings at Te Waimate and Hokianga. By 17 February Hobson was able to report to Gipps:

> I considered that on the conclusion of the treaty of Waitangi, the sovereignty of Her Majesty over the northern districts was complete. I can now only add that the adherence of the Hokianga chiefs renders the question beyond dispute. I therefore propose to issue a proclamation announcing that Her Majesty's dominion in New Zealand extends from the North Cape to the 36th degree of latitude. As I proceed southward, and obtain the consent of the chiefs, I will extend these limits by proclamation; until I can include the whole of the islands.[14]

37. Hobson now arranged for Colenso to print two hundred copies of the Maori text (only) for the use of the potential signatory chiefs, so they could

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12 R. Taylor, journal entry for 5 February, in ATL-qMS-1985 p. 189.

13 P. Parkinson, 'Preserved in the archives of the Colony: the English drafts of the Treaty of Waitangi' New Zealand Association for Comparative Law. Yearbook 10 (2004). 110 pp.

14 GBPP 1841 (311) p. 12. The proclamation intended by Hobson, however, was not issued.

see what they were asked to sign, or have it explained to them and that was also done on 17 February.[15]

38. A despatch (40/8, dated 5 and 6 February 1840) was sent by the *Samuel Winter* on 8 February, enclosing a copy of the Treaty in English. It was authenticated by signatures of Hobson and Williams and is now in the Public Record Office in England, having been forwarded by Gipps on 19 February. However, the Maori text which presumably accompanied it has not survived. Both texts were printed in the Parliamentary papers (GPPP 1840 (560)) the remaining original being at PRO CO 209/7, 13-15. On 17 February, the day when the Maori text was printed by Colenso, printed copies were included in the duplicate despatch which was sent in the *Martha*. Gipps received these on 14 March. Another set of duplicates was sent in another vessel *Achilles* on 16 February, *before* the printing of the Treaty in Maori. The contents of the despatches are therefore different. The sets, all passing through Sydney, seem to have become a bit muddled later.[16] As I pointed out:

> Most alarmingly the English 'official text' of the Treaty of Waitangi as given in the printed *Samuel Winter* despatch (GBPP 1840 (560) p. 10) and the extant manuscript written by Freeman (PRO 209/7, 7-12, 13-14) are very different from that in the 'duplicate' in the *Achilles* despatch to Normanby. The scribe has, in fact copied the wrong document, using a draft of the Treaty of Waitangi [i.e. 'Her Most Gracious Majesty' text of the 5th] rather than the 'official' text, as was intended (see Appendix document 4). Freeman, who was responsible for the documents, and may personally have prepared all of them, appears not to have noticed the error.[17]

39. The English text authenticated by Hobson and Williams with "I certify that the above is as literal a translation of the Treaty of Waitangi as the idiom of the language will allow."[18] is the 'official' text of the Treaty in English and corresponds to the Manukau Heads text, including the reference to 'estates, forest, fisheries'. But it is not a translation of the Maori text. It is in fact a variant of the penultimate English draft, with the date changed from the 5th

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15 One of these copies was subsequently used for signature gathering but almost all signatures later added were on either the original sheet or one of a number of copies in Maori which were produced by Hobson's officials.

16 As explained in 'Preserved in the archives' pages 9-10 and footnote 3.

17 Parkinson, 'Preserved in the archives' p. 10.

18 CO 209/7, 14 (verso).

to the 6th and the original 'Royal style' formula (correctly "Her Most Gracious Majesty, Victoria, Queen of the United Kingdom of Great Britain and Ireland") changed to "Her Majesty Victoria" (etc), i.e. leaving out 'most gracious' probably by accident, and not affecting the sense. These accidents and errors have confused us ever since.

Official copies of the Treaty / Tiriti

40. Subsequently other manuscript copies of the Maori text were prepared, mostly by Freeman. One sheet (that signed at Manukau) of the treaty which was used for signature gathering is in English and was doubtless used in conjunction with the printed copies.[19] One sheet was uniquely set out as a text with two panels with Maori and English facing.[20] This sheet was, however, not used for signature gathering; it was sent to England as the official record for the Crown and is still in England in the Public Records Office. It also has a slight and inconsequential variation in the wording.[21]

The more haste less speed

41. It is sometimes said that the Treaty was drawn up hastily and by amateurs. One or two writers have even suggested recently that the text was deliberately mistranslated. But Gipps and Hobson were well aware of the earlier treaties made between British authorities in various parts of Africa and Asia. Normanby's instructions, which had been prepared with great care, were an important guide for Hobson, especially on the land question. Hobson's care is evident in his preamble and in the records of what he said, guided by Henry Williams. The part of the Treaty which has continued to be problematic, in fact, is Busby's second article with its attempt to explain the nature of what constituted 'property' – not just forests and fisheries, and certainly not "treasures" but rather ALL property, which was secured in Maori possession until they wished to sell. In fact the infant government did not wish to acquire property other than land for future sale. Several chiefs were very willing to sell land and to acquire settlers and that was part of the problem.

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19 CO 209/7, 13-15.

20 CO 209/7, 178.

21 One (CO 209/7, 13-15) containing the words "Her Majesty, Victoria Queen of the United Kingdom ..."; the other (CO 209/7, 178) containing the words "Her Majesty Queen Victoria of the United Kingdom ...".

42. It is true, however, that the text of the Treaty was drawn up hastily to meet a deadline and that, in Hobson's own words he was "unaided by any legal advice", for no legal advisor was in his official party. Whether the availability of more time would have made any difference can only be a subject of speculation. But it is important to bear in mind that the Treaty was never intended to be a blueprint for the future colonisation of New Zealand. On the contrary it was one of a series of preliminary steps to transfer sovereignty from a large number of sovereign individual chiefs to a centralised authority, which could then begin to exercise that authority in the interest of both the chiefs and their people and the settlers. In that respect I feel entirely in accord with Professor Ward in his synopsis paragraph 5 on page 3 of his brief of evidence. A step in that direction is Hobson's proclamation of 2 May which reprints part of a law relating to illegal possession of army stores, and is unique among his proclamations in being issued both in English and (in a translation by Colenso) also in Maori[22], and another step was the printing of a notice in Maori to establish a pound for stray animals, issued on 31 March 1840. I will expand on this neglected area of the introduction of civil government in Appendix B.

Catastrophe

43. After the printing of the Maori text of the Treaty, on 17 February, Hobson and some of his officials started a progress down the Eastern coast to Waitemata, but there, on 1 March Hobson suffered a paralytic stroke which left him unable to write. He was returned to the Bay of Islands into the care of the missionaries and ordered to take complete rest. These events were reported to Gipps who sent Major Thomas Bunbury with a detachment of troops to take over; they arrived on 16 April. At this point, of course, all plans came unstuck and expedients had to be devised to proceed as best as was practicable.

44. I set out in Appendix B to my evidence some background information on the operation of Kawanatanga in the period between 6 February 1840 until the proclamation of sovereignty on 21 May 1840.

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22 See BiM 82.

The proclamations of British sovereignty, 21 May 1840

45. An incident at Wellington, which led an aggrieved captain to complain to Hobson of assault, precipitated the declaration of British sovereignty on 21 May 1840. Proclamations of sovereignty over the North Island (by cession), and over "all the islands of New Zealand" (by a combination of cession and discovery) were printed by Colenso, the mission printer. There was a sense of panic about this. In the former proclamation "Whereas, by a Treaty bearing date the Fifth day of February ..." the date is incorrect (it was actually the 6th). And when the second of these documents was prepared, the Lieutenant-Governor could not remember the Maori names of the islands ('Te Ika a Maui' and 'Te Wahi Pounamu' was what he intended) and so the proclamations were printed with the names given in English instead. To make matters worse Willoughby Shortland, who prepared the document, made a mistake in the latitude (this placed the islands in the Northern Hemisphere), necessitating the subsequent printing of a corrected publication, when Colenso pointed it out.

46. Well, mistakes happen. In the North Island proclamation Hobson "vested for this purpose with full powers by Her Britannic Majesty, of the one part" and "the Chiefs of the Confederation of the United Tribes of New-Zealand, and the separate and independent chiefs of New-Zealand, not members of the Confederation, of the other" agreed by treaty to cede to the Queen "absolutely and without reservation" all "Rights and Powers of Sovereignty over the said Northern Island" noting that this was "further ratified and confirmed by the Principal chiefs of this Island of New Zealand". On this basis "in the name and on the behalf of Her Majesty" and "from and after the date of the above mentioned treaty" the "full sovereignty of the Northern Island of New Zealand" vests in the Queen and her successors forever. Nobody printed this in Maori.

47. The other proclamation reads:

> WHEREAS I have it in Command from Her Majesty Queen VICTORIA through Her principal Secretary of State for the Colonies, to assert on the grounds of Discovery, the Sovereign Rights of Her Majesty over the Southern Islands of NEW-ZEALAND, commonly called, "The Middle Island", and "Stewart's Island"; and, the Island, commonly called, "The Northern Island", having been ceded in Sovereignty to Her

> Majesty. Now, therefore, I, WILLIAM HOBSON, Lieutenant-Governor of New-Zealand, do hereby Proclaim and Declare to all men, that from and after the Date of these Presents, the full Sovereignty of the Islands of NEW-ZEALAND, extending from Thirty-four Degrees Thirty Minutes to Forty- seven Degrees Ten Minutes South Latitude, and between One Hundred and Sixty-six Degrees Five Minutes to One Hundred and Seventy-nine Degrees of East Longitude, vests in Her Majesty Queen VICTORIA, Her Heirs and Successors for ever.

48. That was not printed in Maori either. Maori still had their property, but their individual acts of cession, ceding 'sovereignty' to the Queen (in practice to the government acting on Her behalf), put the effective management of sovereignty in political matters into Hobson's hands, then delegated to the Protectorship of the former missionary George Clarke. Practically it did not change anything overnight, and it was a long time before a semblance of functioning economic state would appear and Maori political involvement in that future state would be a long way off indeed, ensuring a history of grievance. This concludes what I consider to be a brief but necessary preliminary discourse.

EVIDENCE CONCERNING A FIRST DRAFT OF THE TREATY IN MAORI

49. This section of my evidence addresses the questions that were put to me about the possibility of there being a first draft of the Treaty being put to Maori in which they were asked to cede their 'mana'.

50. I understand that the suggestion has been made that a first draft of the treaty had been translated into Maori was presented by Henry Williams and James Busby to Maori prior to 6 February 1840, containing the statement in Maori "ka tuku kia riro wakangaro rawa atu kia te Kuino o Ingarani ake tonu atu te mana katoa a o ratou wenua" (absolutely give to be lost to the Queen of England forever the Sovereignty of all their lands).[23] It is not stated where precisely this expression was to have been inserted, but it could only have been in Article 1, rendered by Henry Williams as "ka tuku rawa atu ki te Kuino o Ingarani ake tonu atu – te Kawanatanga katoa o o ratou wenua". The dispute over the phrases essentially rests on interpretation of the meaning of 'tuku' on the one hand, and 'mana' on the

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23 See the affidavit of Mr Rime Edwards, #A25, paragraphs 6.1-6.14.

other. Henry Williams does use 'tuku' in the sense of 'ceding', or 'giving up' to the Queen, entirely ('ake tonu atu'), but he does not use the word 'mana', preferring instead the expression 'te Kawanatanga katoa' or 'the governorship' of all their lands. The word 'tuku / tukua' is not difficult, as it generally means to 'let go, give up' and the definitive 7th edition of the Williams *Dictionary of the Maori Language* (1971) p. 451 uses it in that sense, with no less than 14 alternative uses as both a transitive and intransitive verb. One interesting alternative meaning is "6. Present, offer".

51. I have traced in detail the history of the composition of the English text of the Treaty through its various drafts, and also the history of the translation from the draft in English provided to Henry Williams on 4 February into Maori by Henry and his son in my article 'Preserved in the Archives of the Colony'. It must be clearly stated at the outset that a draft text of the Treaty in which the chiefs were asked to cede their mana is unknown to any historian who has examined the documents extant in what Hobson called 'the archives of the Colony'. Ruth Ross in her influential article ('Te Tiriti o Waitangi, texts and translations') makes no mention of any such documents either.

52. I understand that it has been suggested that 'Heke Pokai' (i.e. Hone Heke), Ngamanu and Te Hinaki, three rangatira of Ngapuhi, met with James Busby and Henry Williams before the 6th of February 1840 and rejected a text of the document presented to them "at Te Tou Rangatira". Is this likely, unlikely or even possible?

Who was where and when?

53. The schedule of events is clear however. Busby was at his house when Hobson arrived on the *Herald* (28 January 1840) but Henry Williams was away from home. Williams had recently been away from the Bay of Islands, but had returned to Paihia on 18 January. According to Felton Mathew, one of Hobson's officials, shortly after they had anchored three (unnamed but unprepossessing) missionaries and Busby appeared. These were the layman Charles Baker, the layman John Wilson and a junior deacon, John Mason.[24]

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24 Felton Mathew to Sarah Mathew, 29 January 1840, in ATL-MS-1620 p. 18. Two of the missionaries were "little unfortunate-looking specimens of humanity" but the third, Charles Baker, was "a fat vulgar sort of tallow-chandler looking fellow [...] I never saw a more sleek, oily fellow than this, or one whose expression of countenance was more thoroughly vulgar and commonplace." Mason had only recently

Henry Williams was not present and neither was William Colenso the mission printer, although it is sometimes said he was. As for Busby, Hobson, in his letter to Gipps on 29 January wrote: "I have the honour to report my arrival this morning in the Bay of Islands, and to acquaint you that in compliance with your directions dated the 13 January instant I this day relieved James Busby Esq. from the duty of Resident. All public documents and stores will be delivered to me within the course of a few days."[25] After his meeting with Hobson, Busby wrote to Colenso from his home at Waitangi:[26]

> I have undertaken as a private individual to render all the assistance in my power to the promotion of the Queen's service, and have therefore enclosed a circular to assemble the Chiefs on Wednesday – this day week – will you be kind enough as soon as possible to send me 100 circulars Capt. Hobson himself will apply officially for leave to print which I would not do – this therefore is strictly private – pray make the circular what it be – and alter about twenty to address to the representatives of the dead Chiefs.

54. As Buick points out, the printed letter limits the invitation to those of the chiefs who had signed the Declaration of Independence i.e. the 'tino rangatira' or 'high chiefs' (as opposed to local petty chiefs) who Busby approved of. 'Tino' in this context is clear, meaning 'high' or 'eminent'. As a substantive 'tino' means essence, self, and reality, according to the Williams *Dictionary* 7th ed., (1971 p. 420) and

> used with a qualifying noun or adjective following it must be translated by an adjective or adverb: Exact, veritable, quite, very. (Ka tae ki te tino wahapu o Manuka) In some cases it is transferred from a noun to a governing verb, and, being translated by an adverb, gives the appearance of an adverb preceding the verb which qualifies it (Ka tino tae atu a Hakawau ki te kainga o Kaiwhare). Sometimes it is used to give vividness and force to the narrative (Te tino rarahutanga ki te hoe, ka rite noa ano; tino pounga ki te wai i poua ai; anana! Me te pere!).

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been ordained as a deacon, at Sydney (Wilson was ordained a deacon in 1852). Sarah Mathew was not impressed with one of the poor specimens either, describing John Wilson when she met him, as "the most doleful-looking, whining, miserable creature imaginable." (Sarah Mathew, 5 April 1840, ibidem p. 126.)

25 Hobson to Gipps, 29 January 1840, letter no. 5 (sent per *Samuel Winter*, 8 February), in J. S. Freeman's hand in the Private Secretary's letterbook at Archives New Zealand, G 36/1.

26 J. Busby, [Letter with enclosure to W. Colenso, January 1840] in Colenso, W. 'Letters from James Busby and other papers' 1835-1840. ATL f-76-048; and 'Letter to W. Colenso, "Friday Mng" [29 January 1840]' in Colenso, W. 'Inward correspondence' [31 Jan 1840, 11 Feb – 30 Nov 1841] ATL MS-Papers-4622.

55. Grey called himself 'te tino rangatira, Kawana Kerei' or 'Governor-in-chief of the New Zealand islands' in proclamations and in the prefaces and dedications of such works as *Robinson Crusoe* (1852), *Pilgrim's Progress* (1854) and *Nga Moteatea* (1853), when he had a lieutenant-governor as subordinate. Apart from its use in a secular and political context 'tino rangatira' (high chief, highness) it occurs in the biblical expression 'tino tohunga karakia' (in reference to Kaiapa = Caiaphas, high priest, in Matthew 26: 57-65). It was those 'tino rangatira' chiefs, specifically, who were to be called upon to repudiate their 'independence' by signing their 'sovereignty' away, although they are not called 'tino rangatira' in Busby's letter, but simply 'rangatira', according them the same rank as Hobson himself. All the drafts of the form letter cum invitation to the chiefs have survived and Colenso printed only one kind of form letter, not several. One such letter survives (that for Tamati Waka Nene, at Auckland) and Busby kept one for his file.[27]

56. Hobson would not leave the *Herald* until he could land formally 'in his proper character' to read his proclamations, which had been ordered via Busby from Colenso at the same time as the invitation, and that did not take place until 30 January. Henry Williams was at Te Waimate at this time, returning from the catechising and baptisms of Patuone which had taken place on 23 January.[28] On 29 January Henry Williams "Rode into the Waimate to see my friends there after my return from my journey. At 11pm after we had all retired to rest an express arrived from Paihia announcing the arrival of the Lieutenant Governor Capt Hobson RN with a summons for me to return without loss of time." He was detained till noon by rain at Te Waimate on the following day, and so missed Hobson's proclamation.

Hobson and Williams finally meet, 31 January 1840

57. Then, on the evening of 31 January Henry Williams wrote to Alfred Brown at Tauranga, to acquaint him with the latest developments:

> Thus most unexpectedly curtailing the visit and hurrying home I went on board HMS *Herald* to see Capt. Hobson who had many inquiries to make and much news to communicate but was disappointed at receiving no communications from the

27 At Alexander Turnbull Library, BiM 69, in Parkinson & Griffith, *Books in Maori* (2004).

28 Tamati Waka Nene had been baptised by the Wesleyans, the two brothers deciding to bet on both horses. H. Williams, diary extract, 29-30 January 1840, in ATL-Micro-MS-Coll-04-33 (CMS Archives CN/M v. 12 p. 388).

> Society at this important crisis. From the Bishop of Australia had a long, kind and judicious letter. Heard the Queen and the Lieut. Governor had been proclaimed this day at Kororareka. In the evening I prepared to accompany Cap. Hobson and suite to Waimate and Hokianga on the morrow.[29]

58. The journey to Waimate did not take place, as on the next day Hobson was ill, and had to send his officials to Busby to start the preparation of the text of a treaty to cede sovereignty. The illness may have been stress-related but there is no evidence of its nature. The only members of the mission to have witnessed the reading of the proclamations were the layman Charles Baker and the deacon John Mason. Henry Williams informs Alfred N. Brown:

> I was on board to see Cap. Hobson last eveng – we have had no communication from the Society tho Cap H saw much of them. I have a long letter from the Bishop, whose diocese now extends to this country. [...] Bro [Richard] Taylor has purchased from the North of Kaitaia to the North Cape, so he has soon got his hand in. Bro [James] Busby carried on to the last hour, disregarding tapus or anything else. Also Mr Mair, but by the proclamation you will see that now this matter is brought to a stand.[30]

59. Richard Taylor, the other clergyman remaining at Te Waimate, writes in some disappointment that Hobson had already been proclaimed: "we made every preparation to receive him but he disappointed us. [...] All the land owners are in a great stew about their land, not knowing the intentions of the Govt. about them." Taylor and George Clarke called on Hobson to pay their respects on 3 February and stayed to tea on board the *Herald* with Henry Williams.[31] Busby was not present, and did not need to be, as his office had ended, but he was still writing his draft of the Treaty articles that day, in English. Doubtless the officials were mulling them over before sending their advice to Williams the next day. On 4 February, the day before the meeting with the chiefs, a draft of the Treaty was given to Henry Williams, with the request that he have it translated. The suggestion may have come from Busby as, although Busby could have drafted a text in Maori (and as he had done in the case of the invitation to the chiefs), the

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29 H. Williams, diary extract, ibidem p. 388.

30 This refers to the second proclamation of 30 January by which further sales were effectively prohibited. Letter, Henry Williams to A. N. Brown, 31 January 1840, in A. N. Brown Inward correspondence, ATL MS-Papers-7510.

31 Richard Taylor, journal entries for 30 January and 3 February 1840, in R. Taylor, Journal v. 2 1833-1840 ATL-qMS-1985 p. 187.

fact that the Consul was expected to work in cooperation with the missionaries may have suggested that Busby not put himself forward. A further consideration may have been the impropriety of Hobson's seeming to be taking direction from the man he had just replaced. In any event Hobson relied on Williams, not Busby, to translate the document into Maori. The complicated matter of the drafting of the treaty, however, has been already described in *Preserved in the Archives of the Colony*, and so is not dealt with in detail here.

The alleged 'draft in Maori'

60. I return now to the alleged draft in Maori in which chiefs were asked to cede their mana. Henry Williams well understood the various connotations of 'mana' after many years of managing relationships with the chiefs. Busby must also have been aware of the sensitivity of any use of that term. It is one term which they would NOT use. It is not used in Henry's English draft dated 5 February, in his own hand. It is not used in the surviving fair copy of the 6 February either. The only indication of a change in wording in the Maori text is that which had necessitated the recopying by Taylor, the substitution of 'wakaminenga' (Busby's term for the confederation) for 'huihuinga' (Henry Williams' term, meaning 'gathering'). Busby seems to have won on that point, reasonably, as if the 'whakaminenga' was to cede any sovereign power it had to be explicitly cited. In issuing his invitation to selected chiefs he had expressly written: "He Rangatira hoki koe no taua Wakaminenga tahi" and there was a further reference to it four lines earlier in the invitation. But this change occurred on the 5th, not on the 4th.

61. I do not think it at all likely that Busby and Williams met on the night of the 4th to discuss Williams's translation of the Treaty into Maori. I say this for three reasons. First, there is no evidence (historical or otherwise) of which I am aware of any such meeting. Secondly, we know that on the morning of the 5th Busby asked that the word "huihuinga" in the Maori draft be altered to "wakaminenga". Had Busby met the prior evening, that issue would have been resolved, or we would expect there to have been some record of it not being resolved. Thirdly, Williams and Busby had an acrimonious relationship. One would not have expected Busby to have offered assistance to Williams.

62. It is, I believe, even less likely that Williams, together with Busby, met a delegation of chiefs to discuss a draft Maori text of the Treaty on the 4th. That would have been most improper. Hobson certainly did not ask for any such discussion with chiefs to take place. One would have expected a record of it having taken place. It is inconceivable that any such meeting took place on the night of the 4th.

63. Henry Williams did discuss matters with chiefs on the night of the 5th, and Busby may possibly have contributed to that discussion, but that was AFTER the English and Maori texts had been finalised and there was no opportunity whatsoever to vary the wording on either the 5th or 6th at the meetings. As Busby was up to his neck in trouble over his recent land purchases for the projected township of 'Victoria, at Waitangi' a matter of which Williams disapproved, and which he refers to in his letter to Alfred Brown, quoted above, it is most probable that he stayed away. Apart from that, the two men were on quite bad terms and had been for a long time. Busby had complained to his brother on 24 August 1839 that Williams's opposition to Busby's plans for his speculation at the town of Victoria showed "this is merely an illustration of what Williams' conduct has been to me throughout [. . .] he is now insinuating away my character as an efficient functionary. [. . .] they [the missionaries] were made use of in Sydney to remove me and get Hobson in my place."[32] There is simply no evidence that a private meeting with chiefs took place or that anybody thought that the word 'mana' could express 'sovereignty' in a sense that Maori would understand and agree to. Neither Busby nor Williams would have suggested such a wording, and clearly Mr Edwards does not think 'mana' would have been appropriate either.

64. Accordingly I do not think the alleged 'first treaty' existed, notwithstanding the evident local tradition. Similarly, I do not think the events described by Mr Edwards in paragraphs 6.5 to 6.10 actually occured. There is no evidence to support the beliefs expressed in paragraphs 6.11 ("It seems logical that Henry Williams and Busby ...") and 6.12 ("I believe that Henry Williams would have consulted with Captain Hobson ...").

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32 James Busby to Alexander Busby, 24 August 1839, cited in E Ramsden, p. 227.

Observations on the reliability of Frederick Maning

65. David Colquhoun points out in his essay on Frederick Maning that the writings of Maning are coloured for effect, and he is not regarded as much of an historian, his few books being a mixture of factual material, anecdote and literary invention.[33] Because of the mixture of literary forms in Maning's writings, people are easily deceived into believing that what is literary invention is historical fact. It is, of course, not. The first of these works was: *History of the war in the North of New Zealand against the chief Heke in the year 1845 / told by an old chief of the Ngapuhi tribe ; faithfully translated by a "Pakeha Maori"* (1862).[34] The second was *Old New Zealand : a tale of the good old times / by a Pākehā Māori.* (1863) and a later (1876) edition included as an appendix the earlier work.[35] There were frequent editions of the latter with various editorial introductions in 1876, 1884, 1887, 1893 and a dozen or more in the 20th century, some of which have biographical introductions.

66. The combined work is almost always referred to as *Old New Zealand* (1863) but the character to the two works is different and it is with the character of the first of them, the *History of the war in the North of New Zealand against the chief Heke in the year 1845* with which I am concerned. The 'history' purports to be '*told by an old chief of the Ngapuhi tribe ; faithfully translated by a "Pakeha Maori"* but is plainly a fabrication by Maning himself with some amusing literary touches. It is NOT a reliable historical work. It contains several passages which are mentioned by Mr Edwards and Professor Salmond and which are referred to in their evidence, which is why I have mentioned them here. Mr Edwards refers to the 'Ngakahi' tradition in conjunction with Maning and he refers at page 61 of his evidence to a 'fourth article regarding the religions' supposed to be in the 'first Maori text' along with the reference to 'mana'. Also on page 63 of his evidence he says (at paragraph 6.13) "Te Wananga o te Ngakahi refer to this document as 'The first Tiriti' which they asked be buried with Governor Hobson when he died because they stated that his treaties were a curse on him." Professor Salmond also refers to the burying of something with Hobson at page 69 of her evidence, citing Maning at considerable length, although she does

33 *Dictionary of New Zealand Biography* v. 1 (1999) p. 265.

34 (Bagnall 3339, Auckland; Geo. Chapman, (undated but 1862, 52 pages, with second edition (Bagnall 3340) by R.J. Creighton and A. Scales, 1864, essentially a reprint.

35 Auckland [N.Z.] : Robert J. Creighton & Alfred Scales, 1863. Xiv, 239 p.

recognise that Maning's is a "satirical account (purporting to come from Kaitoke)". How reliable is such Maning evidence?

67. In his 'The war in the North' text latterly appended to his work *Old New Zealand*, (1876), Maning gives a well-known account of a famous incident:

> Now when this new fort of Heke's was finished the spirit of the Ngakahi entered into the Atua Wera, who is the greatest tohunga in all the country of the Ngapuhi. So the Ngakahi spoke in the night to Heke and his people by the mouth of the Atua Wera: "be brave, and strong and patient. Fear not the soldiers, they will not be able to take the fort – neither be you afraid of all these different kinds of big guns you have heard so much talk of. I will turn aside the shot and they shall do you no harm ...

68. But Heke was shot anyway. The Ngakahi is the one Mr Edwards refers to, but Maning is clearly using a parody of the Garden story of Genesis 3: 1-5 to ridicule the belief, and to disparage the deceiver Papahurihia, who takes the role of the serpent, while Heke takes the role of the deceived Eve.[36] Clearly Maning is telling another of his funny old stories and Heke cannot object because Heke had died in 1850.

69. The other funny story, that of the 'bad treaty' being buried with Hobson because he was cursed by it, referred to by both Mr Edwards and Professor Salmond comes from exactly the same source – Maning pretending to be 'Kaitoke'. Here we have a whole string of literary jokes, – where the events at Mangungu are thoroughly a parody of events at Waitangi - Te Taonui kissing the Governor's hand – another chief saying "Put money in my left hand and I will write my name with my right" – the governor shaking his head and looking displeased "and saying he would not pay them for writing on the paper" – clearly a reference to Hobson's altercation with Maning mentioned in his despatches – Papahurihia saying " 'Remain here and be governor of this island, and I will go to England, and be King of England, and if the people of England accept me as their King, it will be quite just;

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36 'Ngakahi' was not, originally, a Maori word. It is usually spelled 'Nakahi' and, according to the authoritative Williams dictionary, was coined from the Hebrew *nagash* by Robert Maunsell, the principal translator of the Old Testament to represent 'serpent' as in the story of the Garden of Eden, there being no Maori word for snake or serpent, and snakes not being present in New Zealand *A Dictionary of the Maori Language* 7th ed (1971) page [503, Appendix]). The Dictionary is not quite correct, as Maunsell did not arrive in New Zealand until 26 November 1835, and as early as 1827 the word had been used in the translation of Genesis 3, where the story of the Garden of Eden and the temptation by the serpent is told. 'Nakahi' also holds a pun as 'nakahi' is a transliteration of the English word 'snake'.

otherwise you do not remain here', then many other chiefs began to speak and there was a great noise and confusion, and thy people began to go away and the paper was still lying there, but there was no one to write on it. The Governor looked vexed and his face was very red."[37] And so on, with a parody of the events on the second day of signings and the food and gifts running out and the idea of cutting up blankets:

> So we went ashore at the house of a pakeha and got a pen and some paper, and my son who could write, wrote a letter for us all to the governor, telling him to take back all the blankets and to cut our names out of the paper, and them my two brothers and my sons went back and found the Governor in a boat about to go away. He would not take back the blankets, but he took the letter. I do not know to this day whether he took our names out of the paper. It is however, no matter; what is there in a few black marks? Who cares anything about them? Well, after this the Governor died; he was bewitched, as I have heard, by a tohunga at the south, where he had gone to get names for his paper; for this was his chief delight, to get plenty of names and marks on his paper. He may not have been bewitched, as I have heard, but he certainly died, and the paper with all the names was either buried with him, or else his relatives may have kept it to lament over and as a remembrance of him. I don't know. You who are a pakeha, know best what became of it, but if it is gone to England, it will not be right to let it be kept in any place where food is cooked, or where there are pots or kettles, because there are so many chiefs names on it; it is a very sacred piece of paper; it is very good if it has been buried with the Governor.[38]

70. It is plain to me that Maning has compiled this pastiche from various sources, including the account in Taylor's journal and Hobson's published despatches, which Professor Salmond also cites. However, she does not seem to have realised that the pseudo-historical pamphlet on the 'war in the north' and *Old New Zealand* is of a late date[39], poking fun at Maori, and thus suitable for the popular reading public, then quite anti-Maori, during the time of the 'war in the south' to support 'good' Governor Grey's military

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37 "[I] told the chiefs that Mr Maning had given them advice in utter ignorance of this most important fact, adding 'If you listen to such counsel you will be stripped of all your land by a worthless class of British subjects who consult no interest but their own and who care not how much they trample on your rights. I am sent here to control such people and I ask you for the authority to do so'." (Cited by Hocken in his own edition of Maning's *Old New Zealand* (1906) p. x).

38 Quoted from Professor Salmond, brief of evidence page 71, with the citation as 'Maning 2001 [i,e, a 2001 reprint of the collected works of Maning] '22-23' erroneously these are actually 230-231 [Check again!!]

39 The events occurred in 1845-46 but 'The war in the North' was first published in 1862 and *Old New Zeland* in 1863.

adventures in the Waikato. It should not be accepted as good historical evidence.

71. Consequently Mr Edwards's belief that a 'first tiriti' was supposed to have been buried with Hobson, according to the desire of 'Te Wananga o te Ngakahi', lacks evidential support. Furthermore, it is directly contrary to the statements and orders made by Hobson that the documents about the framing of the Treaty be 'preserved in the archives of the Colony', which, in fact they were, and still are. The currency of this idea of a 'first treaty' goes back no further than the mischievous pastiche by Maning in 1862, and that is where the tradition comes from. There is no explicit reference to a first treaty draft in Maori anywhere in Maning's writings, and no quotation of the Maori words used by Mr Edwards in Maning either.

72. This concludes my evidence concerning to alleged 'first draft' of a Maori text of the Treaty. I was offered the opportunity to make any other comment on the evidence of Mr Edwards, and there is a further related element coming under a question concerning the parts of the Bible translated and distributed to 5 February 1840. I will deal with that here, as it also related to the evidence of Mr Edwards.

The matter of Leviticus 25

73. At paragraph 9.1 of his deposition (pages 69 and 70) Mr Edwards states that "The night before the signing [at Kaitaia] Nopera Panakareao asked for a explanation of the scriptures in the Book of Leviticus Chapter 25 verses 23 to 28" and that because of the explanations he was given "Nopera warmed to Te Tiriti". In this section of his affidavit, Mr Edwards sets out a Maori language version of the extracts from Leviticus. Had this been translated into Maori by this time?

74. Translation of the Old Testament was piecemeal, principally because the Anglican missionaries as well as the Methodists wished to work from the texts in the original languages, Hebrew and Greek rather than from either the Authorised version (King James Bible, the standard text in the Church of England) or from a text corrupted by another church. Henry Williams was not used as a translator of scripture because he did not know Greek or Hebrew. William Williams, his brother, was fluent in koine (New

Testament) Greek, but did not know Hebrew. Robert Maunsell was the first of the CMS missionaries who could work in Hebrew. Maunsell began work in 1836 but lost all his books and papers in two house fires in the mid 1840s.

75. Meanwhile William Williams completed a translation of the entire New Testament in 1836-1837 and it was revised and printed in sheets by William Colenso by 30 December 1837. The press proof sheets are in the Alexander Turnbull Library MSX-5178. Bound copies were first issued in 1838 but, as they had to be paid for, most remained in sheets for some years and of the 5000 printed, some copies were issued in parts as assorted extracts in paper covers. A similar arrangement occurred with the issuing of probationary texts among selected missionaries so they could comment on drafts of the Old Testament. These were circulated from the Church Mission and later from St John's College, Auckland after Bishop Selwyn arrived and took control of the printing. Once the probationary texts were approved they were sent to England for commercial printing there, and the mission presses became redundant after 1845, when the presses were evacuated, although probationary printing continued until 1855. The printing history in the period is covered in detail in *Books in Maori.*

The printing of the Book of Leviticus

76. Leviticus was printed with part of the Book of Exodus (from Exodus 21 to 40) and the Book of Numbers in 1846 at Purewa, as is confirmed by a letter from the printer John Telford to the CMS secretaries in September 1846: "I am now engaged with the printing of the Bk of Leviticus. ..." (See *Books in Maori* BiM 260, p. 157). There was no other printing of this work previously. It is possible, however, that Joseph Mathews or William Puckey had expounded the matter to Panakareao in 1840, orally translating as they went from the English text, with which they would have been familiar. Certainly, however, Leviticus in print in Maori was not available in 1840, or even, outside missionary circles, until 1847 when the probationary copy of the Hexateuch (Genesis to Joshua) was issued in September, before being

sent to London for commercial printing in 1848.[40] (Of the latter, 10,000 copies were issued).

77. The Book of Leviticus is also referred to by Mr Edwards under the heading 'The first agenda' (section 11, page 76-77 paragraphs 11.9 and 11.10). I do not think there is an historical basis to these assertions. Panakareao was unable to present a Maori version of Leviticus to the hui mentioned because that version of Leviticus did not exist at that time.

EVIDENCE RELATING TO TEXTS OF THE BIBLE AT 1840

78. This section of my evidence addresses the following questions:

78.1 I was asked firstly: "Which books of the Bible had been translated into Maori and distributed by February 1840?"

78.2 Secondly I was asked about the meaning of the words "kawanatanga" and "rangatiratanga" specifically.

78.3 Thirdly I was asked about how these words, used in a biblical context, would likely have influenced Maori understanding of those words in the treaty context.

79. In this section I also make reference to various non-scriptual texts that were available by 1840 and which would have been relevant to Maori understandings of terms such as "kawanatanga" and "rangatiratanga".

Introduction

80. The history of the translation of the Biblical texts and of their subsequent printing was thoroughly investigated in *Books in Maori* (2004), already referred to (hereinafter referred to as **BiM**). It makes sense to cover the availability of the texts in chronological order rather than in canonical order. Certain very small early texts, used as teaching material, are discussed as a group after the main sequence but **BiM 2**, Kendall's *Grammar and vocabulary of the New Zealand language* (1820) contains an early version of the Lord's Prayer (Luke 11: 2-4) illustrated on page 29 of BiM and this provides the first example of a scriptural text, although in a secular and intentionally educational work, intended to facilitate reading. It is mentioned here to

40 See *BiM* items 319 and 352.

draw attention to the absence of any comprehensible expression for 'thy kingdom come' (which is rendered as 'Tou anga e ki wakau katoa mai') and avoided in the doxology 'for thine is the Kingdom', rendered as "Na! Na'u ra oki te anga ka nui; ne te kaha ra oki me te hana hana ra oki ahinei a --- po noa ka ore e rawa atu.". "Thy kingdom come" was evidently problematic, for the second printed attempt at the prayer also 'The Lord's prayer in the New Zealand tongue' **BiM 7** a single sheet printed in England in 1826, although this does attempt the doxology with "E rangatira tanga nui tou e haha e pai" and so uses the term 'rangatiratanga'. A document by James Stack contains three references to the translation of the Pater Noster from 24 April to 28 April 1825: "We are of opinion notwithstanding our very scanty knowledge of the native language that if we attempt to translate certain portions of the Holy Scriptures as the Lord's Prayer etc., that we shall be enabled by the assistance of our boys if not to do it so correct as we should wish still so as greatly to improve ourselves in the language as well as add new light to the native mind." These early efforts, before the alphabet was established, are ignored.

BiM 9 (1827)

Kenehihi. | Ko te tahi o nga upoko. | [Text begins:] 1 I te orokomeatanga i hanga e te Atua te | rangi me te 'wenua. | 2. A ki'hai i 'wai ahua te 'wenua, i takoto | kau, a ngaro ana [. . .] | [. . .] | [Sydney:] G. Eagar, Printer, King-st., Sydney. [1827]

81. This is a selection of texts from the Old Testament and the New Testament, with the Lord's Prayer and hymns. These were translated mostly by James Sheppard, from English. The work was printed at Sydney in August 1827, with 400 copies issued. It has short extracts of Genesis, the Gospel of John, Exodus, the Gospel of Matthew and the Lord's Prayer, all edited by the CMS (Church Missionary Society) mission. Marsden, writing to James Kemp and George Clarke from Parramatta on 4 September 1827 remarked:

> I am satisfied God will incline the hearts of the New Zealanders to read and study the Scriptures as soon as they are translated unto their own tongue. When the Gospel was first preached to the Gentiles, the Apostles had not time to learn the languages of those they were commanded to preach to; therefore God gave them the Gift of Tongues that everyman might hear the Glad Tidings in his own tongue. When you can preach to the New Zealanders in their own tongue, you may then expect to

> see the fruit of your labours. The portion of Scriptures which are now printed I hope will be of great benefit.[41]

82. As the orthography was still not settled all divine help was needed and the work is experimental. The process is explained in his journal by William Williams (entry for 30 July 1826):

> Began the translation of Genesis III with the rest of the brethren at Paihia. We now have made a new division of our time which I trust will be of great advantage to us. At half past five in the mornings our large bell is rung to arouse the whole settlement. At half past seven we meet in the native school, and at half past eight, we begin to study the native language which we continue till eleven; and this time will now be appropriated to the translation of the scriptures. We find much benefit in carrying out this work in a body. William Puckey, a young carpenter who has been brought up in this island, has a very extensive knowledge of the language: he therefore first translates the passage and the rest examine his production by the original and by other translations. We feel very much the want of a printing press to work off some copies of portions of scripture which could be read by several natives now with us. If the Society was to send a missionary instructed in the art of printing together with a printing press, we should be able to keep him well employed, but without this help we shall be much crippled as the schools are now kept very backward for want of printed lessons.[42]

83. As an example, I transcribe here the first five verses of Genesis III in this work (Ko te toru o nga upoko):

> 1. Na ko te naka'hi ano te mea tino tini'hanga rawa o nga kararehe katoa o te wenua, i 'hanga ai e Ihowa te Atua. A mea ana ia ki te wahine; Ae kua te Atua kei kai korua o nga rakau katoa o te mara?
> 2. A mea atu ana te wahine ki te naka'hi, e kai ano maua i te karaka o te rakau o te mara.
> 3. Na ko te karaka o te rakau e tu i waenga nui o te mara, kua mea te Atua, aua korua e kai i to ia (RAKAU) kaua ano hoki korua e pa atu kei mate rawa korua.
> 4. A ki atu ana te naka'hi ki te wahine, ekore ra korua a mate rawa.
> 5. E mohio ana hoki te Atua ki te ra ano e kai ai korua i to ia (RAKAU) ko reira kite ai ou koro kanohi, a ka pene nga tahi koru ate rite kit e Atua, te mataa ki te pai me te kino.

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41 Samuel Marsden to Kemp and Clarke, 4 September 1827 (transcript), in WTU Printed Collection q266.83 MAR.

42 ATL q MS 2248 (transcript).

84. Note here the neologism "naka'hi" (with a glottal stop, later dropped) for the transliterated neologism for 'snake'. The version of the Lord's Prayer (on page 24 of the same work), reads as follows:

> E tou matou matua it e rangi, kia tapu tou ingoa, tukua mai tou rangatiratanga, kia meatia tou hiahia ki te 'wenua me tou hiahia i te rangi; homai ki a matou aienei ta matou kai mo tenei ra, hohia mai te rongo ki a matou mo a matou 'hara, me matou 'hoki e hohou atu nei i te rongo ki nga tangata e'hara ana ki a matou; aua matou e kaue atu ki te wakapakepakenga, wakaorangia matou i te kino; ina nau ra hoki te rangatiratanga, me te kaha, me te kororia, ake, ake ake. Amine.

85. Note in this passage two usages of 'rangatiratanga' first in 'thy kingdom come' and the second in the doxology 'for thine is the kingdom' with the neologism 'kororia' as a transliteration for 'glory' and the curious use of an apostrophied " 'wenua" for "whenua" but the causative prefix "whaka-" rendered as "waka[-]" as it would be until 1842.

86. Another group of notes in Williams's journal covers the slow progress and difficulty of translation:

> 20/09/1826 The members at this station are now engaged in a body, five mornings in the week, in translating the scriptures. Our progress is very slow at present as every word requires an accurate examination in the original and in such books of reference as are at hand. When the three first of Genesis are completed we intend to proceed to the Gospels.
>
> 23/11/1826 I have been surprised to find how slowly our translation proceeds, but a work of such importance requires most attentive consideration. Although the language is far more copious than has been supposed, we shall be obliged to coin several [words] in the translation of the New Testament thus, the word "glory" in John I. 14, we have rendered as near to the English as this language will allow "kororia" preferring a word of this description to be explained by us rather than a native word which would convey only one of the meanings of this comprehensive term as is done I believe in the Taheitian translation, where the [word] is rendered "brightness". In making new words, we have thought it most convenient to follow the English, because the English reader will then be at no loss to understand what this new word may mean; while in rendering proper names it is more simple to follow the Hebrew or the Greek.
>
> 05/03/1827 Our friends from Kedikedi and Rangihoua came over to the monthly prayer meeting and while they remained

> with us we were engaged in revising a part of the first chapter of St John's Gospel which had been before prepared at Paihia. We make alas but slow progress in this work though it forms a part of our daily occupation. There is so much in this language (which some people have thought may be learnt in three months) that remains yet to be understood that we are often long engaged upon a passage which has no difficulty in itself. As to the sufficiency of this language to convey to this people the full meaning of the scriptures there cannot be a doubt, except in those peculiar expressions which it is necessary to introduce into every language which has been previously used only by heathens, may we receive for this our work the spirit of the wisdom and of a sound mind.
>
> 05/06/1827 Engaged in revising the 2nd Chapter of St John for the last time in order that it may be printed in the Colony with other portions of scripture and hymns upon which we have been daily employed for some time past.
>
> 13/07/1827 It is now nearly a year since we began to translate in this settlement, and when we look at what has been effected, it appears indeed but little, but that little we trust will be made useful to the natives, while, to ourselves, it has been already of great service in that we have found our attempts to acquire the language blessed while we have been employed in it. We have revised a second time the three first chapters of Genesis, preparatory to their being printed in the Colony under Mr Davis's care, together with the first chapter of St. John's Gospel.

BiM 11 (1830)

Ko te pukapuka tuatahi o | *Mohi e huaina ana ko* | *Kenehi.* | [. . .] | [Sydney:] Printed by R. Mansfield for the executors of R. Howe. [1830]

87. This is an expanded version of the last selection, with services, catechisms and hymns all together as a *vade mecum*. It contains Genesis 1-3 (including the 'nakahi' passage, here reprinted); Matthew 1-9; John 1-4; I Corinthians 1-6; followed by parts of the morning and evening services, the Ten Commandments, two catechisms and 19 hymns. 550 copies were printed at Sydney under the supervision of William Yate. Yate, James Kemp and James Hamlin were responsible for I Corinthians (although none of them knew Greek), but Henry and William Williams – who had arrived in 1826 - were responsible for the Gospel of Matthew, with all collaborating on the liturgy. Yate, who arrived in 1828, also prepared the catechisms. Of particular interest, however, is the inclusion of prayers for King George IV, news of whose death on 30 June 1830, just before the text was printed, would not be known for some months. Prayer books published between

1833 (**BiM 19**) and 1844 (**BiM 197**) printed prayers for Maori chiefs in place of those for the King and Royal Family but in 1848 (**BiM 357**) the Prayer for the Queen's Majesty was reinstated as part of the formal services of the Church of England. The 1830 alterations in the text of Genesis 3: 1-5 are only slight but I give them verbatim, for comparison, as they are not widely available (UPOKO III):

> 1. Na ko te nakahi ano te mea tino tinihanga rawa o nga kararehe katoa o te wenua, i hanga ai e Ihowa te Atua. A mea ana ia ki te wahine; Ae kua te Atua kei kai korua o nga rakau katoa o te mara?
> 2. Mea atu ana te wahine ki te nakahi, e kai ano maua i te karaka o te rakau o te mara.
> 3. Na ko te karaka o te rakau e tu i waenga nui o te mara, kua mea te Atua, aua korua e kai i to ia *rakau* kaua ano hoki korua e pa atu kei mate rawa korua.
> 4. Ki atu ana te nakahi ki te wahine, ekore ra korua a mate rawa.
> 5. E mohio ana hoki te Atua ki te ra ano e kai ai korua i to ia *rakau* ko reira kite ai o koro kanohi, a ka pene nga tahi koru ate rite ki te Atua, te matau ki te pai me te kino.

88. Note here that the neologism "naka'hi" has now lost the glottal stop. Other changes are essentially typographical. Evidence on the pace of translation continues in William Williams's journal, where the contributions of himself, Yate, Puckey and George Clarke are noted:

> 20/04/1829 [Clark, Yate and WW revised three first chapters of St Matthew.]
>
> 22-23/06/1829 Attended meeting for language at the Kerikeri where the 3rd & 4th Chapter of 1st Corinthians were examined and passed.
>
> 20-21-22/07/1829 Meeting for the language at Paihia when the 6th, 7th & 8th Chapters of Mathew were examined for printing.
>
> 17-18/08/1829 Attended a language meeting at Rangihoua where the 4th chapter of St John was examined and passed for printing.
>
> 19-20-21-22/08/1829 After attending to the instruction of the European children in morning engaged during the rest of the time in translating the baptismal service for infants into the native language.

> 11-12/12/1829 Occupied with Mr Yate in correcting the portion of scripture translated preparatory to their being printed. It has been determined that Mr Yate shall take an early opportunity of visiting the colony on Business, which he will mention to you, when we hope to have everything printed which is in a state of forwardness.

BiM 15 (1833)

Ko te tahi wahi o | Te Kawenata Hou | o Ihu Karaiti Te Ariki, | to tatou kai wakaora. Me nga upoko e waru | o te pukapuka o Kenehi | ka oti nei te wakamaori ki te reo o Nu Tirani. | Hirini: | Kua oti te ta e Te Tipene raua ko Te Toki, | 1833. 170 pages

89. This is a further expansion of the texts in the last, now containing Genesis 1-8, Matthew (completed), John (completed), Acts (complete), Romans (complete) and I Corinthians (completed). 1800 copies were printed under Yate's supervision, assisted by the now baptised youth Edward Parry (Eruera Pare, te kaituhituhi, the scribe of the 'Declaration of Independence'), formerly known as Hongi. Genesis 3: 1-5 remains the same except for "Na!" replacing "Na" at the start of verses 1 and 3. For these translations a different procedure was adopted:

> 07/03/1831 It is arranged that the examination of translation shall hence forward be referred to three individuals instead of to the whole body which has occasioned much delay hitherto.
>
> 20-21/03/1831 Held a language meeting at Paihia, which was attended by Mr Yate, W. Puckey and myself. We revised 4 1/2 chapters of Mathew for the press.

90. It does not seem necessary to continue to report progress in this way for the present purposes, but notes of this form continue for years:

> 07-08/05/32 Mr Yate came to Paihia. We revised in company with my brother and Mr Puckey, the 5th, 6th and 7th Chapters of St John's gospel.

91. The circumstances behind the letter of thirteen to chiefs to King William IV, however, are worth noting. From William Williams's diary:

> 27/09/1831 News having been brought from Port Jackson by the return of the "Active" that it is suspected that a French corvette now at Sydney is coming to New Zealand with a design of taking possession of the country in the name of the French government, we have taken the opportunity, at the suggestion of the Governor of Port Jackson, of mentioning the matter to the native chiefs. They seem all glad to avail themselves of the proposal to place themselves under the

> protection of the British Government, as has been done at Taheiti and the Sandwich Islands, and we have accordingly taken measures for the preparation of a document for this purpose.
>
> 04/10/1831 A number of chiefs from the Bay of Islands and Hokianga signed a petition to King William praying him to protect these islands from foreign invasion and from the improper conduct of British subjects who frequent their coasts.
>
> 06/10/31 The French ship of war [Favorite] having arrived, I accompanied my brother on board. No intimation was given by anyone on board of any intention on the part of the French government of forming a settlement in this country.

92. Note that it was the Governor of New South Wales and the missionaries who engineered this petition, in response to agitation in Sydney. The Williams diary continues the progress of translation:

> 03/10/1832 ... Our second object has been to make provision for the present wants of the natives in the way of books. Our edition printed in Port Jackson is expended. It has been concluded that Mr Yate shall again visit that place for the purpose of superintending the press. We hope to send two gospels, the Acts of the Apostles, Epistle to Romans, and 1st to Corinthians, together with a considerable portion of the Book of Common Prayer.
>
> 14/08/1833 The natives generally are much pleased with our new native book which has just arrived from the Colony by Mr Yate. They will now have in possession a portion of scripture which will afford them an abundant source for contemplation.

93. Translation by Yate and Williams continued until June 1834:

> 05/04/1834 During the last eleven days engaged in attending the English school and in translating. The second Epistle to Timothy and those to Titus and Philemon are completed.

94. Yate left for England in June and did not return and Puckey had moved to Kaitaia leaving Williams to work alone. Yate and Williams had disagreed over the readiness of the translations for printing in England, and there it was decided not to use them. Further progress was only possible when a printing press arrived at Paihia for Christmas 1834.

BiM 22 (1835)

Ko nga | *pukapuka* | *o Paora te Apotoro* | *ki te hunga o* | *Epeha, o Piripai.* | [woodcut] | Paihia: | He mea ta i te perehi o nga mihanere o te | Hahi o Ingarani | 1835. 16 p. 195 x 125 mm

95. Two thousand copies of the Pauline epistles to the Ephesians and Philippians were printed by Colenso in February 1835 and he reported: "This 'first fruits' of the New Zealand Press, which the Lord hath allowed me to begin and complete, is very much liked by the natives [. . .]"[43] . In his Printing Office Accounts 1835-1842, Colenso states that they were printed in February.[44] In his later Ledger book 1835-1842 p. 37, Colenso states incorrectly that two thousand copies were printed in July 1835.[45] The translation was by William Williams. This was essentially a trial piece to see if the press shipped out could be made to work, to produce text locally. Priority was given to the New Testament and the Book of Common Prayer. Several smaller texts were also produced, including some secular texts. The Wesleyans obtained a press in 1836 but agreed to let the Anglicans control the printing of the scriptures and prayer books (using the same texts), while the Wesleyan press was used to produce small educational works, most of which are out of scope for this project, although **BiM** describes all of them.

96. This is the most appropriate place to survey the plan for printing *in New Zealand* of the scriptural texts. There is a gap in the journals of William Williams from 22 November 1834 to 3 February 1835, so that his initial observations of the editor Wade and the printer Colenso are not recorded. Williams was busy translating the New Testament Epistles in the early months of that year. He mentions on 19-20 February that he is "Engaged in translation and in correcting proof sheets of the Epistle to Ephesians and Philippians for the press."[46] In June he completed the translation of the Epistle to the Hebrews and the Epistle of James.[47] At the end of July the Committee of Missionaries decided that the priority for printing would be the Gospel of Luke and William Williams began a revision of it, which continued through to October, printing commencing in August. Like Shepherd and Yate before him, Williams had requested "MacKnight on the

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43 Colenso, ATL qMS-0491.

44 See AR MS 76 Box 2.

45 Colenso, ATL fMS-048.

46 The proof copy, retained in Colenso's hands and passed on to his descendent Martin Simcox was sold on his death to G. C. Petersen in 1954. After Petersen's death in 1978 it was sold to McArthurs (sale of 21 October 1982, lot 117) and is marked "For Press WW". It was bought by Cecil & Warren Winstone for $950. The Winstone brothers had also acquired Colenso's own copy of the work which they resold in their sale at Webbs (28-29 October 1981, lot 120), "The first book printed in New Zealand: February 1835" (See also endnote 52).

47 "Report of Waimate by Rev. W. Williams. June 1835" ATL-Micro-MS-Coll-04-63 (CMS Archives CN/O96c "Rev. Wm Williams Reports Papers").

Epistles, Campbell on the Gospels" to assist him in translating. He also sought "Professor. Lee's Hebrew Grammar[48], Taylor's Hebrew Concordance and any other books which may be important in translating the Old Testament. I have as yet but little acquaintance with Hebrew, but as soon as the New Testament is complete I propose devoting as much time to the study of it as I am able."[49] He was not needed to do this as Maunsell's arrival spared him the trouble. William Williams, at Waimate, meanwhile had been "revising the translation of St Luke's Gospel, & carrying it through the press, and in preparing a new translation of the first nine chapters of the 2nd Epistle to the Corinthians." At its meeting on 5 June the Committee of Missionaries had resolved "That the New Testament be printed & that the Rev. W. Williams having been principal translator, he be appointed Editor thereof." In William Williams' next report he notes that the arrival of Henry Bobart as schoolmaster had relieved him of some teaching responsibilities: "In the translation department I have compiled from chap. V to the end of the 2d Epistle to the Corinthians, & the 1st & 2d Epistles of Peter, also a revision of the translations of Matthew & Mark. A short grammar of the native language has been compiled."[50] The one thousand copies of the Gospel of Luke authorised in July were printed in December, some copies being bound up and issued with the Epistles printed in February.[51] James Shepherd, who was now in charge of the stone store at Kerikeri, had been working on translations also: in his report for the year ended 30 June 1835 Kemp mentions some of these: "Mr Shepherd has also translated into the New Zealand language the Epistle of St James & has completed a revision of the

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48 Samuel Lee, *A grammar of the Hebrew language, comprised in a series of lectures compiled from the best authorities . . . designed for the use of students in the universities.* (London: Printed for J. Duncan, 1827). xxxi, 397p.

49 William Williams to the Secretaries, 20 June 1834, ATL-Micro-MS-Coll-04-31 (CMS Archives CN/M v. 7 p. 595). Since Yate had had only the rudiments of Latin it is unlikely he had any Greek or Hebrew. The first missionary with facility in Hebrew was Robert Maunsell, who arrived in February 1835.

50 W. Williams, Report in Half yearly meeting July 1836, ATL-Micro-MS-Coll-04-32 (CMS Archives, CN/M v. 9 p. 469). See also the original of the "Waimate Report for the year ending June 30th 1836" in ATL-Micro-MS-Coll-04-63 (CMS Archives CN/O96c "Rev. Wm Williams Reports Papers") stating "The Second Epistle to the Corinthians together with the First and Second Epistles of Peter have been translated; and the translation formerly made of the Gospels of Matthew, Mark & Luke has been revised. A short grammar also of the language has been prepared."

51 W. Colenso, Ledger book p. 39, ATL-fMS-048. Some copies were issued bound with BiM 27. Colenso notes in his report dated 5 January 1836 that he had printed one thousand copies of the Gospel of Luke "a 12mo book of 67 pages, some of which I have bound in leather & cloth, upwards of 400 of these gospels." Alexander Turnbull's copy of this work bears his pencilled annotation: "In the Juror's Report of N.Z. Exhibition, 1865 at page 243 amongst W. Colenso's exhibits of book the Epistles bound at the end of this volume, are mentioned as being "the first book printed in N.Z." The copy was bought from Quaritch and has the bookplate of William Wuxen Leycester, also seen in Turnbull's copy of Kendall's 1820 *Grammar.*

Revelations, & at the request of the Rev. W. Williams he has gone through a revision of the first seventeen chapters of St Matthew."[52] Kemp's report for June 1836 notes that Shepherd had translated "Malachi, Jonah, the Book of Ruth, & completing a revision of St Matthew's Gospel".[53] Doubtless all of these were in manuscript only, to be edited by Williams. None of them were printed or published separately. Extracts from William William's diary indicate rapid progress now:

> 19-20/02/1835 Engaged in translation and in correcting proof sheets of the Epistle to Ephesians and Philippians for the press.
>
> 3/06/1835 During the past week keeping school and translating. Completed the Epistle to the Hebrews.
>
> 15-19/06/1835 School translation. Commenced the Epistle of James.
>
> 29/06/1835 Finished the Epistle of James.
>
> 29-31/07/1835 It having been directed by the Committee that the gospel of Luke shall be printed forthwith, I have commenced a revision of the translation preparatory to its being sent to press.

BiM 27 (1836)

Ko te | *Rongo Pai* | *i* | *tuhituhia* | *e* | *Ruka.* | [*swelled rule*] | [*woodcut illustration (the Christ child in the temple) with caption* Upoko 2, 46.] | Paihia: | He mea ta i te perehi o nga mihanere o te | Hahi o Ingarani. | 1835. [i.e. 1836] 67, [1] p. 190 x 115 mm

97. The principal translator of the Gospel of Luke was again William Williams, who commented in a private letter that the demand for copies of the work was high but that the price paid for each copy ('three bushels of potatoes') deserves better quality binding than the materials supplied permit. He refers to the decision to proceed with the whole New Testament, despite limited supplies of paper, and that 5,000 copies were wanted, but the work did not get published until 1838 (W. Williams, letter to W. Jowett, 6 January 1836, DUHO F & J v. 6 no. 9). An edition of one thousand copies of Luke was printed by Colenso in December 1835, but copies were not issued until June 1836 (Colenso, Printing Office Accounts 1835-1842 AR MS 76, Box 2, also

52 J. Kemp, Report of Kerikeri for the year ending June 30/35, ATL-Micro-MS-04-32 (CMS Archives CN/M v. 9 p. 477).

53 Ibidem, p. 479.

Colenso, Ledger book p. 39, ATL fMS-048). Some copies were issued bound with **BiM** 22 (Ephesians).

BiM 32 (1837)

[SCRIPTURE LESSONS FROM THE OLD TESTAMENT]

Ko etahi | *o nga korero* | *i te* | *Kawanata Tawito.* | [Text begins:] Ko te orokohanganga i te Ao. | Kenehi Upoko I.—1. | I te orokomeatanga i hanga | e te Atua te rangi me te | wenua. | 2 A kihai wai ahua [. . .] | [. . .] | [Mangungu: He mea ta i te perehi o nga Weteriana Mihanere, 1837] 12 p. 190 x 110 mm

98. This is a selection of scriptural extracts (Genesis 1: 1-25, 26-31; 2: 1-25; 3: 1-24; 4: 1-26; 6: 9-22; 7: 1, 4, 11-24; 8: 1-22; 9: 1-17). It was intended for instruction in reading and was compiled on the model of Turner's primer *Koe tohi eni, oe fakatubu oe lagi, mo mamani* (fifteen lessons from Genesis 1-8) written by Turner in Tonga in 1832 and printed there by William Woon. The work appears to have been based on the Scripture Lessons of Sarah Trimmer: *An abridgement of Scripture history: consisting of lessons selected from the Old Testament. For the use of schools and families. By Mrs Trimmer.* (London: Stereotyped and printed by A. Wilson for F. & C. Rivington, 1811). This is the "12 pages of instruction from the *Old Testament*" printed by Woon at the Wesleyan Mission Press, Mangungu, in an edition of two thousand copies in December 1837 and recorded in a list of "Books Printed 1836, 1837, 1838 & 1839" on a fly-leaf of the Journal (Woon, ATL qMS-2292). One of the three known copies is marked "1st Proof" in William Woon's own hand now at ATL MSX-5387. The work lacks an imprint or colophon and is obviously incomplete. It appears to have been abandoned after the first signature and was superseded by **BiM 86**, which was dated 1840 but actually issued in 1841 as *He* | *korero kohikohi* | *enei* | *no te Kawenata Tawhito,* | *no* | *te Karaipiture.* | (Mangungu: | He mea ta i te perehi o nga mihanere Weteriana | o Ingarani. | 1840. [i.e. 1841] 83, [1] p. 190 x 110 mm). The decision to print "5000 copies of Lessons from the Old Testament" was taken at the Annual District Meeting of the Wesleyan mission on 5 November 1839.[54] Printing began in February 1840 but was not completed until June 1841.[55]

54 MCNZ, ATL Micro-MS-0612-05.

55 Woon, ATL qMS-2292-2293.

99. This is one of the first publications to use "wh" in place of "w". A short run of the last two sections resulted in an additional printing in September 1841. The edition was of five thousand seven hundred copies. In his letter to the WMS Secretaries on 15 November 1841 John Hobbs wrote: "I herewith send you two copies of a most useful little book which was finished just after the District Meeting, 200 of which Mr Smales has bound this year. It is called "He Korero Kohikohi no te Kawanata Tawhito" and comprises the first sixty pages of Scripture Lessons published by the British and Foreign School Society." The translators were Hobbs, Whiteley and Wallis.[56] William Woon describes the work in his letter of 12 May:

> I am now printing the last half sheet of Scripture Lessons from the Old Testament, 84 pages 12mo between 5 and 6,000 copies (6 reams each half sheet), and will send you a copy by a favourable opportunity when bound up for the people. It embraces the Creation, Fall, Deluge, account of the Patriarchs, Destruction of Sodom and Gomorrah, History of Joseph, Moses, the Israelites, Joshua, Solomon, Elijah, Elisha, Naaman the Syrian &c., Daniel in the Lions Den, the Hebrew Children &c. which I have had in hand some time and which would have been completed last year but for the mysterious removal of our beloved Chairman who had some of the copy with him when he was drowned, and which was missed for several months, thereby delaying the operations of the press.[57]

100. The eventual print run was 5,700 copies, of which "Bro.r Smales has been able to bind 200 copies and has 200 more in hand" though his circuit duties meant that other solutions to the binding needs were to be found.[58]

BiM 37 (1837)

[Harmony of the Gospels. Maori]

Ko te | *Rongo Pai* | *i tuhituhia* | *e nga kai wakaako* | *o Ihu Karaiti.* | *Me te Mahi o nga Apotoro.* | *Me* | *nga inoinga,* | *me* | *nga himene hoki.* | [Mangungu,] New Zealand: | Printed at the Wesleyan Mission Press. | 1837. [iv], 120, 12, 12p. 191 x 115 mm

101. While this work is not strictly a translation of parts of the scriptures, it seems best to include it here. The first part contains a life of Christ digested from the four Gospels (pp. 1-96) followed by extracts from Acts (pp. 97-120). This is followed by a section of morning prayers (Nga inoinga i te ata)

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56 According to Woon's letter to the WMMS on 20 April 1840 in ATL-Micro-MS-Coll-03-20.

57 W. Woon to WMS Committee, 12 May 1841, in ATL-Micro-MS-Coll-03-21.

58 William Woon, 1841 printing report; see EMI 0082 for further details.

and evening prayers (Ko nga inoinga i te ahiahi) with the second colophon (pp. [1]-12) and finally a collection of thirty-five hymns. The work is a compilation of texts translated by William Williams for his edition of the New Testament published at the end of 1837, parts of which were available earlier. The work was commonly known as the 'Harmony of the Gospels' and was printed with the encouragement of the Church Mission. It appears to be an adaptation of the work *A harmony of the four Gospels, in which the natural order is preserved, with a paraphrase and notes* by James MacKnight (first published in 1756 and republished in 1763, 1804, 1809 and 1819). In his letter to the WMS dated 27 May 1836 Turner states: "The press is now in operation and we shall soon be able to publish something that will, I trust, be made an everlasting blessing to the poor New-Zealanders. A good number can read, but there is a great want of books for them. Mr Woon had just commenced a 'Harmony of the Gospels', selected from the Scriptures, published by the Church Missionaries, upon the principle of one published by the British and Foreign Bible Society and based on a work issued by the Bible Society." In his report for the year 1837 Nathaniel Turner says that the 'Harmony of the Gospels' was half way through the press: "This useful work will be compiled from the Translations our Church Brethren and what we (Bro. Whiteley in particular) are able to furnish."[59] The part of the work containing the services for morning and evening prayer was reissued separately in 1837 (see **BiM 42**) and a reset reprint was issued in 1838 (see **BiM 51**) with a separate signature of hymns (see **BiM 36**). In a letter to the editor of *The Watchman*, dated 24 February 1837 and copied in his journal, Woon says the edition was of two thousand copies and the first section "Harmony of the Gospels" had been finished the previous day. The hymns and prayers were completed by 10 April, when a copy was sent to the Wesleyan Missionary Society.[60] At a Special District Meeting held at Mangungu on 16 March 1838 it was decided to print a further thousand copies in partial payment for one thousand copies of the Church Mission Press New Testament supplied by the Church Mission.[61]

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59 ATL-Micro-MS-Coll-03-19.

60 Woon, ATL qMS-2292.

61 MCNZ, ATL Micro-MS-0612-05.

BiM 45 (1838)

Ko te | *Kawenata Hou* | *o* | *to tatou Ariki te kai wakaora* | *a Ihu Karaiti.* | *He mea wakamaori i te reo Kariki.* | Paihia: | He mea ta i te perehi o nga mihanere o te Hahi o Ingarani. | 1837. [i.e. 1838] 356p. 215 x 135 mm

102. The first edition of the complete New Testament in Maori, translated by William Williams from the Greek. It is probable that the work was commenced by William Williams and William Yate together, but there was a falling out between them in 1834 when Yate went to England, and Williams advised the CMS not to print the text Yate had brought with him. After Yate was disgraced, in 1836, the whole work was revised by William Williams alone, to make sure that Yate's influence was expunged. The reediting from proof copy continued throughout 1837. The printing of the edition of five thousand copies was completed on 30 December 1837. Colenso records in his Ledger book that the first copies of the complete bound volume were issued in January 1838 to members of the mission. The Wesleyan Mission received one thousand copies in sheets on 10 May 1838, while two thousand were sent for binding at Sydney. The remainder were gradually bound at Paihia under Colenso's supervision.[62] The Wesleyans, lacking binding facilities of their own, sent one hundred copies to New South Wales and five hundred to England for binding, according to notes of the Annual Meeting on 12 October 1837.[63] In some copies pp. 259-266 are in a version printed by Woon at the Wesleyan Mission Press at Mangungu, in order to supply a short run from the Church Mission Press. Woon detected the gap in September 1840 in a case of five hundred copies bound in London.[64] Colenso received two hundred and eight copies of this sheet from Hobbs in June 1841.[65] These pages are lacking in some copies. One copy has been seen with a variant title-page not set in rules and lacking the text on the verso.[66] As usual progress in revision, translation, printing and proofreading is documented in William's diary from which a few sample entries are given:

> 05/02/1836 Began the revision of our printed translation of Matthew preparatory to its being printed.

62 Colenso, Day and Waste Book ATL qMS-0484, and his Ledger ATL fMS-048.

63 MCNZ, ATL Micro-MS-0612-05.

64 Woon, ATL qMS-2293.

65 Colenso, ATL qMS-0484.

66 WTU Printed Collections, Acc. No. 34440.

> 13/04/1836 ... In the evening corrected a part of the first proof of Matthew.
>
> 14/04/1836 Finished the correction of proof and went to Paihia to make certain arrangements about the printing.
>
> 25/04/1836 Finished the revision of our translation of the Gospel of Matthew.
>
> 01-05/07/1836 Translating the 1st Epistle of John.
>
> 18-23/07/1836 Attended the half yearly meeting of the Committee at Paihia ... I found the natives who are employed in the press busily occupied in striking off the first sheet of Mathew. They attend to their work satisfactorily but as yet are slow in their movements.
>
> 26/07/1836 Finished the translation of the Epistles of John.
>
> 27/07/1836 Translated the Epistle of Jude.
>
> 25/08/1836 Finished Revelations.
>
> 01/09/1836 Began a new translation of Genesis together with the study of Hebrew, the latter being almost new to me. The work of the former will necessarily proceed but slowly.
>
> 31/12/1836 Corrected proof. Thus closed the year 1836; the most eventful since the formation of the New Zealand mission. The enormity of sin has been made fearfully manifest; ...
>
> 24/01/1837 Revised Luke 24 and read proof.
>
> 30/10-04/11/1837 Revised the translation of the Epistle of Jude and of Revelations I-III and read proof.
>
> 27-30/11.1837 Revised the two last chapters of Revelations and thus completed my portion of this great undertaking. The work has been long in progress but not too long considering its importance. May God for Christ's sake pardon what is deficient in it and commend his blessing upon the perusal of it.

103. After distribution of the printed work began in 1838 he notes: "May 22 ... Our first package of Testaments for the natives came from Paihia. Our poor natives are exceedingly anxious to be possessed of them but the number as yet bound is so small that very few can be supplied." For the rest of the year attention was focussed on a reprint of the daily services from the Book of Common Prayer, a cheaper work and more useful for services as well as for the teaching of reading and writing: "[07/04/1839, at Rangitukia] a little before sunset we held evening prayers and a number of the natives

remained at our house till a late hour. There are a few among the young people who begin to read, but as yet they have only had six books among them. The supply of small prayer books is very acceptable and all are anxious to possess them. The six natives who carried our luggage yesterday the distance of 18 miles preferred the prayer book to any other payment." And on [08/04/1839] "The bearers of our luggage today requested a prayer book each as payment. These books, it is to be remembered, are only small tracts comprising the Morning and Evening prayers with the Hymns."

104. Another title-page was printed in 1840 to be used with extracts of this printing made up from assorted "portions" (**BiM 68**). The variant states are presumably copies made when the original printings of some sheets were exhausted. Colenso's edition was superseded when printing of the work in London commenced in 1841 (**BiM 88**). Colenso recorded in his Ledger book (p. 104) that the first copies of the London edition – 20,000 copies were printed - were issued on 9 July 1841.[67] For further details of the binding and variants see *Books in Maori* pp. 58-61. From then on the work was reprinted regularly in London for both missions.

Necessary remarks on published NON-scriptural texts available in 1840

Texts in Maori were not ALL scriptural

105. That completes the listing of the scriptural texts in Maori available at the start of 1840, but it does not give an accurate record of the variety of texts available, most of which were non-scriptural religious texts and catechisms. Some brief words concerning these and the few secular and political texts should be added, and in particular it is necessary to comment on texts in Maori which are important in a political capacity such as the speeches and letters printed when Busby arrived as the British Resident in 1833. I turn to those works next.

BiM 6. A proclamation by the Governor of New South Wales, in Maori, 1824

106. In May 1824 Governor Brisbane of New South Wales issued a proclamation at Sydney concerning outrages against 'unoffending natives' and this was translated into Maori by the CMS missionary John Gare Butler (**BiM 6**). Only one copy of it survives but it is remarkable for the early use

67 Colenso, Ledger ATL fMS-048.

of the expression 'tino rangatira' in the citation of the Governor's titles, certainly the earliest printed use of the term. In the 1824 proclamation:[68]

New South Wales. | Proclamation. | I. By His Excellency Sir Thomas Brisbane, | K.C.B. Captain General and Governor in | Chief [. . .] | [Preamble begins:] II. Whereas misguided persons often commit | gross outrages in the islands of the Indian | and Pacific Ocean, [. . .] | [. . .] | [Testamentum clause:] Given under my Hand and Seal | at Sydney, 17th of May, 1824. Thomas Brisbane, L. C. | By His Excellency's Command, | F. Goulburn, Colonial Secretary. | God Save the King!	New South Wales | E Korero, | I. Ná tóna Excelenei iá Sir Thomasa Brisa- | bane, ko te Captani, ko te tíno Rángatira | wáka shau; o ténei káinga, o New South | Wales, me óna tíne motu atu óki, &c. &c. &c | [Preamble begins:] II. Na te mea, e máha ngá páshua tanga o ngá Mótu, kí te Moana Pocifica; a kí te Moana tudiana, e | nga tángata kíno: [. . .] | [. . .] | [Testamentum clause:] 6. Kua óti nei te o átu i tóku nei | Ringa ringa me tóku Seala i Sydiny, 17 May, 1824. | E tono ná tona Exceleny | Ko F. Goulburn, To kónei | kai túhi túhi. | Má te Atua e wáka óra te Kingi. | [Sydney, NSW: R. Howe, Government Printer, 1824]

The Church catechism of 1830, BiM 12

107. Several small catechisms in Maori generally need not concern us but **BiM 12**, the Church Catechism, used in the Church of England, like the Lord's Prayer, does contain the phrase 'Kingdom of Heaven (rangatiratanga o te rangi) which was an expression committed to memory by catechumens, along with the Creed, with knowledge of the Ten Commandments, an obligation to 'honour and obey the King, and all that are put in authority under him', and the memorisation of the Lord's Prayer. There were also the State Prayers used in the Church of England used at the Morning and the Evening Service – The Prayer for the Kings Majesty and the Prayer for the Royal Family – which have political import in the state church and were used by Anglican converts in New Zealand, including Maori, in conjunction with specific adaptations to local conditions.

108. These new prayers were introduced in the 1833 Prayer book (**BiM 19**) in the reign of William IV, as specific Prayers for the Maori chiefs and for their families, copying the form from those of the State Prayers, where God

68 Only copy at Auckland, BiM 6. Copy at ATL.

is referred to as the "King of kings, the Lord of Lords, the governor of princes" ("Te kingi o nga kingi, te Ariki o nga ariki, te Kawana o nga pirinaha"). As New Zealand was not a British colony yet, prayers for Maori chiefs in place of prayers for King William were quite appropriate. The Church Catechism was also included with others in the Prayerbook of 1833, along with the prayers in the morning and evening services with which all Maori converts had to be familiar. This presupposes some familiarity with monarchical government and explains the desire of so many Maori to see for themselves the nature of this power and influence by trying to visit New South Wales and England.

Address of Lord Goderich etc. BiM 20

109. We now come to the printed letter of 1833 (a pamphlet) announcing the accreditation of Busby to New Zealand as the British Resident (**BiM 20**). This work was printed on both English and Maori as:

> *Letter* | *of the* | *Right Honourable* | *Lord Viscount Goderich* | *and* | *address* | *of* | *James Busby, Esq. British Resident,* | *to the* | *chiefs of New Zealand.* | [=] *Ko te pukapuka* | *o Te Tino Rangatira* | *o Waikauta Koreriha,* | *me te korero* | *o Te Puhipi* | *ki nga rangatira* | *o Nu Tirani.* | Sydney: | Printed at the Gazette Office, by Anne Howe. [1833]

110. Note the distinction between the 'Tino Rangatira' (Goderich, the Secretary of State) and the ordinary rangatira of New Zealand (in missionary Maori 'rangatira' was originally used for 'a gentleman', and implied no especially exalted status). When Busby arrived he brought an open text of the document in English, and that was translated by Henry Williams before the landing; a transcript survives in the British Residents papers at Archives New Zealand. The missionaries, well aware that the 22 chiefs who attended the event (without understanding what it was all about) needed to be better informed of the new situation sent the texts to Sydney to be reprinted there for subsequent distribution to the chiefs and their literate mission converts the *kaituhituhi* (scribes). The translation was edited by William Williams but was seen through the press by William Yate, in Sydney to print the Prayerbook and Scriptures with his own *kaituhituhi* Edward Parry (Eruera Pare, the kaituhituhi, who had collected the votes when the 'Standard of New Zealand' was presented and was also the Scribe who penned the Wakaputanga in 1835). A thousand copies were printed with the English

and Maori on facing pages about October. The work is rare, however, and has been little discussed, although Mr Carpenter has given a part of it (in English). Accordingly I give the letter of Goderich below, in English and Maori, as transcribed from a copy of the work:

Lord Viscount GODERICH, one of the Principal Secretaries of State to HIS MAJESTY THE KING OF GREAT BRITAIN -	Na te Rangatira nui, na Waikauta KORERIHA, ko ia nei te tahi o nga tino kai tuhituhi o TE KINGI O INGARANI -
To the chiefs of New Zealand. FRIENDS, I am commanded by THE KING to acknowledge the receipt of the letter which you addressed to HIS MAJESTY, and which you intrusted to Mr. WILLIAM YATE to forward to England. THE KING is much gratified to find that the cause for alarm, which appears to have existed at the time when your letter was written, has entirely passed away; and He Trusts, that no circumstances may occur in future to interrupt the internal tranquillity of New Zealand, which is so necessary to the maintenance of a close commercial intercourse between its inhabitants and those of Great Britain. THE KING is sorry for the injuries which you inform him that the people have suffered from some of His subjects. But, He will do all in his power to prevent the recurrence of such outrages, and to punish the perpetrators of them according to the laws of their country, whenever they can be apprehended and brought to trial; and THE KING hopes that mutual good will and confidence will exist between the peoples of both countries. In order to afford better protection to all classes, both the Natives of the islands of New Zealand, and British subjects who may proceed, or be already established there for purposes of trade, THE KING has sent the bearer of this letter, JAMES BUSBY Esquire, to reside amongst you as HIS MAJESTY'S RESIDENT, whose duties will be to investigate all complaints which may be made to him.	Ki nga Rangatira o Nu Tirani. E HOA MA, KUA mea mai TE KINGI ki hau, kia korero atu ki a koutou, kua tae mai nei ki TE KINGI to koutou pukapuka, i ho atu e koutou ki a Te IETI kia kawea ki Ingaarani. E hari ana TE KINGI no te mea kua pahure ke atu te mea i mataku ai koutou, i te tuhituhinga o to koutou pukapuka, (ara ko te tangohanga o tou kainga e te iwi o Mareau), a e hiahia ana ia kia kaua e poka ke a mua atu te tahi mea, hei wakararuraru i to koutou kainga, kei wakamutua hoki te hokohoko o ana tangata o Ingarani ki a koutou. E kino ana TE KINGI ki nga mahi kino o ana tangata ki te hunga o Nu Tirani, kua tuhituhia mai nei e koutou. Penei ka tohe nga tangata ki aua kino a mua, ma TE KINGI e riri, mana ano e utu aua tangata kino, ki te tikanga o nga ture o ratou kainga, ua hopukina, ua wakawakia ratou. A e mea ana TE KINGI kia pai marie nga wakaro o koutou katoa ko ana tangata, o te tahi o te tahi. A kua tonoa e TE KINGI te tangata i tenei pukapuka a TE PUHIPI, kia noho ki to koutou kainga; he tangata hoki no TE KINGI, hei kai wakarite i nga mea o te tangata maori o Nu Tirani, o nga tangata hoki o KINGI WIREMU e noho ana i a koutou, hei kai hoko. Mana ano e wakawa nga mea kino katoa, e wakapuaki ai koutou ki a ia.

It will be his endeavour to prevent the arrival among you, of men who have been guilty of crimes in their own country, and who may effect their escape from the place to which they have been banished, as likewise to apprehend such persons of this description as may be found at large.	Mana hoki e mea, kia kaua e haere atu ki to koutou kainga nga tangata i mahi kino i to ratou kainga, a kua oma i te kainga i hereherea ai ratou; mana hoki e hopu aua tangata e haere noa nei to koutou kainga.
In return for the anxious desire which will be manifested by the BRITISH RESIDENT to afford his protection to the inhabitants of New Zealand, against any acts of outrage which may be attempted against them by British subjects, it is confidently expected by HIS MAJESTY, that on your parts you will render to the RESIDENT that assistance and support, which is calculated to promote the object of his appointment, and to extend to your country all the benefits which it is capable of receiving from its friendship and alliance with Great Britain.	Na! Ka wakaro te tangata o TE KINGI ki te tiaki i nga tangata o Nu Tirani i nga mahi kino o nga tangata o Ingarani, waihoki e mea ana TE KINGI, kia utua tenei wakaro e koutou, ara kia meinga koutou hei hoa, hei kai tiaki i tona tangata, kia puta ai te mea e noho ai ia kia a koutou, a kia wiwi ai koutou ki nga pai katoa e riro ki a koutou, no te mea ka meinga koutou hei hoa mo TE KINGI O INGARANI.
I am, Your friend, GODERICH. Colonial Office, Downing Street, 14th June, 1832	No to koutou hoa, Na te KORERIHA Hune 14, 1832

111. The address of James Busby follows, in the same pamphlet and is addressed to "The Chiefs and People of New Zealand" (Ki nga Rangatira me nga Tangata o Nu Tirani), making a distinction between chiefs and ordinary people. In missionary practice, however, the distinction tended to be between rangatira = 'gentleman' = 'freeman' and others who might be of lesser status (including slaves = taurekareka, although slavery was in decline under mission influence). It begins with a recapitulation of the message of Goderich, then mentions the custom of the King's sending of representatives to "all those countries of Europe and America, with which he is on terms of friendship" ("ki nga kainga tawiti o Uropo, o Amerika, o hea, o hea nga kainga hoki o wakahoatia ana ki a ia.") He then warns, however, in such cases their persons and families, and all that belongs to them are considered sacred ("E kore rawa e ahatia aia tangata, o ratou

tamariki ra nei, a rarou taona ra nei e te kainga e noho ai ratou.") and seems to give a pre-emptive warning that "the whole civilised world would resent any violence which His representatives might suffer" before saying that the "Chiefs and people of New Zealand have proved to be the faithful friends of those who have come among them to do them good" and that he therefore trusts himself "to their protection and friendship with confidence." He intends that the chiefs come to his house and be his friends "We shall then consult together by what means they can make their country a flourishing country and their people a rich and wise people, like the people of Great Britain." He comments on the situation of the ancient Britons (compared with the state of native society in the 1830s) and the amelioration of conditions which followed the introduction of Christian civilisation.

Do you, then O Chiefs and Tribes of New Zealand, desire to become like the people of England? Listen first to the word of GOD, which HE has put into the hearts of HIS servants, THE MISSIONARIES, to come here to teach you. Learn that it is the will of GOD that you should all love each other as brethren, and when wars shall cease among you, then shall your country flourish. Instead of the roots of the fern you shall eat bread, because the lands shall be tilled without fear, and its fruits shall be eaten in peace. Where there is abundance of bread, men shall labour to prepare flax, and timber, and provisions for the ships that come to trade, shall bring clothing and all other things which you desire. Thus shall you become rich. For there are no riches without labour, and men will not labour unless there is peace, that they may enjoy the fruit of their labour.	E mara ma, E nga Rangatira, e nga Tangata o Nu Tirani, peratia koutou me te hunga o Ingarani? Ma tua ka wakarongo ki te kupu o te ATUA kua ho mai nei ki ona tangata ki te MIHANERE. Kia rongo koutou ko te hiahia o te ATUA kia aroha koutou katoa ki a koutou ano, kia wakateina, kia wakatuakana koutou katoa. A ka mutua te wawai, ko reira kake haere ai to koutou kainga, ka pai ano. Ka mutu te kai i te aruhe, kei te taro anake; ka ngakia katoatia te wenua, ka kainga marietia nga kai. Ka nui hoki te kai, ko reira hoki mahia ai he Muka, he Rakau, he Kai ra nei, hei hokohoko mo te kaipuke. A ka riro mai mo koutou he kakahu me nga mea katoa e pai ai koutou. Makonei ka wai taonga ai koutou, Ki te kahore hoki he mahi, kahore he taonga, tena ko te mahi, ma te rangimarie anake, ma te ata noho ka puta ai, kia kite ai te tangata i tana mea i mahi ai ia.
JAMES Busby Bay of Islands, 17th May 1833	Na te PUHIPI Paihia, Mai 17, 1833

112. William Williams notes in his diary:

> 08/05/1833 We found H.M.S. *Imogene* lying at anchor having on board the British Resident, Mr Busby.

> 17/05/1833 Most of the principal chiefs having been assembled at Paihia, Mr Busby landed this morning under a salute, accompanied by Captn. Blackwood and several officers from the *Imogene*. ... Mr Busby then read the King's reply to the letter sent from the native chiefs, which was afterwards delivered in native, and this was followed by a very appropriate address from Mr Busby. The natives do not as yet clearly understand the object for which Mr Busby is sent, and some strange ideas have been industriously put into their minds by ill-disposed Europeans.

113. So it was that the missionaries took the lead to dispel those 'strange ideas'.

Busby's later secular texts in Maori

114. BiM 20 was the only text by Busby to set out his objectives in *two* languages. There are three other documents in Maori associated with Busby, and of a political nature. The first is a printed letter in Maori wanting compensation for the attack on him by Rete the previous year (1834) issued in April 1835 – which is of little interest except in as much as that the prophecy in the address given above was soon fulfilled (**BiM 23**) and the others, of course are the circular letter to chiefs of 12 October 1835 and the printed Declaration of Independence, first issued on 8 March 1836 and reprinted with corrections in April 1837 (**BiM 28** and **BiM 34** respectively), both in Maori. There is also the printed circular in English of 10 October announcing the assertions of Thierry and Busby's intention to call the chiefs together to resist Thierry, should he actually show up. As the Maori text of the circular to the chiefs is short and virtually unknown, I transcribe it here, and it was also transcribed in full in *Books in Maori* (**BiM 24**). It was not traced at the time H W Williams' *Bibliography of Printed Maori* (1924) appeared (his Williams 17b) but Colenso's file copy turned up among some of his papers a decade ago, and the original manuscript is in Busby's papers at the Auckland Museum. Seventy copies were printed, according to Colenso.[69]

E koro

Kia rongo koe : kua rito mai te tahi pukapuka i tahi tangata no tawiti; a e mea ana ia, hei kingi mo konei, mo te tangata maori.

E mea ana a hau, kia huihui koutou ki taku kainga, a te Weneri a tua i te kowititanga mai o te marama. Kia rongo a hau ki a koutou wakaro ki tenei tangata pokanoa; kia pehea ranei, kia pehea ranei. Kia tukua ranei te wenua mona, me koutou hei pononga

69 **BiM 24** 'Printed letter, 12 October 1835, inviting chiefs to a hui to discuss Thierry'.

mona, kahore ranei.

Naku tenei pukapuka,
Na te PUHIPI,
Te Rehirenete o Kingi Wiremu.

> (My translation): O Sir! Hear ye, a letter has been received from person far off who desires to be the king over you, the Maori people.
>
> I suggest that you meet at my house on Wednesday after the moon rises that I may hear your opinion of this interfering person, to determine what should be done one way or another. Should the land be handed over to him, so that you all become his servants, or otherwise?
>
> This writing is from Busby, the Resident of King William.[70]

115. Note that the use of 'pononga' here is 'servant' not 'slave', as usually misrepresented. In the Maori scriptures 'pononga' occurs frequently but the most common familiar usage is that in the Prayer of Simeon in Luke 2: 9-32, which was used every day in the Evening Service between the New Testament Lesson and the Apostles Crede, in the Book of Common Prayer, from 1833 on:

> Lord, now lettest thou thy servant depart in peace, according to thy word:
> For mine eyes have seen thy salvation,
> Which thou hast prepared before the face of all people;
> A light to lighten the Gentiles, and the glory of thy people Israel.

116. While 'pononga' in the Biblical text indicates subordination, it does not have a perjorative tone. Even a King is a servant of God. A *pononga* is not the same as a *taurekareka.* That is made clear by Maharaia Winiata in an article from 1956:

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70 Translation by the author. The text as given by Ramsden in *Busby of Waitangi* (1942) p. 95 is stated in Ramsden's footnote to be from: "The original invitation to Nene [which] is in the Old Colonists' Museum at Auckland" but this is incorrect. In fact the invitation to Nene is his invitation to meet Hobson in 1840 (publicly displayed at the Auckland War Memorial Museum). There is a draft in Māori of Busby's letter of 1835 at the Museum in Busby's papers (AR MS 46 v. 1 page 292) and this appears to be have been seen by Ramsden while in private hands. It is accompanied by a translation by Elsdon Best and that translation is the source of Ramsden's text in English. The only surviving copy of the invitation of 1835 (cited above) is that found in Colenso's papers and purchased from G. C. Petersen in June 1975.

> The lowest grade in the society was made up of slaves, captured in war and thereby possessed quite absolutely by the chiefs. The slaves really held no status in the tribe, so that strictly they were not members of the society; however, they formed a not too insignificant portion of the labourer force that supported chieftainship. Their lack of sanctity and *tapu* also gave them a further special use in carrying cooked food, doing menial tasks, and providing sacrifice for ritual purposes, which of course was unthought of with the credited members of the tribe. The slaves were the *taurekareka,* as distinct from the *pononga* or servants of the chiefs, often selected from their own relatives.[71]

117. Part of the reason for this distinction is tied up with the word *pononga*, derived from *pono*, true or genuine and associated with *ponongatanga* a means of showing hospitality - as in 'He ahu taku ponongatanga? – (What have I to offer you?') - as well as the verbs *whakapono* and *whakaponotanga* (to believe or to admit as true).[72]

The printings of the Declaration (BiM 28, BiM 34)

118. The earlier version of the subsequent Declaration is also illustrated in *Books in Maori* (page 47, from Busby's own copy with his annotations) and annotated in Appendix III to my doctoral thesis, identifying the signatories any subsequent adherence they may have made to the Treaty of Waitangi etc, and the history of the manuscripts covers such matters, and I understand the text has already been quite widely circulated. The revised printing of 1837 is also extant.

Busby's circular letter to the English

119. Busby's English language circular (of which the final version and an annotated printed draft both survive) does not need to be described in detail here, but it is worth noting a few passages which are somewhat echoed in the Declaration: "His [Thierry's] intention is founded upon an alleged invitation given to him in England by Shungie and other Chiefs, none of whom as individuals had any right to the Sovereignty of the Country, and consequently, possessed no authority to convey a right of Sovereignty to another." Busby tells "his Countymen" (the British) that he feels assured that the insidious promises made will be disregarded by them

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71 Maharaia Winiata, 'Leadership in pre-European Maori Society', *Journal of the Polynesian Society* v. 65 no. 3 (1956): 212-231.

72 See Williams, *Dictionary* (1971) p. 291, under pono.

and that "in the British Resident's opinion", their King "having acknowledged the Sovereignty of the chiefs of New Zealand in their collective capacity, by the recognition of their Flag, [will not] permit his humble and Confiding Allies to be Deprived of their Independence upon such Pretensions." He wishes them, moreover "to inspire both Chiefs and People with a spirit of the most Determined Resistance to the landing of a person on their Shores, who comes with the Avowed Intention of Usurping a Sovereignty over them." And finally:

> The British Resident will take immediate steps for Calling together the native Chiefs, in order to Inform them of this proposed Attempt upon their Independence, and to advise them of what is Due to themselves and their Country, and of the Protection which British Subjects are entitled to at their hands. And he has no doubt that Such a Manifestation will be exhibited of the Characteristic Spirit, Courage and independence of the New-Zealanders as will stop at the outset such an Attempt upon their Liberties by demonstrating its utter hopelessness.[73]

Other international diplomatic documents in Maori, 1834-1837

120. But there are three other documents which should be noted as reflecting the trade between Britain and New Zealand which features prominently in Goderich's letter and which precede these circulars of October 1835. One is the letter from Titore to the King, sent via Yate in 1834, well known from Yate's *Account of New Zealand* (1835), the original Maori text of which is in the missionary's journal:[74]

> Kia Wiramu te Kingi o Engarani
> E Kingi Wiramu
> Tenei ano a hau te hoa o Kapene Harara. Ka tomo te kaipuke – ka tahi ka rere. Kua rongo a hau he Rangatira Kaipuke koe i mua – mau e titiro inga rakau me he pai ranei – me he kino ranei. Ka wawai korua ko Manoao tenei ano nga rakau mou he rakau mo ou kaipuke wawai.
> Ka tahi nei a hau ka wakaro ki te tahi kaipuke moku. He waka maori toku kaipuke – kahore aku mea ke. Ka tahuri te waka maori ma tomo ki nga kapana, nga aha ra nei mo ou.
> Ka utaina ke te "Puwaro", te tahi Meri Pounamu me nga kakahu e rua. He oi tonu to te tangata maori mea. Me he mea pai atu ka ho atu e hau ki a Kapene Karara ?

73 Busby, 'The British Resident in New Zealand to His Britannic Majesty's subjects who are residing or trading in New Zealand' (Placard, 10 October 1835) Paihia: printed at the Press of the Church Missionary Society. The corrected printed draft is at Alexander Turnbull Library MS Papers 6763-1.

74 Alexander Turnbull Library, MS-2544 pp. 116-117.

He oi toku ki a koe
Te Titore

Ki a Wiremu te Kingi o Engarani

121. Another is the unpublished account also in that journal of Yate's interview with the King in January 1836:

> The King asked me many questions about the Geography of the Country, the state of the natives, the effects of Christianity in civilising or whether civilising brought in Christianity. He particularly inquired into the political state of the country — whether the natives were attached to the English, what was the produce of New Zealand — and what kind of barter was most useful. He then entered upon the subject of the conduct of British Sailors towards the aborigines and requested me to tell him of any instances of gross conduct. He remarked that 'as far as his experience of the Navy went he found Sailors both very good and very very bad men, worse certainly when unrestrained could not be.' He then enquired whether the natives would quietly submit to have their country colonised and assured me that it was only for information that he enquired and that as long as he had anything to do with it no more colonies should be added to the British Crown for he had now more than he knew what to do with, or than his shoulders would bear. [. . .] He said to me "I shall expect you, Sir, to write through Sir Herbert Taylor and let me know how you are going on in New Zealand. Write from time to time and if there is anything that I can do to forward your views let me know and it shall be done. I mean what I say Mr Yate, I mean what I say. It is not a matter of course that I say so."[75]

122. In due course the gift from Titore was reciprocated, with a set of armour and a letter to 'His Highness Titore' from Lord Aberdeen:

> King William will not forget this proof of your Friendship and he trusts that such mutual good offices will continue to be interchanged between His Majesty's Subjects and the Chiefs and People of New Zealand as may cement the Friendship already so happily existing between the two Countries, and advance the Commercial Interests and wealth of Both. The King, my Master, further commands me to thank you for your presents, and in return, he desired you will accept a Suit of Armour, such as was worn in former times by His Warriors, but which are now only used by His own Bodyguard. This letter, as well as His Majesty's Royal Present will be conveyed to you through James Busby Esquire, His Majesty's authorized

75 W. Yate, Journal 1833-1845, ATL-MS-2544 p. 176.

> Resident at the Bay of Islands, whose esteem and Friendship you will do well to cultivate, and who, in his turn, will do all in his power to promote your Welfare and that of your Countrymen.[76]

123. The evidence of diplomatic gift exchanges is consistent with the *tuku* tradition referred to at length by Professor Salmond in her evidence.

124. I do not see any need for the purposes of the present work to discuss the various small Wesleyan and Anglican tracts and hymnals, primers and lesson sheets, or the sermon of the visiting Bishop of Australia (**BiM 53**) or the earliest (1839) Roman Catholic printing, all described in *Books in Maori.* Neither is there any further need to comment on the largest production of the Anglicans in 1839, the so called 'Small prayer book' containing the morning and evening prayer services (as noted above) some 47,000 of which flooded the market in 1839-1840 as a prophylaxis against the Romanists (**BiM 56, 72, 73, 74**).

The translations of the OLD Testament

125. I return now the matter of the Biblical translations. Nothing in life is simple, especially when it comes to translation. It is usually imagined that all or most of the Bible was available in Maori by 1840, but the facts of the matter are very different. Almost all of the Old Testament was NOT yet translated in 1840, apart from the few extracts from Genesis and a smattering of extracts put out as reading lessons by the Wesleyans. The only finished and substantial work to have an extensive distribution during 1840 was the Psalter (**BiM 65**, The Book of Psalms, translated from English by William Puckey and printed by Colenso in late 1840, to be used with the Prayer Book and a collection of hymns). Colenso made so many unauthorised changes to Puckey's text that the translator disowned it! It was wholly revised again in 1844 (**BiM 197**). The Roman Catholic Marist mission under Pompallier produced no scriptural texts at all until a complete Gospel of

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76 Letter, Native Department, Auckland, 12 October 1939, to A. W. Mulligan, General Secretary Centennial Committee, from [illegible signature], in ATL-MS-Papers-6770 'Titore Takiri Correspondence' with photocopy of the letter from Aberdeen to Titore. The armour of Titore was described and illustrated by A. Hamilton in 1909 (see bibliography). This armour is at Te Papa (Museum of New Zealand) ME 00185 and the associated file documentation is MU 00001 box 003 item 0059 file 2/2/9. There are several mere pounamu without provenance in the Royal Collection at St James's Palace, but it is thought that two particular mere (RCIN 62810 and RCIN 62811) may be these mere from Titore and Patuone, as they do not appear to have been fashioned using iron tools. I am grateful to Matthew Winterbottom, Research Assistant (The Queen's Works of Art) 14 May 2001, Awhina Tamarapa, Curator Maori Collections, Te Papa Tongarewa, and Roger Neich, Auckland Institute & Museum, for comment.

Matthew became become available in 1847 (**BiM 327**), preferring to print explanations of church doctrine and pastorals.

What Maori could NOT read in Maori in 1840

126. I have thought it useful, therefore to indicate what was NOT available in 1840 and WHEN it became available. The complete work was not finished until 1868 and is complicated by the production of probationary issues in small numbers for use by dispersed consulting missionaries. For example a small part of Isaiah (chapters 49 to 55 only) in 12 pages appeared in 1841 is about idolatry and was produced to combat Roman Catholicism on a scriptural basis, as a sort of confrontational tract (**BiM 87**). 5000 were distributed in April 1841. On his arrival in 1842 Bishop Selwyn disallowed further distribution of detached portions of scripture as tracts and the probationary copies of the Hexateuch (The five books of Moses – Genesis, Exodus, Leviticus, Numbers and Deuteronomy plus Joshua) were not issued until 1847, so they could be printed in London in 1848 (as **BiM 352**). Colenso produced several non scriptural tracts of his own, mostly against Papists and the printing of parts of the Book of Daniel in 1840 was of the same character. The list of complete books is presented – with dates in canonical order for convenience:

Books of the Old Testament (and compendia) with dates of issue

Genesis (1845)

Exodus 1-20 (November 1842) and 21-40 (1846)

Leviticus (1846)

Numbers (1846)

Deuteronomy (1842-1847)

Joshua (parts, chapters 1-10, 22-24, 1843, 1847)

All of the above together (as the Hexateuch, London, 1848)

Judges (1849)

Ruth (1849)

Ist Samuel (1850)

2nd Samuel (1851)

Ist and 2nd Kings (1852)

I and IInd Chronicles (1853)

Ezra (1853)

Nehemiah (1853)

Esther (1853)

Job (1844, tr. John Hobbs, anr. Ed. By Maunsell, part only, 1853, the rest 1854)

Collected texts Ezra to Job (probationary ed., 1854)

Psalms (November 1840, with various later reprints of the Psalter)

Collected texts Judges to Psalms, London, 1855

Collected texts Judges to Nehemiah, London, 1855

Collected texts Esther, Job and Psalms London, 1855

Collected texts Proverbs to Lamentations, (probationary issues, Purewa) 1856

Collected texts Ezekiel to Malachi (probationary issues, Purewa) 1856

To complete the OT a Maori Bible Translation Committee was established with members of both the CMS and the WMMS, working six days a week for three months and finishing 21 October 1857. The translators were William Williams, Robert Maunsell, George Kissling, Thomas Buddle, Alexander Reid and John Hobbs. The printer was Robert Skeen. See BiM 463 for further details. The works included are:

Proverbs

Ecclesiastes

Song of Solomon

Isaiah (part only, chapters 49-55 had been issued in 1841)

Jeremiah

Lamentations

Ezekiel

Daniel

Hosea

Joel

Amos

Obadiah

Jonah

Micah

Nahum

Habakkuk

Zephaniah

Haggai

Zechariah

Malachi (also issued separately and earlier in 1847)

127. Most of the texts were not issued separately but issued as probationary texts in compendia in the 1850s and 1860s, prior to being sent overseas for

commercial printing. For example, Judges to Chronicles was printed in this way (**BiM 438,** 1853), before the texts were at length commercially printed in London in 1855 (**BiM 455, 456, 457**) and Proverbs to Lamentations was printed at Purewa in 1856 (**BiM 463**), along with Ezekiel to Malachi (**BiM 464**) before Proverbs to Malachi was printed in London in 1858 (**BiM 470**). The set comprised the British and Foreign Bible Society edition of the Old Testament, and this was used as an interim edition to which was added the New Testament to produce the first complete Bible in 1868 (**BiM 716**) which was revised and seen through the press by Elizabeth Colenso, George Maunsell and Bishop Selwyn.[77]

The Gospels and Epistles in the New Testament

128. The books most used, of course, were the Gospels and particularly those of Matthew and Luke with their lives of Christ with references to rulers and systems of rule with Kings, Governors, Tetrarchs, Caesars etc. It is from this small number of books that Maori would have learned to some extent of alien political systems. In 1840 the pseudo-historical books of Kings, Chronicles and the Exile stories (David, Solomon, the Assyrian conquest, the Exile to Babylon, Cyrus and the Persians and so forth) were not available for Maori to read, as these did not appear until the 1850s. Maori would have accepted the stories, as in some sense literal, as the missionaries did. The Nativity story in Matthew 2: 1-23 is one of best known and was translated early on, Matthew 1-9 being included in the 1830 compendium. Here Matthew 2: 1 Jesus was born "in Bethlehem of Judaea in the days of Herod the King". But which Herod? It is assumed that it was Herod the Great - who executed his wife and sons fearing a possible rival, the probable source of the fiction of the massacre of the holy innocents in Matthew 2: 16, an event not known to Josephus - although that Herod died in 4 BCE, to be succeeded by Archelaus (Matthew 2: 22), without the title of King but as ethnarch, as Augustus had declined to recognise Archelaus as king. Archelaus died in 6 AD, to be succeeded as the tetrach Herod Antipas who was the Herod of Jesus' ministry.

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77 For further information see *Books in Maori* p. 345 **BiM 716**) and see P. Lineham, 'Tampering with the sacred text' in *A Book in the hand* eds P. Griffith, P. Hughes and A. Loney (2000) pp. 29-45.

129. In Matthew 2: 6, however there are even more indications of political figures: (Quoting Micah 5: 3) "And thou Bethlehem in the land of Judah, art not least among the princes of Juda; for out of thee shall come a Governor, that shall rule over my people Israel." Already we have terms King, Governor, Caesar, prince and the ethnarch Archelaus and in Matthew 14: 1 we hear of 'Herod the tetrach' (also called 'king' at 14: 9). This is Herod Antipas (as the Kingdom of Judea had been split into four parts by Augustus). Pontius Pilate the 'Governor' appears in Matthew 27: 2. Governor or ethnarch is also used in II Corinthians 11: 32, for the commissioner or governor of Damascus, 'ethnarch' being a Greek title for rulers of subject states in the Roman Empire. In Luke 3: 1: "Now in the fifteenth year of the reign of Tiberius Caesar, Pontius Pilate being governor of Judaea and Herod being tetrach of Galilee, and his brother Philip tetrarch of Ituraea and of the region of Trachonitis, and Lysanias the tetrarch of Abilene" are identified.[78] Pilate, also called procurator, but inaccurately, was not a 'Governor' but a Roman Prefect (Praefectus), acting as the army commander and chief justice. Luke also mentions Quirinius, the legate of the Roman Province of Syria, which included the subprovince of Judaea but not Galilee in 6 BC, but mistaking the date and erroneously thinking the census was universal (Luke 2: 1).[79] With such confusion over titles in the scriptures themselves it is hardly surprising if there was confusion in the minds of Maori over who was in charge of whom. Puckey tried to explain unfamiliar words in a list printed at his little mission press at Kaitaia in about 1845 (see **BiM 252** 'Three small sheets explaining biblical terms') which starts with tetrarch: "Tetaraki. He tangata i waiho hei kingi | mo nga kainga ewha | [. . .]"). There are many instances of missionaries being confronted by Maori with queries about unfamiliar words or expressions.

130. Another text of significance is the Epistle to the Romans, chapter 13:

> 1. Let every soul be subject unto the higher powers. For there is no power but of God; the powers that be are ordained of God.

78 See W. R. F. Browning, *Oxford Dictionary of the Bible* (1997) p. 123, 366.

79 Ibidem p. 312

> 2. Whosoever therefore resisteth the power resisteth the ordinance of God, and they that resist shall receive to themselves damnation.
>
> 3. For rulers are not a terror to good works, but to the evil. Wilt thou not then be afraid of the power? Do that which is good and thou shalt have praise of the same.

131. 'Higher powers' here refers to magistrates and the term is used several times in Acts, where Paul has recourse to magistrates: see Acts 16: 39; Acts 17: 9; Acts 18: 17; and Acts 19: 31. In the light of the frequent requests of Maori "Give us a law for this" higher powers, delegated from as source of sovereign power (Caesar in the Roman world, Queen Victoria, through her agents or governors) made good sense.

On the words kawanatanga and rangatiratanga

132. I was asked if there was "any particular meaning of the word 'kawanatanga'" and "any particular meaning of the word 'rangatiratanga'" in these Biblical texts available in February 1840.

Kawanatanga

133. To take 'kawanatanga' first, the word is a neologism established in written form in the 1820s and constantly used thereafter with more than one application. It is derived from the word *kawana*, itself a transliteration of 'governor' and doubtless used by Maori visiting New South Wales as early as the 1790s such as those who visited Lieutenant Governor Philip Gidley King, later Governor of New South Wales (1801), and who hosted Maori at Government House at Port Jackson. 'Governor' is a word is originally from the Latin *gubernator, gubernatoris*, (which originally meant a pilot or steersman in a nautical context, from the verb guberno, to steer) but was transferred to a political context to mean a director, ruler or governor.[80] The idea still occurs in a modern political context e.g. 'the great helmsman' controlling the 'ship of state'. A governor / kawana was not a sovereign, but was one who exercised the powers of a sovereign, duly delegated. In the Australasian colonial context where Governors and Lieutenant Governors existed (as Hobson originally was Lieutenant Governor to Gipps, and Eyre was Lieutenant Governor to Grey), although both could be called 'Kawana' for most purposes. An exception occurs in the case of the formal recitation

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80 See Lewis and Short, *A Latin dictionary* (1880) p. 813

of titles in proclamations where FitzRoy, for example is called 'tino rangatira' = 'Governor in chief' (or a similar expression) of the colony, according to personal circumstances. Because the term had been in use in this specific context for over forty years, and had appeared in print as early as 1824 (see **BiM 6**) it was familiar by 1840. It was probably more familiar in a political context than in a scriptural one by 1840, and that makes it particularly suitable in the context of the Treaty. To use any other word to translate 'sovereignty', frankly, would have been odd.

134. Beneath I set out the start of a proclamation by FitzRoy, 15 January 1845, offering a reward for the capture of Hone Heke. The proclamation demonstrates the use of the expression 'tino rangatira' in a political context, albeit in a slightly later (1845) time period:[81]

Proclamation	Wakarongo
By His Excellency Robert FitzRoy, Esquire, Captain in Her Majesty's Royal Navy, Governor and Commander-in-chief in and over the Colony of New Zealand, and Vice-Admiral of the same &c., &c., &c.	Na te Kawana no Ropata Pitiroi, Ekoia, te Kapene na tetahi o nga Kaipuke Manowa i te Kuini, te tino rangatira o tenei Koroni o Nui Tireni, te Amiria no te aha no iho
Whereas a serious outrage [. . .]	Mo te mea kua tutu kino na [. . .]

135. It is also worth noting that there are many words and phrases in Maori which are homonyms (the same written word meaning different things in different contexts) and Maori were well aware of the contextuality of expressions and of individual words. Take the word 'Ika' for example, normally meaning 'fish', but with a figurative meaning (see Williams, *Dictionary of the Maori language* (7th ed, 1971) p. 76 of 'prized possession' transferred as 'Ika a Ngahue' and meaning *pounamu*. Other meanings for 'Ika' given in the same work include 'fighting man, warrior' and 'victim' and 'cluster, band, troop, heap' and there are numerous cognate expressions (e.g. Ika a Maui meaning not 'North Island' but rather the Milky Way). 'Tuku' is another word of this sort. Everything is influenced by context. As Alan Ward has said, it is unwise to pick words out of their intended

81 Plate 7 in Parkinson, 'The Maori language and its expression in New Zealand Law ' (2001) from a copy in ATL = **BiM 241.** Note: almost all the words used are neologisms, and that 'tino rangatira' is used exclusively for the Governor.

contexts. I agree with Mr Samuel Carpenter in the interpretation he gives to the use of the expression 'kawanatanga' by Henry Williams in his translation of the Treaty of Waitangi.

> The predominant view of the 1830s, therefore, was that all true civil governments were, by definition, sovereign governments. The existence of representative institutions and courts signalled the presence of a sovereign authority according to the law of nations (or 'international relations'). Even the English text of the Treaty reflected this view. Article one brought about a cession or surrender of 'all the rights and powers of Sovereignty' which the Confederation and individual rangatira exercised or possessed, or were 'supposed' to exercise or possess. The qualification is important because it reflected the view that Maori sovereignty, rule or government existed on unstable ground, not having a proper institutional basis. Hence, the very purpose of obtaining the sovereignty was to empower Victoria to establish 'a settled form of Civil Government' or 'the necessary Laws and Institutions' (preamble). Obtaining sovereignty was the necessary (legal, moral, humanitarian) precondition to establishing the government. Viewed in this light, kāwanatanga should be understood as the most appropriate word to describe the substance of the cession of sovereignty in article one. (Carpenter report p. 161)

136. I endorse this view wholeheartedly, and have no doubt that Henry Williams, Hobson and Gipps all took the same view of the matter, as reflected in their contemporary statements. On the matter of linguistic considerations I agree with Professor Salmond when she stated:

> The words kawanatanga in the Preamble and Article 1 of Te Tiriti, rangatiratanga in Article 2, and kingitanga in the Declaration of the United Chiefs of 1835 are all constructed alike. A stative referring to a status or role – kawana (Governor); rangatira (chief, aristocrat); or kingi (King) takes a nominalising suffix (-tanga) to describe the abstract noun describing the qualities of such a position in society, with its associated powers, obligations and privileges. Rangatiratanga is thus generally translated as 'chieftainship', kingitanga [perhaps the closest transliterated equivalent for 'sovereignty' {*Although I disagree here, holding that sovereign power in the British constitution is in fact parliamentary, 'the Queen in Parliament'* – PP} be translated as 'kingship' and in strict parallel kawanatanga in 1840 is best translated as 'governorship' [the equivalent given by some of the contemporary European translators, and by William Martin, the first Chief Justice of New Zealand] or of the state of having a governor with his privileges, obligations and powers. (Salmond p. 23)

137. But again I have to disagree with Professor Salmond's interpretation of the texts which she goes on to cite. The Brisbane proclamation using 'tino rangatira' (literally 'high chief') as a gubernatorial title, was written by the Rev. John Gare Butler, who had an extremely poor understanding of Maori after living at the Bay of Islands from 1819 to 1823, when Marsden removed him. A glance at his text (only one example of which survives) shows that. It seems that it had not occurred to him to use a neologism.[82] 'Kawana' was adopted by Yate as a neologism in his Church Catchism of 1830, and the word then appeared consistently thereafter as the catechism was in constant use. To say, as Professor Salmond does at page 24, that kawanatanga "must have been an unfamiliar term to many of those involved in the Tiriti translations" is quite mistaken, and the use of the term in the Bible (most of the Old Testament of which had not been translated by 1840) is irrelevant as it is in the Book of Common Prayer that the expression occurs most frequently, including in the state prayers. Here, as in the prayer for the Maori Chiefs in the Maori prayer book, God is addressed as the "Kawana o nga piriniha" (the Governor of princes).

138. From these and other secular and ceremonial references we can be sure that the neologism had over a decade of use and was well understood by Christian chiefs in 1840. Professor Salmond's remark that the 1835 Declaration "is perhaps the best and most reliable evidence of the semantic relationships between these terms" (rangatiratanga, kingitanga, kawanatanga) is not correct either, because the Declaration was not widely circulated – probably only given to visitors such as FitzRoy and Du-Petit Thouars and so forth – and only 60 copies of the first issue were printed. There is no evidence that the printed text of the Declaration was ever circulated to Maori. As the printing contained a number of errors in the spelling of chiefly names the copies were probably withdrawn when the second issue appeared a year later. Contrast that with the small prayerbook of which 20,000 were in circulation by the end of 1840 and 47,000 by 1842.

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82 I have discussed Butler's poor grasp of Maori, confirmed by the criticisms made by George Clarke, who knew Butler personally, in the last part of my article 'The Maori grammars and vocabularies of Thomas Kendall and John Gare Butler' Part 4: Butler's 'New Zealandic vocabulary, 1839-41', in *Rongorongo studies* v. 14 no. 1(2004): 20-37

139. Professor Salmond then goes on to say that on the basis of her evidence about the meanings of 'kawana', of 'rangatiratanga', of 'kingitanga' and of 'mana' that "the best of the translation equivalents in 1840 for sovereignty" as defined in Blackstone's *Commentaries* would be *mana, kingitanga* or a combination of both as *'ko te kingitanga ko te mana'* expressed by Blackstone as "a supreme, irresistible, absolute, uncontrolled authority" or, in other words a *despotic* power (Salmond page 24). Given that the sovereign power in the United Kingdom was not despotic, that the Queen was the sovereign but she was not an absolute monarch, and that her powers were constrained by law and by parliament, as a constitutional monarch, Professor Salmond's analysis is, with respect, wrong. Absolutism had gone out with the Stuart dynasty when the Glorious Revolution had deposed James II and invited in another sovereign, adopting William III and Mary II as joint monarchs in 1688. In future no sovereign of England would hold the freedom (Henry Williams's 'rangatiratanga') to choose his or her personal religion, because sovereign power was conditional upon allegiance to the Church of England and mandated by the Coronation Oath Act of 1688.[83] Both Hobson and Henry Williams were doubtless aware of this, and it makes all three suggestions made by Professor Salmond (rangatiratanga, kingitanga and mana) ineligible. By and large, Old Testament texts are of no use here.

140. I find it curious, therefore, that Professor Salmond states at page 24 that "*Kāwanatanga* ... must have been an unfamiliar term to many of those involved in the Tiriti transactions" but later states(at page 28):

> "By 1840, one must conclude that Northern rangatira knew a great deal about kings and governors, whether by repute or from personal experience. This included a number of the rangatira who took part in the Treaty deliberations. In particular, they were well aware that a Kawana was subordinate to a Kingi or kuini and that kawanatanga was by implication a subordinate or delegated power."

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83 The oath is set out in the Coronation Oath Act, 1689, 1 Will & Mar, c 6. (See *The Law & Working of the Constitution: Documents 1660-1914*, ed. W. C. Costin & J. Steven Watson. A&C Black, 1952. Vol. I (1660-1783), p.57-9, which contrasts the oath of 1689 with that of 1660). The 1689 oath requires the monarchs to assent to the following oaths (amongst others): "Will You to the utmost of Your power Maintaine the Laws of God the true Profession of the Gospell and the Protestant Reformed Religion Established by Law? And will You Preserve unto the Bishops and Clergy of this Realme and to the Churches committed to their Charge all such Rights and Priviledges as by Law doe or shall appertaine unto them or any of them."

141. I agree. That must be a good practical reason why the word 'sovereignty' or some bizarre transliterated Maorification of it ('houereingitanga'?) was avoided in the interests of intelligibility, to employ 'Kawanatanga' instead.

Rangatiratanga

142. I was asked if there was "any particular meaning of the word 'rangatiratanga'" in these Biblical texts available in February 1840. Obviously 'rangatiratanga' was a Maori expression not a neologism and so we need to start with the words rangatira and rangatiratanga as they were used when the words were first written down in the word lists and vocabularies of the 1820s. I will then go on to consider different uses of the word in a non-biblical context, the Declaration of 1835 before considering what the word might be used for in a Biblical context.

143. It is necessary here to say something further about the mission struggle with the language in 1820s, to explain why progress was so slow, and painful – as seen in the extracts of William Williams's journal from 1826 cited above. During my work for my thesis and *Books in Maori* I did a great deal of work on the early vocabularies including the vocabulary of Thomas Kendall in the 1820 *Grammar and vocabulary of the language of New Zealand* and Kendall's 1827-1831 revision of that work, which had been lost for some 170 years but which I rediscovered in 1996.[84] Kendall had had printed a small primer *A Korao no New Zealand* (Speech from New Zealand) in 1814 but it was realised at once that it was inadequate; only one copy is extant **(BiM 1)**. He produced a manuscript list of terms for parts of the body and other practical matters in 1816 and attempted a few sentences "Ire mi = come to me" is his rendition of 'Haere Mai!' but little advance was made until he returned to England with Hongi and Waikato for a brief visit in 1820 to work with the great linguist Samuel Lee. Thus far not even the sounds of words had been understood accurately, but Lee worked out a viable grammar and syntax, while Kendall added to his vocabulary to produce the first *Grammar and vocabulary of the language of New Zealand* (**BiM 2 to 4**). The vocabulary was written in English, of course, to assist the instruction of English speakers, but did include some phrases with translations and some

84 These documents are described in a series of articles in the now ceased periodical *Rongorongo studies: a forum for Polynesian philology*, v. 11 no 1(2001), 11 no, 2 (2001), 13 no. 2 (2003) and 14 no. 1 (2004)

examples of Maori songs (waiata) and a few religious and scriptural passages such as the Lord's Prayer and the Creed. There were also some off-printed passages in Maori only, issued as reading lessons for students at the mission Schools (**BiM 5,** only one copy of which survives, with an example of a Lesson and the Lord's Prayer illustrated in *Books in Maori* p. 29).

144. Of particular interest to us here, of course is Kendall's use of the term *rangatira*, given as "Ránga tíra; A gentleman or lady. Proper name" (*Grammar*, (1820) p. 200). The same expression is used in the revised (but unpublished) vocabulary Kendall was working on at the time of his death in 1832. Here *rangatira* means a free-born Maori, not a *pononga* or *taurekareka* or (to use another Maori neologism of the time), a 'kookee' sort of person, a menial person to prepare food. A modern *Concise Oxford Dictionary* still gives the British equivalents: "Gentleman: man of chivalrous manners and good breeding; man of good social position; man of wealth and leisure." The term 'esquire' is also pertinent "Title appended to name of one regarded as a gentleman by birth, position or education. Or name of any man in formal use or in address of letter where there is no prefixed title", and hence Busby is referred to as "James Busby Esquire" in Lord Goderich's letter to the chiefs, announcing the Resident's appointment in 1833. Conscious of his status as Resident, Busby is particular about it, especially as the chiefs with whom he has to deal are higher in the social scale, even to being 'sovereigns of their soil'. And so also it is that when the Earl of Aberdeen writes to Titore to thank him on behalf of the King for the gifts, Aberdeen consciously writes to "His Highness Titore" through "James Busby, Esquire, His Majesty's authorised resident at the Bay of Islands". The style has been abandoned in the last half century but it was still in use in 1939, a century after Waitangi when an official of the Native Department in Auckland wrote to "A. W. Mulligan Esquire, General Secretary of the Centennial Committee" in Wellington, enclosing a copy of Aberdeen's letter of January 1835. These days the word gentleman is seldom used except as a courteous synonym for 'man' usually in the household of a sovereign or in expressions such as 'gentleman usher'.

145. The 1820 texts on cards for Kendall's students are also given in English in the *Grammar* of 1820 and comprise the 'Familiar dialogues between a

Christian Missionary and his pupil' set out in the form of a catechism (pp. 114-124). There are a few other manuscripts with phrases in Maori set out in the years 1821 to 1822, when Kendall was dismissed, but they tend to dwell on prosaic matters e.g. "e utu aha ma nga kete kapana? – What is the price for these baskets of potatos?" and do not tell us anything useful about Biblical texts. When he dismissed Kendall, Marsden told the mission that:

> as the natives were so good at learning English and could pronounce the vowels so well according to our custom, I thought it advisable to retain the English pronunciation of the vowels, as this would greatly facilitate the acquirement of the language. The missionaries would soon learn to speak and write it while under the present system they never could. I also recommended that all the English terms, for such things as the natives had not seen, should be introduced into the New Zealand language; that a sheep should be called a sheep, a cow a cow etc. If we did not do this the New Zealanders would give them names by comparison, and it would probably require three or four words in some things to express what we do in one.

146. Fortunately this recommendation was rejected by the missionaries, now under the leadership of Henry Williams and the orthography selected by Samuel Lee was restored at the end of 1824. Neologisms continued to be added by Maori themselves: sheep became 'hipi', 'cow' became 'kau' and the already coined word for potato (kapene, from 'captain') was retained because potatos came from the captains of trading vessels. Both Kendall and his rival John Butler were out of the mission in 1823 but Butler, in Sydney, did translate the proclamation of Governor Brisbane previously referred to, where the expression 'tino rangatira' first turns up as a mark of respect, before reappearing in the title of Goderich and successive Governors.

147. *Rangatira*, in the modern sense, as explained in the Williams *Dictionary* is simply 'chief, male or female', but with some of the same honorific distinctions as noted by Kendall and the missionaries: "2. Master or mistress; 3. Person of good breeding ("he haka ano ta te rangatira, he haka ano ta te ware") and, as an adjective 4. (a) Well born, noble, ("Ka mahue te wahine rangatira, me nga tamariki"). *Rangatiraranga* is a cognate expression given as 'evidence of breeding and greatness' and is a personal attribute

without alternative meanings as in "Ko te rangatiratanga o te wahine nei, he atawhai ki te tangata i tona iwi".

148. The earliest written usage of the expression 'rangatiratanga' that I can trace is in 'The Lord's Prayer in the New Zealand tongue' **BiM 7** a single sheet printed in England in 1826, the doxology with "E rangatira tanga nui tou e haha e pai" and so uses the term 'rangatiratanga' split into two words. And here 'rangatiratanga' certainly translates 'kingdom' of God. But 'evidence of breeding and greatness' is not the correct sense here, but rather a clumsy attempt at 'Chieftainship', and chieftainship does not make much sense in reference to the power and glory of the Almighty. Nevertheless in the following year, 1827, in the Anglican compendium **BiM 9** page 24 we find 'tukua mai tou rangatiratanga' for 'thy kingdom come', which can only be a supplication for the divine power. Would "tukua mai tou kingitanga" have been better? I think not, as *Kingitanga* was probably already associated with the secular power of King George III and his successors. Although Cook had claimed the islands for the King in 1769, it was already clear by 1827 that George IV was not the 'King of New Zealand'. A prayer to God is no place to invite intervention by an external sovereign power, even a friendly one! This, then, I suggest may be why *kingitanga* would not have been deemed appropriate, leaving the overlordship of God needing some other term. In the absence of another alternative 'rangatiratanga' became established. And once established it stuck, in the way that expressions in sacred texts did.[85]

149. It may be the case, therefore, that *rangatiratanga* is one of those words which has taken on a new and specialised meaning in a particular context, religious discourse. So long as there was no confusion between the 'rangatiratanga' of God in a religious context and the 'rangatiratanga' of secular chiefs in another, the same term might be used in two contexts without confusion. An analogous case may be that of the term *ariki*. The modern meaning of

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85 See P. Lineham, 'Tampering with the sacred text, the second edition of the Maori Bible' pp. 29-45, in A book in the hand, edited by Penny Griffith, Peter Hughes and Alan Loney (Auckland: AUP, 2000). The edition of 1868 had become established and the 'improved' version of 1887, by Maunsell, aroused deep hostility, with poor sales attributed to changes in the text. A similar reaction had occurred when wh was substituted for w in the 1852 reprint of the New Testament. Colenso commented: "Two great causes which have operated against ready disposal [of the 1852 edition of the NT] are the highly unnecessary alteration of texts in a people sensitive to ancient songs, or recitals of histories, so a great difficulty with the new edition, and also all the new little particles, ra ra hoke, na e hoki, neo, ro pea which always sound so sweetly to a native ear having been expunged."

ariki is the first-born male or female in a family of note and it has a distinctive significance for *whakapapa*, with related expressions *ariki tamaroa* and *ariki tapairu*, but earlier it seems to have had a pan-Polynesian special sense in the stratified cultures of Hawaii, Tonga and Tahiti (see Professor Salmond, who has written extensively in this area). At least by the 1820s however, that old culture was disappearing, although the word appears in Kendall's vocabulary in 1820 as [Te Ariki] "A representative of God, a priest" p. 166 "Tói Ariki; A ceremony or prayer of the Ariki. A person's name" p. 215. The old time *ariki* – perhaps finished off in the musket wars – vanish and *ariki* came to have a new and specialised meaning which was fundamentally incompatible with the old one: that was the deliberate appropriation of the term for 'Ihu Karaiti te Ariki'. After 1833, in Te Tai Tokerau, 'Te Ariki' meant only one thing. Priests were *mihanere* (Christian) or *tohunga* (traditional priest healers and experts) and the old *ariki* became another class of *tohunga.*

150. The expression 'wenua rangatira' used by Williams for 'independence' in Article 1 of the Declaration (See Carpenter pp. 73-74) is said to mean, according to Williams's *Dictionary* (page 323) something quite different: a "state of peace" (citing as authority *Nga Mahi o nga Tupuna*). In this context, I find it difficult to see that 'rangatiratanga' as the practical managing authority of the various chiefs, which everybody understood, can reasonably be conflated with the utterly foreign concept of 'independence'. Chiefs were 'independent' in their individual relations, but capable of uniting for temporary purposes such as *taua*, and were in fact interdependent in trading and commercial senses along with the shipping pakeha. The 'rangatiratanga' spoken of in the "declaration" is something else again and is more closely associated with a new and specifically Christian concept of freedom. This is figurative language and who knows what such expressions mean, and to whom? It may well be, as Mr Carpenter suggests that Henry Williams drew the expression 'rangatiratanga' out of John 8: 31-32 and Galatians 5:1 which talk of freedom in Christ, in contrast to the servitude / ponongatanga of a slave-based society, which was to be expected if 'chief' Thierry turned up.[86]

86 Thierry was assumed to be a Roman Catholic, but in fact was not.

The passage in John, in the 1838 text, which would have been available to Maori, is as follows:

> 31 ¶ Me i reira ka mea atu a Ihu ki nga Hurai i wanapono ki a ia, Ki te mau tonu koutou ki tatou kupu, he tino akonga ano koutou naku;
>
> 32. A e matau koutou ki te pono, ma te pono koutou e wakarangatiratia.
>
> 33¶ Ka mea atu ratou ki a ia, He wanau matou no Aperahama, kaore ano matou i wakaponongatia ki tetahi tangata; he aha tau e mea, e wakarangatiratia koutou?
>
> 34. Ki atu ana a ihu kia a ratou He pono, he pono ka mea atu a hau ki a koutou, ko te tangata katoa e mahi kino and, he pononga ia no te kino.
>
> 35. Ekore ra te pononga e noho tonu it e ware: ko te Tamaiti ia e noho tonu awa.
>
> (Authorised version: (31) Then Jesus said to those Jews which believed on him: If ye continue on my word, they ye are my disciples indeed. (32): And ye shall know the truth, and the truth shall make you free. (33): And they answered him, We be Abraham's seed, and were never in bondage to any man, how sayest thou, Ye shall be made free? (34): Jesus answered them, verily, verily I say unto you, Whosoever commiteth sin is the servant of sin. (35): And the servant abided not in the house for ever, but the Son abideth ever.)

151. Note here that there is a distinction between 'servant' (pononga) and slave (taurekareka) in old Maori which had become obsolete in the late 19th century when 'slavery' = taurekarekatanga (if there is such a word) had been eliminated, but people still kept employees as servants. There is a further reference to 'pononga' in the sense of servant in Matthew 26: 47-57, where the servant / pononga of the Chief Priest is mentioned in a well known passage on the arrest of Jesus in the Garden of Gethsemene: "47: ... I haremi i te tino tohunga karakia, i te kaumatua o te iwi." (... from the chief priests and the elders of the people) and verse 51: "Na wakamarokia ana te ringaringa o tetahi o nga hoa o Ihu, ka unu i tana hoari, haua ana kite pononga i te tino tohunga karakia, a motu rere tena taringa" (And behold, one of them that were with Jesus stretched out his hand, and drew his sword, and struck a servant of the high priests and smote off his ear).

152. I do agree with Mr Carpenter that in translating 'kingitanga' (kingship) in the Declaration, for 'sovereign power and authority' Williams was correct and the translation is obvious. I also agree with him that in the declaration

'mana' for 'sovereign power and authority' was a natural choice, notwithstanding the fact that at that time there was not in fact a single source of power. In a possible ideal future the tribes might have unified. But as Mr Carpenter points out: "Mana was not the Maori equivalent of Kingitanga" (page 83) because a king was a person who exercised sovereign power or supreme authority and mana was the authority itself: "If an equivalent had been sought by the translator, 'Rangatiratanga' was the obvious choice, but it was not used, perhaps for the reason that it had already been used in Article 1 for Independence." (page 84). There simply was no equivalent expression for 'sovereignty' or supreme power capable of being exercised by an as-yet nonexisting collective of 'sovereign chiefs'. If one concept was needed to marshal opposition to Thierry, then freedom of religion or freedom from subjection might well provide it, using scriptural precedents. I conclude, therefore, that in 1835 it is most probable that 'rangatiratanga' (in the Christian context) meant more than one thing and most immediately for Henry Williams, in 1835, it probably meant 'freedom from alien' (and possibly Catholic) control. Hence I am inclined to accept the views of Mr Carpenter when he writes that in the Wakaputanga:

> 'Rangatiratanga' denotes a state of true human and spiritual freedom. In Te Kawenata Hou it often represents 'the kingdom of Heaven' ('te rangatiratanga o te rangi') or 'the kingdom of God' ('te rangatiratanga o te Atua'). Although in this sense, the word rangatiratanga meant the rule or reign of God, it also referred to a state in which all human beings were rangatira – free from sin, free to be children of God. This was partially realized in this life, only fully realised in heaven or in the next world.[87]

153. In this context a passage from the Epistle to the Romans (Romans 8: 21) is important: "Me te awangawanga ano e waka orongia te mea hanga i te ponongatanga o te mate, kia ora ai ki te kororia nga Tamariki o te Atua."

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87 D Coates, *The Principles, Objects, and Plan of the New-Zealand Association Examined, in a Letter to the Right Hon. Lord Glenelg, Secretary of State for the Colonies* (London: Hatchards, 1837), p 41. Coates argued that the New Zealand mission should be left alone and colonization prevented for fifty years to enable the diffusion of 'the blessings of Christianity, and its inseparable fruits – civilization, and social well being'. Cited by Carpenter, p. 79. As Carpenter notes, "In a later translation of the New Testament, Romans 8: 21 described this end state in this manner: 'Tera te mea hanga e whakaateatia mai i ta te pirau hakataurekarekatanga, whakarangatiratia ake ki roto ki te kororia o nga tamariki a te Atua'. [. . .] The use of the root word 'taurekareka' for 'bondage' in this 1868 translation is stronger than the word 'pononga' used in the 1837 translation passages cited above, but the use of 'whakarangatiratia' for liberty or liberated is consistent with the 1837 translation.

(Because the creature [or creation] itself also shall be delivered from the bondage of corruption into the glorious liberty of the children of God) (Authorised version). Incidentally, it does not matter that the Thierry crisis was in 1835 but that the text was printed in 1837 and published in 1838, as the texts from John and Galatians had been translated years before (Galatians in July 1833, according to William Williams's journals). The passage from Galatians referred to (Galatians 5: 1 in the 1838 publication) is:

> 1. E tu ra koutou i te rangatiratanga kua wakarangatiratia nei tatou e te Karaiti a kei puritia ano hoki kou tou e te herenga o te ponongatanga.
>
> (Authorised version: Stand fast, therefore in the liberty wherewith Christ hath made us free, and be not entangled again with the yoke of bondage.)

154. The passage then goes on, irrelevantly for the purposes of 1835, to talk about circumcision, and contrasts the works of the flesh with those of the spirit concluding with the admonition that sinners will not inherit the Kingdom of God: "ako ratou e mea ana i te penei ekore e wiwi ki te rangatiratanga o te Atua" (Galatians 5: 21). Here the idea of 'rangatiratanga' is clearly literary and not political, and I am confident that Maori in 1835 would have seen the difference. To conclude Mr Carpenter's summary observation:

> These biblical uses of 'rangatira' and its variants depart from concepts of the law of nations or an 'independence' or 'freedom' seen in merely secular terms. Rather, a British Protestant language of liberty that was inherently theological in tone can be seen as latent within both texts of He Wakaputanga. This liberty was fundamentally a 'spiritual' one, conceived as a relationship with the Creator restored through the atoning work of Jesus Christ on the Cross. In being regenerated by the atoning work of the Cross, by the action of the Word of God and the Spirit of God, individuals and communities would be enabled to lead healthy, moral, and productive lives. The 'fruit' of this process would be civilization, that is, social well being, peace, and material prosperity.

155. In the secular business of administering the needs of Maori communities, however, *rangatiratanga* probably meant something else more akin to *rangatiratanga* in the modern sense of self management, which has its own

mana (authority). I very much doubt that either missionaries or Maori confused the different concepts.

Summary reflections on the terms 'kawanatanga' and 'rangatiratanga

156. It follows from the observations on language use in the preceding paragraphs, that 'kawanatanga' has a quite clear meaning in 1840 and meant the things associated with the rule and authority of governors and also that these matters were understood by Maori from both a current secular political context and from historical precedents conveyed by translated New Testament scripture, at least in broad outline.

157. The situation with the expression 'rangatiratanga', however, is much more ambiguous because that word and its associated expressions 'rangatira' and 'tino rangatira' had multiple meanings for Maori, and care needed to be taken to establish what meant what in particular secular and religious contexts. While this might have been fairly clear to communicating Maori at the time it is anything but clear to present day commentators, in no small part because of a general lack of familiarity with scripture and its interpretation in the present. This arises in large part because the legal context in which these matters tend to be discussed is quite independent of the long-fostered belief among Maori that the Treaty of Waitangi arrangement was not so much a matter for legal scrutiny, as a solemn and sacred covenant between Maori and the Crown which the Crown has wilfully breached. And that covenantual agreement was crucially guaranteed by its effectual creator, Henry Williams, who advocated the cession of sovereignty using a mixture of political and spiritual language in terms which would have been more evident at that time than they are today in a largely post-Christian world.

ADEQUACY OF THE TRANSLATION OF THE TREATY OF WAITANGI INTO MAORI

Introduction

158. The question asked of me by Crown Counsel is whether I agreed that in the translation of the word 'sovereignty' in that document it was necessary "to separate ownership from authority".

159. This section of my evidence addresses a number of questions concerning the adequacy of the translation by Henry Williams into Maori of the Treaty. The questions (in sum) are:

159.1 In translating the word 'sovereignty', was it necessary to separate ownership from authority?

159.2 Were the alternative words proposed by Professor Salmond ('mana', 'kingitanga', 'ko te kingitanga ko te mana', 'arikitanga' and 'rangatiratanga') better than "kawanatanga" as a translation for sovereignty?

159.3 What would Maori have understood the term "kawanatanga" to have meant? Was it an appropriate translation for the word "sovereignty"?

159.4 Was Henry Williams recognised as one of the better translators among the missionaries? Why was he asked to translate the Treaty?

In translating the word 'sovereignty', was it necessary to separate ownership from authority?

160. It is quite clear, from both the proclamations of Governor Gipps, issued at Sydney after Hobson's departure for New Zealand and from the second of the proclamations issued by Hobson on his arrival at the Bay of Islands and printed and published by the mission printer Colenso, that the Crown disclaimed ownership of the land of New Zealand.

161. In Sydney, having learned of Hobson's preparations for New Zealand, Dr Samuel Martin (a Coromandel land claimant) and others called a public meeting "with the view of ascertaining the intentions of the new Governor regarding our lands", and became part of a deputation to Hobson who "appeared nervous and embarrassed – evidently most anxious to impress us favourably, but fearful at the same time, of committing himself". The deputation then called another meeting and passed a congratulatory address "assuring him of their ready assistance and co-operation in forwarding the objects of his mission". Martin strongly supported the address and personally presented it to Hobson, who had been "highly flattered with the

compliment paid to him".[88] After Hobson sailed, the release of three proclamations by Gipps on 14 January, arresting further land sales, made Martin suspicious, as well he might be, that a deep game was being played: "It is difficult to contend against a government; but it is, on the other hand, almost impossible for a government to maintain itself in New Zealand with a disaffected European population, which they are sure to be, if their lands and properties are rudely interfered with."[89] Felton Mathew wrote in a letter to his wife Sarah on 23 January "I have been this morning reading the Proclamations which are to appear in this weeks Gazette & two which are to be published by us in New Zealand", showing that the texts were premeditated in Sydney before Hobson's departure.[90] The arrival of Hobson at the Bay of Islands, on 28 January 1840, required the immediate publication of official proclamations to announce his assumption of office and to advise that he had entered upon his duties. As he was the only available printer, William Colenso found that he was called upon to print these official documents. The manuscript of the first, that announcing Hobson's assumption of authority, has not been traced, although a few printed copies survive.[91] The second proclamation, which simply confirms that issued by Gipps, warning that land claims would be investigated and not necessarily confirmed, survives both as the holograph with Hobson's sign manual, and as printed specimens, several of which the printer sent to the CMS.[92]

162. This proclamation is concerned with property, which the Crown disclaims ownership of but which the Crown will, by means of a commission, regulate ownership of. The proclamation is a warning of future intentions, to the

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88 S. Martin, *New Zealand in a series of letters* (1845) letter iv, pp. 79-81, passim.

89 Martin, ibidem p. 83. These are the three proclamations of 14 January enclosed in Gipps's despatch of 9-10 February 1840, in GBPP 1840 (560) pp. 2-3. The first proclamation extended the territory of New South Wales to cover New Zealand. The second announced Hobson's appointment as Lieutenant-Governor, under Gipps, and called "upon all British Subjects to be aiding and assisting the said William Hobson, esq., in the execution of his said office". The third, previously quoted in Chapter 7, announced that the Queen would not acknowledge as valid any titles to land "which either has been or shall hereafter be acquired" there from the native chiefs, declaring them "null and void' and "neither confirmed nor in any way recognised by Her Majesty".

90 Felton Mathew to Sarah Mathew, 23 January 1840, in 'Journals of Felton and Sarah Mathew, 1840' ATL-MS-1620 (a typescript copy of the MS at AP).

91 Archives New Zealand, Colonial Office papers at National Archives (United Kingdom), United States National Archives, Mitchell Library, Sydney. There is no printed example in the National Library of New Zealand.

92 The holograph, by Freeman, with the sign manual of Hobson and the countersignature of Cooper is in the Alexander Turnbull Library, and the printers file copy is with it (ATL fMS-Papers-2227).

Europeans. Meanwhile, as the second article of the Treaty will later say, all property belongs to the chiefs, unless and until they agree to sell. The separate matter of sovereign authority is a matter between the Crown and the chiefs, and does not concern the Europeans. Sovereign authority (Article 1) and ownership of property (Article 2) are designedly separated.

163. The text of the first article as received by Henry Williams for translation said:

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

164. There is nothing in this to say or to imply that the Crown 'owned' the land. In the second article the Queen guarantees possession of all lands and other properties which they possess so long as they wish to possess them but they yield the exclusive right of pre-emption, no mention being made of sovereignty. The point was to deal with the issue of 'sovereignty' separately from the more vexing question of who now owned what. The Queen, personally, did not 'own' New Zealand, and had already, by the proclamation of 30 January, disclaimed ownership on behalf of her subjects, including those settled in New Zealand and claiming to be 'sovereigns of the soil' on the basis that they had made purchases from the original 'sovereigns of the soil' i.e. various rangatira.

165. Consequently I ***do*** agree that in the translation of the obscure word 'sovereignty' (an alien concept for the chiefs), it was necessary to distinguish the ownership of property (article 2) from political authority (article 1). That was effected by naming the latter as 'kawanatanga', in a sense which was already familiar to the chiefs who had been involved with the Declaration of 1835, and separating it linguistically from the expression 'te tino rangatiratanga o o ratou wenua o ratou kainga me a ratou taonga katoa' as taken directly from Henry Williams's holograph manuscript of his duplicate translation of the Treaty, authenticated by the cipher of Hobson's secretary

James Stewart Freeman, and contained within the duplicate despatches at Archives New Zealand.[93] An example will help to clarify this murky issue.

Nopera Panakareao and Richard Taylor's deed for Muriwhenua

166. A contemporary deed and some contemporary letters help to illustrate the relationship between ownership and sovereignty at this time. Many of the deeds drawn up at Kaitaia by Joseph Matthews, on behalf of Nopera Panakareao, as vendor, have common features. The Kaitaia chief was quick to exploit the services of the missionary as his amanuensis. The first of them is Matthews's own private land deed, dated 20 July 1835, being preceded by one of 17 March 1834 for the new mission station at Kaitaia itself.[94] The March 1834 deed uses wording which would become conventional: "I Panakareao and tribe have sold to Mr Puckey for the Church Missionary Society a piece of land with all the trees on it and everything else that grows on it and everything underneath it" ('te tuku o matou e Pana Kareaoma ki a te Paki mo te Hunga o te Hahi Mihanere tetahi wahi wenua oti tonu atu me nga rakau katoa me nga aha noa katoa e tupu ana i taua wenua me na mea katoa i raro i taua wenua').[95] Witnessed by Henry Williams, Richard Davis and Joseph Matthews this became the model for subsequent deeds, including that of Richard Taylor in 1839. Richard Taylor's deed (in Maori) for the 'Te Aupouri lands' is dated 20 January 1840. This was just a week after Gipps's proclamation of 14 January, which declared that speculative claims would not be recognised by the Crown, but this was not known at the time.[96] The manuscript of this deed is in John White's papers in the Alexander Turnbull Library, as is Taylor's signed English language copy of the deed.[97]

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93 Archives New Zealand, G series 30/1 leaves 25 to 27,

94 Deed 6 = OLC 328, and Deed 4 = OLC 675, respectively, in Turton, *Maori deeds* (1882).

95 See Evelyn Stokes', *A review of the evidence in the Muriwhenua land claims* (1997) pp. 112-116 for discussion of the context of the deed.

96 E. Stokes comments, in *A review of the evidence in the Muriwhenua land claims* (1997) p. 165: "This proclamation firmly placed the responsibility for investigation of pre-Treaty land transactions with Governor Gipps of New South Wales, who would appoint commissioners for that purpose. [. . .] The reason for this division of responsibility was to remove Hobson from the direct hostility of settlers in New Zealand by appointing independent commissioners, because it was expected to be an unpopular measure. Hobson was therefore left to get on with the important task of negotiating a treaty of cession with the 'native chiefs', the rangatira Māori." And indeed the opprobrium for interfering with pre-1840 deeds fell initially on Gipps; but when Normanby (Secretary of State for the Colonies) cut the new colony of New Zealand adrift from New South Wales in 1841, the opprobrium fell back on Hobson.

97 John White papers, ATL MS Papers-0075-106C. This latter document indicates, however, that although the deed was prepared on 20 January 1840, it had been negotiated and agreed upon during Taylor's earlier visit to Kaitaia, in November 1839.

> Attend all men to this Deed which has been written by us Noble Panakareao and others the chiefs of the Rarawa on one side, Richard Taylor, clerk, MA on the other side. This deed has been written on the 20th of the days of January in the year of our lord Jesus Christ, one thousand eight hundred and forty / Jan 20 1840. This deed has been written and delivered by us Noble Noble [sic] Panakareao and others on one side Richard Taylor on the other for a real sign to us and to all men also. There has been delivered by us Noble Panakareao and others to Richard Taylor a portion of land to keep forever, and all the trees and whatsoever is growing upon that land, and all things below that land, and the chieftainship and power upon that land. The principal names of that land are Muriwenua, Kapowairua, the Reinga. These are the boundaries . . .[98]

167. The area was sold for $1750 (including $500 in cash, the rest in goods). Taylor agreed that: "the remnant of the Aupouri shall reside on his [Taylor's] land if they dwell quietly and do not cause any disturbance." Taylor would say who was to live where "But let no one say that the land is his own, or of his own account sell a portion within these boundaries. Signed by Noble Panakareao and 29 chiefs of the Rarawa."[99]

168. Taylor's deed is one of several in the same style which are recorded in Turton's *Maori deeds of old private land purchases* (1882), although this particular deed is not recorded, probably because of the 14 January 1840 'rule'. Technically, Taylor was entitled to nothing, but his intentions in securing lands on which Te Aupouri could reside, and other circumstances bear testimony to his philanthropic motives. It was not a simple case of a speculative investment by a greedy missionary, as it might appear on the surface.

169. The sale was later investigated by the Commissioners and a grant was eventually awarded by Governor FitzRoy in 1844.[100] The Taylor deeds are discussed in Evelyn Stokes' *A review of the evidence in the Muriwhenua land claims* (1997).[101] It is clear, therefore, that the Panakareao / Taylor deed for Muriwhenua, of 20 January 1840, is not exceptional in its character, and the

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98 In another folder of the same collection, MS Papers-0075-106E.

99 Ibidem.

100 The original extent of the property claimed was reduced from the estimated 50,000 acres (Taylor had no real idea of the extent of his purchase) to scarcely 1,704 acres and further reduced after survey in 1853 to 852 acres. See 'Appendix to the report of the land claims commissioner', AJHR 1863 D no. 14 p. 35.

101 E. Stokes, pp. 445-454.

manner in which it is drawn up is comparable to the other deeds of the period. The Maori text of Taylor's deed begins:

> Wakarongo e nga tangata katoa ki tenei pukapuka kua tuhituhia e matou e Nopera Pana Kareao ma nga rangatira o te Rarawa te tahi ka Richard Taylor Clerk MA ki tetahi taha kua oti tenei pukapuka te tuhi tuhi i te rua tekau o nga ra o Hanuere o te tau o tatou Ariki a Ihi Karaiti kotahi mano e waru rau e wa tekau (January 20th 1840) kua tuhituhia tenei pukapuka

170. The deed appears to be in the writing of Joseph Matthews, who is named as the first witness (*kai titiro*) followed by eleven others, the last of whom is again William G. Puckey. The deed conveys to Taylor:

> tetahi wahi oti tonu atu me nga rakau katoa me nga aha aha noa me nga aha noa katoa e tupu ana i taua wenua me nga mea katoa o raro o taua wenua me te rangatiratanga me te mana i runga i taua wenua.

171. As with the other deeds quoted above, the intention is to transfer a certain district with all the trees and other things belonging to this land and all things underneath the land and (rather surprisingly!) the *rangatiratanga* and the *mana* (chieftainship and authority) over the land, expressed in the translation as:

> A portion of land to keep for ever and all the trees and whatsoever is growing upon that land and all the things below that land and the chieftainship and power upon that land.

172. Clearly, here the idea of rangatiratanga expressed here is more conventional than the religious interpretation cited by Mr Carpenter, in a different context, but if rangatiratanga and mana are inalienable, then how can it be that Panakareao is giving them up so readily?

173. The 'sovereignty' over the land is claimed using the expression 'chieftainship and power' in the English text, Taylor becoming the *rangatira* (chieftain) of Muriwhenua by cession, a little 'sovereign chief', like Thierry. Naturally the alien expression 'sovereignty' is not used, but the transfer of the property itself and the intangible *mana* or 'power' over the Muriwhenua is implied. Taylor has become, without intending this result (for at this stage he did not understand the Maori language, having been in the country only a few months and is just doing as Matthews and Puckey are suggesting), a

'sovereign of the soil', but he is not proclaiming himself as 'the sovereign of Muriwhenua' because he already owed his own sovereignty, as a British citizen by birth, to his legal sovereign, Queen Victoria. He cannot owe allegiance to his sovereign and be a sovereign himself. There are two sorts of sovereignty involved.

174. Scarcely a fortnight later Taylor himself was to inscribe on the copy of the Treaty he prepared on the night of 5 February the words 'Kawanatanga o te Kuini ki nga wahi katoa o te wenua' (the Queen's sovereign authority over the whole and any part of the islands'). The Treaty language addresses the 'sovereignty' of the chiefs as well as the 'sovereignty' of the newly arrived British colonists, including Taylor himself, as was always the Governor's intention. There could be only one sovereignty in New Zealand, that of the Queen. Taylor and the other chiefs would retain only the authority of landed gentry and proprietors of the soil – in short the 'tino rangatiratanga o ratou wenua' the proprietorship or 'high chieftainship of his land villages and other property' – under the new dispensation. Some context for this assertion of land ownership is given in a letter by Taylor (written at Te Waimate) to the Lay Secretary of the CMS:

> Many [missionaries] having felt that something should be done for their children have not calculated upon the future value of the lands they purchased and thus have fallen into the error of buying extensive tracts of land, which, were this country colonized as it now appears likely to be, would be more than sufficient for the purpose. I do think that no-one could object to a missionary purchasing a moderate quantity of land for such a purpose, though I also think for the reason above stated it were better we had none at all, as St Paul says it is no sin to marry but it is better to remain unmarried, both holding good only under certain circumstances, one missionary may hold land without its engrossing his attention while another who possesses not a single acre may have his mind occupied in another way.[102]

175. For himself, Taylor said he had not seen the land he had purchased and "can most truly say I do not care whether I ever do, being ready to resign every inch of it, if it will be in any respect a hindrance to the cause of Xy [Christianity]." It was only when the Aupouri had been forced out of their

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102 Richard Taylor, 5 October 1840, to Jowette (Law Secretary CMS), ATL Micro-MS-Coll-04-33 (CMS Archives CN / M. V. 12, p. 300.

Whangaroa refuge by the influx of speculators that they had sought to return to their former lands. Then:

> They petitioned Noble to restore it to them. The tribe refused. Noble himself proposed me to buy it, I declined, for I came to the land with the determination not to have any possession in it, & therefore invested my little property in the colony before I left; but it happened my agent sent me word the security was not good & my money was still in his hands & he moreover was strongly recommended me to purchase land in New Zealand, stating this would be the only opportunity missionaries would have of making any provision for the natives.[103]

176. So advised, Taylor had "bought the land partly with his goods, and in the deed, I have made provision for the whole tribe of the Aupouri, only stipulating that each individual shd be obedient to me" – there were now nearly a hundred resettled there. He had only claimed 1500 acres for himself and the same amount for his agent:

> I may have erred but I believe whatever the world may say I have done more for the poor natives than will be done again; a tribe has now a home, its native home I can only say that I am most willing to resign to the Society all my interest in it, if deemed advisable I cannot regret the step I gave taken though I deem it will render the motives which led me to it to be doubted until the circumstances of the case are known.[104]

177. As the late Dame Evelyn Stokes has observed:

> Criticism of missionary land purchases before 1840 came mostly from anti-mission sources, including some New Zealand Company representatives in London. No evidence has been produced of Maori objections to the sons of missionaries establishing farms. On the contrary this was tangible evidence of the commitment of mission families to the local people. [. . .] As a general comment it would seem that missionary land transactions which, in several cases included provision for Maori communities to continue living on and using the resources of the lands involved, were acceptable to local people. Nopera Panakareao was the principal signatory to the missionary deeds of sale in Muriwhenua. It may be inferred that he saw the allocation of further land to be farmed by the sons of missionaries as a way of consolidating an established relationship with mission families.[105]

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103 Ibidem p. 302.

104 Ibidem p. 302.

105 Stokes, p. 123.

Alternative translations for 'sovereignty'

178. I now turn to the questions concerning the plausibility of alternative ways of rendering the word sovereignty in Maori, drawing on the various alternatives suggested as possibilities by Professor Salmond in her submission (#A22 pages 24-25). On this matter, given the previous discussion, I can be fairly brief.

Mana

179. Mana is not at all a suitable translation for sovereignty. It is difficult to give an exact translation into English of the word 'mana', let alone what the word 'mana' meant in 1840. Mana has many contextual meanings often expanded in a phrase and often expressed in conjunction with another word such as rangatiratanga. (Williams *Dictionary* p. 172 gives examples: "he rangatira whai mana a Hongi" and "No Tuhoe te mana me te rangatiratanga"). As a broad concept, mana certainly connotes power and authority, and would have done so in 1840. Its exact meaning would have definitely been context specific. In my view, mana would have been too generalised and all-embracing a term to translate the reasonably complex concept of sovereignty. It certainly would have conflated the authority that was to be ceded in Article One with the guarantee of property rights in Article Two. One can see why the word ('mana') was used in the January 1840 conveyance between Panakareao and Taylor just discussed. There Taylor sought both authority and ownership of the land in question. But the Treaty intended something more sophisticated: the cession of authority without prejudice to continuation of property rights. Furthermore, mana connoted the special status that certain people, such as rangatira, had in Maori society. It would have been most odd for a rangatira to have ceded his personal mana. No rangatira would have done that and that was not what Hobson was asking them to do in ceding sovereignty. The 20 January 1840 conveyance, however, provides an instance where "te rangatiratanga me te mana i taua whenua" was given up.

Kingitanga

180. Kingitanga is not an appropriate translation for sovereignty, when a Queen is the sovereign and in 1840 would have been ineligible for that reason. But the more important practical reason was that the Queen was far away and

and in fact would never visit her realm of New Zealand, and others would act on her behalf by delegated authority, just as was currently the case in New South Wales and as, the scriptures informed Maori, Caesars had used local plenipotentiaries called governors. A 'kawana' was a monarch's local representative and Maori in Te Tai Tokerau, at least, understood that well by 1840.

Ko te kingitanga ko te mana

181. 'Ko te kingitanga ko te mana' is merely a phrase combining the two above ideas and does not express 'sovereignty' in any meaningful way.

Arikitanga

182. As explained above, while arikitanga continued in the mid 19th century as a genelogical idea concerned with whakapapa, it had long since ceased to hold practical political significance, and the word had been taken over under Christianity to become an exclusive aspect of Christ as "Te Ariki". Had "arikitanga" been used, there may well have been some confusion as to whether the Crown was asking Maori to agree somehow to the replacement by the Crown of Jesus Christ or Christianity more broadly.

Rangatiratanga

183. In 1840 this was the normal term for chiefly authority or chiefly 'rule' which was not generally despotic but rather was conciliatory through *runanga* and the *whaikorero* on *marae*. It thus provided a workable model for self-management of Maori communitues alongside pakeha communities. The interface between the communities was more problematic as these communities had very different communal customs. As colonisation expanded attempts were made to build connections, usually through missionaries, but 'integration' through Maori becoming Europeanised took a very long time and this was never well understood until it was too late. The interpretation of 'rangatiratanga' as 'equivalent' to either 'sovereignty' or 'independence' does not work except in a specialised and semi-spiritual context, and disqualified 'rangatiratanga' as a candidate to express 'sovereignty'.

184. In addition, the word "rangatiratanga" in 1840 would have conveyed a sense of the mana that rangatira had. It would have been most odd indeed for the

Crown to have asked rangatira to give up their rangatira-tanga, i.e. their chiefly status. As with mana, no chief would have considering doing that.

185. Finally, there was also the obvious problem that the word 'rangatiratanga' was to be used in Article Two, which was concerned specifically with property rights. As such, it would have been absurd to have asked the chiefs to have ceded rangatiratanga in Article One.

186. Consequently, as stated above, I consider 'kawanatanga' to be the only appropriate term to express 'sovereignty', in Henry Williams' translation of the Treaty of Waitangi.

What would Maori have understood by 'kawanatanga' in 1840?

187. I was asked what I thought Maori would have understood 'kawanatanga' to mean. I do not think that Maori would have thought "Having a kawana means Hopihana is going to act just like Pontius Pilate", of course. They would have thought, on the basis of knowledge of what went on in Sydney and elsewhere (London, Hobart etc) that a small facsimile of life in Sydney would be transplanted to the Bay of Islands, and further afield.

188. I do not think that Maori realised the full expected extent of immigration, but to the extent they envisaged immigration, they would have quickly realised the need for centralised control and an effective means of reducing frictions over such practical civil matters as wandering animals (establishment of a pound was one of the first acts of government at Kororareka!). The 1840 to 1842 newspapers (*Bay of Islands Advertiser*, of 1840 and the Maori gazette *Te karere o Nui Tireni* of 1842 to 1846) which started to introduce such concepts as civil government and their successors, show the range of matters requiring official attention. Predominantly, however, they would have recognised in kawanatanga the institution of order, justice and a means of regularising and improving trade. That was what they had been asking for since 1831, and which the missionaries did not have the authority to supply. Neither had Busby had the authority to supply it, but the new institution of Kawanatanga (civil government) would have such authority.

The competence of Henry Williams' translations

189. I was specifically asked whether Professor Salmond's remark that Henry Williams was not one of the better translators among the missionaries was correct. Professor Salmond, like most people, has taken this idea from Ruth Ross's influential article of 1972.

190. Henry Williams arrived in New Zealand in 1823 and had superintended the Church Mission for almost 20 years by 1840. Ruth Ross said in her article 'Te Tiriti o Waitangi' (1972) that "Neither father [Henry Williams] nor son [Edward Williams] was an experienced translator, but those who were - William Williams, Maunsell and Puckey among the Anglicans and Hobbs of the Wesleyans – were not at hand in the Bay."[106]

191. Henry Williams was fluent in both spoken and written Maori, and that is well attested. Some missionaries failed that test. He participated in the meetings in which missionaries compared their translations of service books and scriptures but as he did not know either Hebrew or Greek he was not of use for the translation of scripture, almost all scriptures being directly translated out of those tongues. Some missionaries had an ability to write hymns (Sheppard, Yate, several of the Wesleyans) but neither Henry nor his brother seem to have done that, probably in part because they were busy with other things including service duties and the administration of the mission. On all matters concerning the administration and management of the mission including political relations with other missions and political relations with rangatira, Henry was the senior missionary and was respected in that role. Also as senior missionary he had mana in dealing with chiefs, and was respected by them in that regard. When Busby arrived Henry made the arrangements and resolved the problems caused by Busby's lack of tact and political naivete. He also undertook the difficult matter of translating Busby's Declaration. For civil and political matters, Henry, as the senior missionary, took the lead in translation, and that is why Busby asked him to translate the Declaration in 1835 and why Hobson followed the precedent in 1840. It would have been very off indeed to have asked anybody else.

106 For a summary of Henry Williams's achievement see R. Fisher, 'Henry Williams's leadership of the CMS mission to New Zealand', *New Zealand Journal of History*, v. 9 no. 2 (1975): 142-153.

192. When Henry was away, however, Colenso, the printer already present since the start of 1835 was called on by Hobson and Shortland to undertake translation duties. Great care was taken to express ideas correctly in the Church Mission, lest confusion arise, and this came through in both the translation of scripture and in the translation of important secular documents. Henry Williams was the person Hobson particularly sought to undertake the translation of the Treaty because Henry was the senior missionary, with the best political connections, and because he was a person of mana. Busby could not be used, although he was 'consulted' on an early draft when Henry was not available. The other missionaries at the Bay at the time were a sorry lot, derided by Hobson's staff (such as Mason, Baker, Wilson).

193. Recently, it has been asserted by Moon and Fenton that Henry Williams "decided to mistranslate the treaty" and that he indulged in what they term "conscious mistranslation of key concepts of the treaty".[107] Moon and Fenton themselves, however, rely on a late twentieth century translation (Sir Hugh Kawharu's), from which Moon and Fenton derive the conclusion that the second article of the treaty "promised to the Maori signatories the same sovereignty that they were supposedly ceding under the first article of the English version" – a patent absurdity.[108] But, as John Laurie has observed in his critique of Moon's argument, their case is one of advocacy rather than history.[109]

194. Professor Salmond (#A22, p. 30) has also commented negatively on Colenso's knowledge of Maori, which was actually rather good, if unfocussed. The problem with Colenso's work is his prolixity and an infelicity of expression in English. His idiomatic Maori was good but his translations of both scripture (the psalter, 1840) and the Book of Common

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107 P. Moon & S. Fenton, 'Bound into a fateful union: Henry Williams' translation of the Treaty of Waitangi into Maori in February 1840' *Journal of the Polynesian Society* 111 (1): 51-63 (2002). "He did not deny that the English text of the treaty could be translated into Maori. Instead he deliberately stated that '. . . it was necessary to avoid all expressions of the English' for which he suggested there was 'no expressive term' in Maori. It is these two segments that cast doubt on Williams' sincerity and intention to translate the English text of the treaty into a Maori text equivalent in meaning and function to the original and suggest there were other germane considerations." (p. 55). Similar claims of deliberate mistranslation appeared in Moon's *Te Ara ki te Tiriti* (2002) pp. 139-149.

108 Moon & Fenton, ibidem p. 58.

109 J. Laurie, 'Translating the Treaty of Waitangi' *Journal of the Polynesian Society* v. 111 (3) (September 2002) p. 255.

Prayer ('large prayerbook', 1841) were disapproved of because he tended to make unauthorised additions in printing, to the dismay of better writers such as Puckey. Colenso's 'large prayerbook' was considered 'a very great failure' for that reason. His lexicographical project, late in life (**BiM 1505**, of 1898), was no more likely to command respect than the infamous work of Edward Tregear (**BiM 1314**, of 1891).

TOHU AND INDICATIONS OF ASSENT

195. This section of my evidence addresses the questions regarding whether the signatures or marks of chiefs "signified assent, when their speeches had expressed a contrary sentiment". I understand that Professor Salmond has questioned (#A22 page 30-31) whether the assent was genuine.

196. It is perhaps necessary to observe, again, that Hobson's primary objective was to get a majority of the chiefs who had 'signed / marked' the 1835 declaration, to withdraw their adherence to that document by signing another which would supersede it. For that purpose those very chiefs (or their heirs) were circularised specifically as members of the Confederation. Those who could not be reached, or who did not attend the meetings were followed up subsequently with personal letters (Te Tirarau and Nopera Panakareo). It is also for this reason that the marks of these chiefs appear in a particular place on the primary sheet of the Treaty/ Tiriti where Richard Taylor had written "Ko nga Rangarita o te Wakaminenga". It was only when Hobson had secured that majority, that he felt justified in having the Maori text printed (200 copies, 17 February, 1840) and writing to Gipps to say that he had the number. When chiefs started wanting their marks removed Hobson would not permit this, knowing that pakeha hostile to his efforts had been spreading rumours to deter further signings. Colenso sensibly observes that much of this reluctance to sign was just posturing and some of it was deflected by discussions with chiefs on the night of the 5th. There was also an element of going-with-the-flow, for either principled or unprincipled reasons. Different chiefs will have had any number of personal motivations, as had missionaries and settlers / speculators.

197. I have examined both the draft and the published versions of Colenso's *Authentic account* and I see in them as much a verbatim record as could

reasonably be expected (he was writing not for his own amusement but as a record for the Church Mission).[110] Colenso sent a copy to Busby so that his comments could be added and a few matters were corrected. As far as Hobson was concerned, he was more concerned that the chiefs named in the Declaration had signed, than he was about any others, who were clearly just a bonus once the critical mass had been achieved.

198. By 1840 there was a well established practice among chiefs of signing documents with *tohu* of assent. In some cases these were fragments of moko of various kinds and in others they were simple crosses and on others they were squiggles or attempts at signatures, for those who were fluent writers or copyists. Several examples were illustrated in my doctoral thesis such as Gilbert Mair's seed for Wahapu of June 1831, witnessed by W G Puckey and three literate Maori – Ao, Rewei and Tihei the last of which gives both his name and tohu: 'Tihei tona tohu [mark]', while the nine vendors are listed in order: "Ko nga ingoa tangata maori: Taratikitiki tona tohu [mark], Hoia tona tohu [mark], Hiamoe tona tohu [mark] Pukututu tona tohu [mark] etc. A deed of 27 July 1834 by George Clarke (as purchaser) with the two native witnesses – two of Yate's students Henare Hori Watikini Waru (Henry George Watkins Waru) and the ubiquitous Eruera Pare Hongi (Edward Parry Hongi) bears marks of two vendors: "Ko te tohu o [mark] Te Moka' and 'ko te tohu o Kaikohe' and the marks on the 1835 Wakaputanga (also witnessed by Eruera Pare) are marked as *tohu* and names in the same way. Such marks are also evidence of intention in the case of the Muriwhenua deed, and it can fairly be said that the presence of a tohu is an indication of assent. The marks on the primary Tiriti sheet penned by Taylor a fortnight later are done in the same way at Waitangi, at Te Waimate and at Mangunu but at Kaitaia there is a slight difference, in that the two columns of sixty Kaitaia 'signatories' of 28 April 1840 are names only, in W. G. Puckey's writing for the most part but without *tohu* (although six English witnesses are named). Why this should be so in the case of the Kaitaia signings is not known, as *tohu* were used for the last signings in July.

110 See Colenso's letter to the CMS, quoted in Appendix B.

199. In sum, in my view there can be no doubt that the chiefs who gave their tohu to the Treaty assented to it, irrespective of the comments they may have made in the debates preceding the signing.

OFFICIAL VERSION OF THE TREATY - THE CERTIFICATION BY HENRY WILLIAMS

200. This section of my evidence addresses questions concerning Professor Salmond's statement (#A22, page 57) that the annotation on a copy of Hobson's despatch to Gipps was "an acknowledgement by both Hobson and Williams that the official text of the agreement with the rangatira was in fact te Tiriti in Maori", referring to the note in Henry Williams's hand and with his signature: "I certify that the above is as literal a translation of the Treaty of Waitangi as the idiom of the language will admit of"[111].

201. This annotation occurs on only *one* of the three copies sent to England, and that copy is in the hand of James Stewart Freeman, with the note by Williams and the initials of Hobson. The most important of the set of copies, however (for there are minor differences in contents), is the subsequently repatriated copy at Archives New Zealand, called a 'duplicate'. That copy contains (in Henry's handwriting) an authenticated manuscript of the Maori text, dated 6 February, with an explanatory note "Copy of Treaty of Waitangi" and Freeman's cipher in the margin of the first sheet. This is at Archives New Zealand G 30/1, 25-27, followed by two copies of Colenso's printing of the same, and then, again in Henry's handwriting, his final draft of the treaty in English "Her Most Gracious Majesty Victoria Queen of the United Kingdom of Great Britain and Ireland" etc, leaves 29 to 32. This is a fair copy of the text he was supplied with for translation, except that it omits the line referring to 'estates forests and fisheries' in the second article, which here reads "the full | exclusive and undisturbed possession | of their lands and other properties | which they may collectively or | individually possess so long as | it is their wish and desire to | retain the same in their possession |" and so on. The original document supplied by Hobson has not survived, probably because it was written on, but transcripts of it do survive and those do contain that phrase, derived from Busby's draft of the second article.

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111 The original document is at the British Archives (formerly Public Record Office) PRO CO 209/7, 13-15.

202. Whether the omission of the words 'and estates, forest and fisheries' is deliberate or a *lapsus calami* on the part of the scribe is uncertain (and either scenario is possible), but an equivalence to these words does not appear in the Maori text, and thus (because 'other properties' is inclusive of 'estates forests and fisheries') it must be considered that it is another linguistic simplification on the part of the scribe, Henry Williams. The text of the draft given to Henry Williams survives in two other copies, one of which is in the same volume at Archives New Zealand G 30/1, 75-78, the other being in America, as described in 'Preserved in the Archives of the Colony, a transcript in Clendon's hand.[112]

203. The drafts are all accounted for, accordingly, and a copy of the 'final draft' is extant in English, with an authenticated transcript of the treaty as signed (but without signatures). These should have been exactly duplicated at the Public Record Office but are not, as no copy of the English language draft is there, but rather a copy of the 'Manukau heads' text in English with the commencement as "Her Majesty Victoria, Queen of the United Kingdom of Great Britain and Ireland" (omitting 'most gracious', as it should have been 'Her most gracious Majesty' etc).

204. In sum, Professor Salmond has not got it all quite right, but it is fair and reasonable to say that the primary sheet of the Treaty / Tiriti, the one inscribed by Richard Taylor is that text in Maori, and not the Manukau heads text in English which is usually called the official English text. The Waikato heads text, however, certainly cannot be called a 'draft in English' of a document already signed in Maori some time before.

205. The exact questions put to me were these:

> 8.1 Do you agree with these statements? [i.e. those of Professor Salmond page 57]
>
> 8.2 Particularly do you agree that Te Tiriti (the Maori version of the treaty) constituted the "official record of the Treaty?
>
> 8.3 Do you agree that the English version of the Treaty was a draft?
>
> 8.4 What would Hobson have considered to be the "official" record of the Treaty to have been?

112 See also paragraphs 30-42 above.

206. I will address these questions in the same order:

Do I agree with these statements? [i.e. those of Professor Salmond page 57]

207. The note by Williams on a transcript of the Maori text "I certify that the above is as literal a translation of the Treaty of Waitangi as the idiom of the language will admit of" ***was*** an acknowledgement by Hobson and Williams that there were two texts of the same document, seen as the same, one in English and one in Maori. It should be noted that one sheet was sent as the official record to London, and it is still there which has the English and Maori texts transcribed side by side. Professor Salmond is correct, however, that the primary Waitangi sheet (that penned by Richard Taylor) called "Te Tiriti" and in English only is the legal source document from which others are derived, including the bilingual copy in London and the various other copies, most but not all of which are at Archives New Zealand.

Particularly do I agree that Te Tiriti (the Maori version of the treaty) constituted the "official record of the Treaty?

208. ***No,*** because Hobson and Williams both knew that the 'treaty' existed in an official English and an official Maori text, both of which were recorded in the despatch presently at Archives New Zealand and which Hobson had specifically required be 'preserved in the archives of the colony', with all its drafts. In particular it is not correct to call the Manukau heads document an 'English text' or 'English version' or a draft, although it has been called that in error for over a century.

Do I agree that the English version of the Treaty was a draft?

209. The so-called 'English version' (the 'English text' as given in Orange, Treaty of Waitangi p. 258-259) is ***not*** a 'draft' of the Treaty of Waitangi / Tiriti. The latest English language draft is that in Henry Williams's hand, at Archives New Zealand, as stated above, that is in Archives New Zealand, G30/1, 29-31. It is that which is the ***only*** document properly called the final draft of the Tiriti.

210. All of the English language drafts by Hobson, Busby and Freeman are also drafts, but not "final" drafts.

What would Hobson have considered to be the "official" record of the Treaty to have been?

211. Hobson would have considered both the Tiriti text and the Manukau Heads document in English (and which he signed with his left hand, because he had been disabled by a stroke on 1 March 1840) as equivalent, knowing that the document in English was being circulated in Maori, because he had ordered Colenso to print 200 copies for distribution, so that both the English and Maori texts could be explained together, as was done at the hui in the days of February. Hobson could not read Maori.

COMMENTS ON CONTENT OF PAGES 13 TO 38 OF PROFESSOR SALMOND'S REPORT

212. Finally I was asked to provide comment on pages 13-38 of Professor Salmond's report, which set out various coments on the linguistic aspects of the Treaty. While I regard Professor Salmond's work in her report as authoritative in her areas of expertise, there are some aspects which I feel ought to be corrected.

Evidence of what was read to Maori at Waitangi on 5-6 February 1840 (page 10)

213. At page 10 Professor Salmond has stated: "The parchment text in Maori, although it may not be an absolutely faithful version of Williams's original draft in Maori, is thus the only evidence in Maori of what was read out to the chiefs and debated in Maori at Waitangi on 5-6 February 1840, and was subsequently read out debated and signed at Mangungu and Kaitaia."

214. This is mistaken. There are two extant authenticated copies of the Maori text ("Te Tiriti" as she calls it) in Henry Williams's own handwriting, and both formally authenticated by Hobson's secretary, Freeman with his cipher. One of these is in Archives New Zealand, and the other is in Clendon's papers at the Auckland City Library. There is a third, probably also in Henry's hand – although it is difficult to be sure because the script is unusually formal – in private hands, and that copy bears in addition Hobson's signature and formal designation as Consul and Lieutenant Governor, and three official authenticating seals. All have the same text as was read out from the 'Te Tiriti" parchment penned by Richard Taylor. Along with the Williams holograph at Archives New Zealand are two printed examples of the text produced by Colenso on 17 February 1840 (the press proof of which, annotated by Colenso) is in the Alexander Turnbull

Library). Immediately following printed copies of these, in the same despatch, is Henry Williams's holograph of the English text from which the 'Te Tiriti' text was prepared.

215. And while I agree with Professor Salmond that it is the parchment transcribed by Taylor and subsequently signed on those days which is 'Te Tiriti' in a particular sense, if one wants to maintain that a 'Treaty' is an agreement between two parties, then it is impossible to ignore the English text understood by the other party, i.e. the Crown, as Ruth Ross and her followers have, including Professor Salmond. When Professor Salmond says on page 10 "Although the treaty in English was also read out at Waitangi [. . .] it is best regarded as a preliminary draft document" she is also mistaken. That English text, in Henry's own hand, as read by him to that meeting on the 5th is in the despatch duplicate at Archives New Zealand, and 'preserved in the archives'. It exists.[113] It is the English text of the Treaty. When the texts in English and Maori were read out on the 5th February they were already in their final forms. They were not amended subsequently as a result of the proceeding at the various meetings. Later departures from the two official texts of the 5th and 6th such as at the Manukau Heads variant in English, do not alter the matter, especially as the scribal variations were inconsequential, not affecting the meaning.

216. I do not wish to retrace the evidence presented in that work here and now, but as I was invited to do so I will pick up a number of other points mentoned by Professor Salmond, as briefly as practicable. She has presented what she has termed a translation [into English] of the 'Te Tiriti' text, forming another of the growing suite of 'back translations' referred to on page 10 of her submission. Most of these are points about terms in missionary Maori.

Tuku and Tukua (page 12)

217. The Queen sends an English 'rangatira' (Hobson) as a *tuku* (a ceremonial gift) to the *rangatira maori* in the (perhaps not-quite confident) anticipation that her new *tuku* will be reciprocated – as it has been in the past, in the case of her late uncle Kingi Wiremu – by the chiefs *tuku* of giving her the

113 It exists, at Archives New Zealand G 30/1, 29-31.

'sovereignty' – whatever it may be – to establish a Governing authority like to that of the Kawana of New South Wales. Hopihana will be like a *kaiwhakarite* (mediator, arranger, plenipotentiary even) to sort out how this will occur, because it is all provisional and nothing can be done unless the chiefs assent to the arrangement. In her concern for their welfare and future happiness the Queen wants them to agree to her proposal that a form of civil and legal government 'kawanatanga' be set up.

218. That is the gist of the preamble, devised by Hobson after discussion with Henry Williams, once Busby was out of the way. Although there is not much evidence of the process of drafting the preamble, I think it can be quite certain that there is extensive input from Henry Williams in the phraseology, introducing the terms *tuku* and *tukua* and drawing upon these historic but recent precedents. These are unlikely to be ideas Hobson got from Gipps or thought up for himself. Busby, of course, had no involvement with the preamble and only drafted articles. I think that Professor Salmond and I would probably agree on this.

219. It is particularly significant that another tuku is presented on 6 February 1840. In a letter to his wife on 7 February, Felton Mathew noted that after the signing the chief Patuone (newly baptised as Edward Marsh, or Eruera Maihi) had joined the party for dinner on the Herald with the officers (he could understand English but did not speak it). The old chief presented a *mere pounamu* for the Queen as a token of submission to her authority: "We are working a good deal in the dark, and there are four distinct parties all opposed to each other, but all endeavouring in different ways and for different purposes to throw dust in our eyes – namely the European inhabitants, the missionaries, Busby & the Roman Catholic Bishop. They are each playing a deep game. [. . .] Busby is an artful humbug."[114]

220. Professor Salmond notes at page 18 that Maori aristocratic etiquette in chiefly exchanges made it difficult for rangatira to ask publicly what kawanatanga might entail, but Felton Mathew writes:

> "One of the most powerful of them [the chiefs] names Patuwooni, who in years past has been distinguished as a friend

114 F. Mathew to S. Mathew, 7 February 1840, ATL-MS-1620 pp. 40-41.

> of the English then advanced to the Governor & presented him with one of their splendid Green Talc Hatchets, or 'mare' [sic] as a present for the Queen. This is the most valuable offering he could have made for they are now so scarce it is impossible to procure them – not one of the chiefs present but himself had one."

221. The *mere* was one of the two returned to New Zealand in 1937 by Hobson's grandson Arthur Rendel (son of Hobson's daughter Eliza).[115] There is no conclusive proof which of these two mere was that of Patuone. One of them is displayed at the Treaty House at Waitangi and the other is in Te Papa Tongarewa.[116]

222. The Salmond/ Penfold 'back translation' of the first article (*ture* is probably the correct term for 'article' because it would have brought to mind the Ten Commandments), works well, in my view.

223. On the other hand I cannot agree at all with her interpretation of "te tino rangatiratanga" as "unfettered chiefly powers" of the rangatira as suggested by Salmond and Penfold. Neither Hobson not Williams nor Gipps could possibly have thought in such terms, being perfectly aware from Normanby's instructions that chiefly power would most certainly be 'fettered' to prevent such abuses as cannibalism, slavery, arbitrary killings, mayhem etc. Significantly, if one consults the back translations I provided in 'Preserved in the Archives' none of those translators would have used 'unfettered' either. Davis's version (said to be literal) confusingly muddles up 'supremacy' with property, and is clearly wrong; Busby translates 'tino rangatiratanga' as 'possession' in a proprietorial sense and makes no sense of it; the anonymous translator uses 'full chieftainship or exercise of the power of chiefs', not understanding the term; Brown used 'head chiefs' in the 'high chiefs' sense (i.e. not all chiefs but rather the eminent ones); and Martin uses "entire chieftainship", again misunderstanding the word.

224. The "unfettered" idea draws on Kawharu's translation of "unqualified exercise" of chieftainship, which I expressly criticised on the same grounds in 'Preserved in the Archives' (note 83). All the later back translations

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115 Rendel told the then New Zealand High Commissioner: "There is a legend in the family that the axes were intended for Queen Victoria, but that my great grand mother never passed them on."

116 See file MERE ME 10819, Te Papa Tongarewa: "Mere pounamu with three grooves on butt, pre-European drilled hole. Pale green 15 inches, greatest width 3.5 inches."

misunderstand the sense in which 'tino' rangatiratanga is a mid 19th century term not in use in a political sense among Maori themselves, so far as we can judge from written records. It is a very specific term in use only rarely so that is not so surprising. While I do agree with Professor Salmond that "by 1840 there was no mention of ariki in the far North" I must strongly disagree with Professor Salmond when she writes that "By 1840 the nearest equivalent [expression to 'ariki'] seems to have been a tino rangatira or senior chief." I think however, that the explanation by Maharaia Winiata is better, and it makes no mention of this seductive modern fiction.[117]

225. I should also comment on Professor Salmond's remark that "It must have puzzled the rangatira that so great an aristocrat as the Queen of England was so interested in hokonga or barter" because trading was something devoid of mana and tapu. But of course commercial trade, for spars etc had been at the focus of contact for years and the chiefs must surely have understood after numerous precedents that the Queen did not do the trading but had subordinates to do that sort of thing. The matter was referred to early in the second proclamation issued by Hobson on 30 January 1840:

> Her Majesty, taking into consideration the present, as well as future interests of her said subjects, and also the interests and rights of the chiefs and native tribes of the said islands, does not deem it expedient to recognise as valid any titles to land in New Zealand which are not derived from or confirmed by Her Majesty [. . .] But in order to dispel any apprehension that it is intended to dispossess the owners of any land acquired upon equitable conditions [. . .] Her Majesty has been pleased to direct that a commission shall be appointed [. . .] to enquire into and report on all claims to such lands. And any persons having any such claims will be required to prove the same before the said commission, when appointed. And I do further proclaim and declare that all purchases of land in any part of New Zealand, which may be made from any of the chiefs or native

117 Maharaia Winiata 'Leadership in pre-European society', *Journal of the Polynesian Society*, v. 65 no. 3 (1956), pp. 212-231 "The chieftainship proper was held by two classes of leaders. The most important was the *ariki* or paramount chief. The *ariki* was at the head of the *iwi*. But the highest ranking *ariki*, in whom the senior lines of the genealogy from tribal descents converged, was recognised as head of the *waka*. There was also the *rangatira* or chief. The *rangatira* was the head of the subtribe and held a status slightly lower than that of the *ariki*, to whom he was related, being a descendant of the original founding family along the junior line. The *ariki* and *rangatira* were the social and political leaders in Maori society, but they also played a part in the economic affairs. The differences between the *ariki* and the *rangatira* postulated an important hierarchy in the chiefship, and this reflected a corresponding status arrangement among the social groups over which they held sway. [. . .] The status of chieftainship whether of the *ariki* or the *rangatira*, was primarily determined by the order of birth and the nature of the sex established in the elementary or nuclear family."

> tribes thereof, after the date of these presents will be considered as absolutely null and void and will not be confirmed or in any way recognised by Her Majesty.[118]

226. It was on account of this proclamation that there was so much antagonism to Hobson's mission. Dr Samuel Martin (who had been at the public meeting in Sydney but was not present at the signing at Waitangi), was now a disgruntled land claimant, writing in April 1840, disparaging the Treaty, and asserting that:

> The Church missionaries have gone far out of their place in interfering with the natives: one of them, Mr Henry Williams, is at present among the natives as agent for the government, inducing them to sign the treaty. When the natives shall, as they are certain to do, repent or find out that they have been deceived, they will assuredly turn round upon the missionaries, who, as ministers of religion, are far from justified in taking upon themselves the duty of persuading the natives to part with their political rights and privileges.[119]

227. The proclamation was indeed a further *tuku*, to use Professor Salmond's terminology (page 22) in which the Queen was acting as a guardian for both her subject and those that might soon become her subjects, on an equitable basis. The Queen would give the assurance, but it would fall to a future civil administration to implement it. And that could not occur until and unless native sovereignty was given up. As with the compromised Richard Taylor, there could only be one sovereign and one law. The immediate steps to be taken after the cession would be to establish a form of civil government for both Maori and colonists. I will say more on this matter in an appendix, taken from my own unpublished book on the early years of infant government 'the Anglo-Maori Covenant' which was produced as a companion to my doctoral thesis 'Our infant state'. This appendix discusses the tribulations of establishing a civil administration without adequate resources and with a disabled governor.

On a question from Ngati Rehia

228. I was further asked to comment by letter on a short paper from Professor Salmond dealing with the alleged signings of the Treaty by Tareha, or, by his

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118 Proclamation. 30 January 1840. printed copy and the holograph together in ATL fMS-2227,

119 S. Martin, *New Zealand in a series of letters* (1845) letter v, pp. 98-99. He also claimed, falsely, that it had been "previously drawn out by the missionaries" for Hobson and that the governor was "obliged to adjourn the meeting" on the 5th to the 6th "in the hope that the missionary influence and a liberal distribution of presents in the shape of blankets and tobacco might produce a more favourable result".

son Mene acting with or without his authority on his behalf. She indicates that whatever the 'histories and written records and reports' held by Ngati Rehia may say, she has not personally seen such documents and neither have I. I think I can make some potentially useful comments, however, on the practice of signing documents on behalf of others, which may be of assistance to the Tribunal.

229. In the original of the letter to King William IV dated 5 October 1831[120], the script is in the hand of William Yate, with a collection of tohu (fragments of moko) added and with the names of 13 chiefs against them. I have no doubt that it is a fair copy, penned by Yate, as amanuensis for the chiefs, a common practice of the time in the 1830s and still in use many years later, as shown by innumerable Maori petitions in the late 19th century. Yate has copied the moko from original tohu, in two columns. The last of the marks, that of Taunui is that of the chief who later took Yate's name as Wiremu Ieti Taunui (not to be confused with Taonui). Tareha did not sign this document.

230. The 13 chiefs, with others, of whom Tareha was one, however, did place tohu on the Wakaputanga. Tareha's tohu is the seventeenth in the sequence and Wiremu Ieti Taunui (now baptised) is at fourteen. Only two chiefs (Hare Hongi and Kekeao) have written their names, but the rest have used tohu. The only chiefs to use Christian names are Hare Hongi (Charles Hongi), Hemi Kepa Tupe (James Kemp Tupe) Reweti Atuahaere (Lewis Atuahaere), Wiremu Ieti Taunui (William Yate Taunui). The scribe 'Eruera pare te kaituhituhi' was Edward Parry [Hongi]. Two additional names were subsequently added at an unknown date: these are Te Peha (who signed as Peha) and Hoane Wiremu Heke (signing as 'Hone Wiremu') his fuller form of name actually being in Busby's handwriting. Clendon and Gilbert Mair signed as witnesses.

231. When Busby transcribed the list to add tribal affiliations between January 1836 and the printing in March 1836 he deleted Waikato's name (sixth on the list) and did not include either Peha or Heke in the printed document, even though the names are on his manuscript. In the printed document 'Ko

120 Public Record Office CO 201/221 ff. 384-388.

TAREHA' is at the top of the right hand column. Six named chiefs are added in a separate manuscript codicil (Nene, who had arrived late because of flooding, and Huhu, Tona, Panakareao Kiwikiwi and Te Tirarau). Their names appear to have been added in expectation that they would sign, although they did not. Nene's mark written as his name Nene was witnessed by a T. Clarke, without date, Kiwikiwi has a dated mark as does Tirarau but without a tribal affiliation stated, and various other chiefs made their tohu, most of them dated later in 1836, 1837 or 1839 and mostly with simple crosses. The last name on the list is 'ko te werowero na ko Ngati mahuta – Ko Kahawai te kaituhituhi' (Te Wherowhero no ko Ngati Mahuta – [by] Kahawai the scribe). Whether Te Wherowhero knew that Kahawai had acted on his behalf, we simply have no idea.

232. When it comes to Tareha's mark or the lack of it on the treaty, we have an analogous situation to that of Te Wherowhero. Several of those who had signed the letter of 1831 and several of those who had signed the Wakaputanga had died and the names of their heirs were deliberately recorded on the Treaty in their places. So for example Titore (slain by Pomare in 1837) was replaced by Hakero "mo Titore kua mate" and the Pi who signed the Treaty on 15 February 1840 was the son of the Pi (baptised as Arama Karaka Pi = Adam Clarke Pi, of Waima) who had also been shot in 1837. Matangi of Waima (baptised as Simon Peter Matangi) had died on 1 January 1839, but his son Paora Mohi Matangi (Paul Moses Matangi) signed the Treaty in his stead.

233. The mark of Mene "te tamaiti o Tareha mo tona matua"appears, at least on the face of it to be an indication that Mene signed on his behalf, even if that was contrary to Tareha's intentions. But Professor Salmond states that "Furthermore Mene did not put his fathers tohu, or indeed any tohu on the Tiriti parchment." Mene is only the third in the list to sign with a name rather than a mark (the others being Heke whose name is not on the printed Wakaputanga but is on the manuscript, and Wiremu Hau who is well known as a literate associate of Yate and was another fluent writer, but who did not sign the Wakaputanga). The next on the list is Tamati Waka Nene, who also signed with his name. At different signings different practices were used. Whether a name or a mark (tohu) was used is of no significance; in

either case it implies assent. At Kaitaia a large number of names are recorded, but no tohu are used at all, the names are all clearly recorded by W. G. Puckey except for the first, who is Nopera Panakareao, and whose name has been written by none other than Richard Taylor, who was a witness.

234. It is possible that Tareha had already left the meeting when Mene stepped up, or that he had changed his mind, and that he may have wanted to cover any possible embarrassment by withdrawing, but it is all speculation as to what anyone's intentions were. As an historian I deal with concrete evidence as much as possible and have cited evidence from reliable primary documents in my evidence.

APPENDIX

BACKGROUND CONCERNING THE DECLARATION OF INDEPENDENCE AND JAMES BUSBY

Introduction

235. This document is an appendix to my brief of evidence. This document sets out certain background concerning the Declaration of Independence/He Wakaputanga, which I believe may be of some assistance to the Tribunal. I have set out in this appendix references not cited by others in evidence in this inquiry and which are relevant to a broader understanding of the Declaration. I have set out this material in an appendix because it is not directly relevant to the questions that I was asked by Crown Counsel. The appendix concludes with a bibliography associated with both my brief of evidence and this appendix.

236. At the Turnbull I developed expertise in its specialist field of New Zealand history and its documentation, with a growing interest in the first half of the 19th century and the in-house opportunity to explore neglected areas of research, with both manuscripts and published works.

237. I also became attracted to work in areas of Maori interest, accepting a *wero* thrown to me at a conference to use my skills in a way that could benefit Maori, and therefore became involved in the National Library's Maori thesaurus project (He Puna Kupu Maori) before returning to the Turnbull in 1992 after a secondment, to undertake a revision of the 1924 *Bibliography of New Zealand Maori* by Herbert Williams. That work eventually became my co-authored work *Books in Maori 1815-1900*.[121]

238. At the same time I commenced a thesis, finished as a doctoral thesis 'Our infant state: the Maori language, the mission presses, the British Crown and the Maori 1814-1838' awarded in 2003, before *Books in Maori* appeared. The title of the thesis 'Our Infant State' was taken from an expression used by James Busby in drafting the 'Declaration of Independence' of October 1835, this being the principal focus of my thesis, where Busby quotes the

121 P. Parkinson & P Griffith, *Books in Maori 1815-1900, nga tanga reo Maori, an annotated bibliography* (Auckland: Reed, 2004) 1013 pp.

1740 verse translation of Virgil's *Aeneid.* Dido, the Queen of Carthage, tells the exiled refugees from Troy:

> Trojans be bold; against my will, my fate.
> A throne unsettled and an infant state
> Bid me defend my realms with all my powr's
> And guard with these severities my shores

239. These are lines also quoted by Machiavelli in *The Prince* Chapter XII.[122] Although this 'defence' was ostensibly aimed at the Baron de Thierry, Mr Busby was more immediately concerned with quite a different, and indeed personal argument concerned with the outlawing of the Hokianga liquor traffic and he used the call to the defence of the 'infant state of New Zealand' against the self-proclaimed 'sovereign chief' Thierry as a subterfuge. It was consistent with the position he had declared when he first arrived in 1833:

> I have also reason to suppose that it would be extremely difficult to persuade the individual chief or tribe to yield to the majority; but I am so strongly impressed with the advantages which would result to themselves in putting a stop to their frequent sanguinary conflicts that I am resolved to bend the whole strength of my mind to effect this object. I have been advised however that it would be inexpedient to allude to it at the approaching conference and it is probable that **the surest method of commanding success is, if possible, to discover a case in which such a union would prove to their advantage and give it the appearance of originating with themselves.**[123]

240. His superior, Bourke, saw through the subterfuge at once. Busby was manipulating the chiefs for his own purposes. He did it with the matter of the flag selection and he was up to his old trick with the Declaration two years later, one of the major themes of the thesis.

241. I continued the argument developed in 'Our infant State', in a second work tracing the fate of the Declaration and to be called 'The Anglo-Maori Covenant: the missions, law and sovereignty, 1838-1846' but that work has not yet been published, but parts were used for my substantial essay 'Preserved in the Archives of the Colony: the English drafts of the Treaty of

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122 Virgil, Aeneid lines 757-760, translation by Christopher Pitt. Machivelli gives the original Latin: "Res dura, et regni novitas me talia cogunt, Moliri et lati fines custodet tueri"

123 J. Busby to Colonial Secretary NSW, Sydney 13 May 1833, in Busby Despatches, no. 3 ATL-qMS-0344.

Waitangi' referred to above. My thesis and article have been cited in evidence by others in their briefs of evidence to this enquiry.

James Busby

242. I begin with James Busby. In her influential article 'Te Tiriti o Waitangi – texts and translations' (1972) Ruth Ross suggested that the Treaty "was specifically to retract recognition of the sovereignty of the united tribes"[124] and further observes: "The Secretary of State's continued avoidance of any mention of the united or confederated chiefs or tribes, or to their declaration of independence, his qualification of the sovereignty which Britain recognised as vested in the New Zealanders, surely dispels any theory that Hobson was instructed to treat with the "confederation" for the cession of New Zealand sovereignty."[125] An early view of Busby's competence, virtually unknown to date, is that of William Wade, who came to New Zealand with Colenso at the end of 1834 and who knew Busby well:

> I believe that the greatest charge brought against Mr Busby is that of want of energy. [. . .] Mr Busby is a man of high Tory principles and as a public functionary extremely cautious not to go beyond the letter of his instructions on the limits of his authority, the more so perhaps from being in every possible way oppressed and impeded by Sir R. Bourke, the late Gov. of New South Wales. I am not prepared to say that Mr Busby has exerted himself so much as he might in gaining personal influence over the natives. But it must be remembered that he is placed in a very delicate situation – without authority beyond the name & without power to enforce the ends of justice, he has many envious eyes upon him watching and waiting for him to commit himself. His appointment as it now stands is a mere farce & the individual who holds it is of sheer necessity little better than an object of ridicule; Sir Richard Bourke might well say that either further power must be given or the British Resident had better be withdrawn from New Zealand. [126]

243. Wade ascribed some of Busby's difficulties to his obligatory connection with Henry Williams "whose uncouth, self-important & over bearing manner very few know how to put up with."[127]

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124 Ross, 'Te Tiriti o Waitangi' p. 130, with a direct reference to Ward, *Shadow of the Land* (1968) p. 22 note 3.

125 Ibidem, p. 131.

126 W. Wade to Dandeson Coates, 6 February 1839, in DUHO Misc-MS-0323.

127 Ibidem.

244. In June 1839 Busby had considered offering his house at lease to the new 'functionary' expected to replace him as a Consul (supposed at that time to be Robert FitzRoy, who had visited the Bay of Islands in the *Beagle* in late 1835), but he had first mentioned the idea of converting part of the estate into town sections in a letter of 9 April. He was considering the need for a bank and for a battery. Arrangements were made to survey the site, but in August (after Busby learned that it was to be Hobson who would replace him), Henry Williams let it be known that he was opposed to the Victoria speculation and that he thought that the projected 'Victoria Paternal Institution' should be erected at Paihia, instead. Ill feeling between the two men resurfaced, as Busby remarks in a letter to his brother:

> But this is merely an illustration of what Williams's conduct has been to me throughout. [. . .] He is now insinuating away my character as an efficient functionary. [Charles] Baker has never come near me since it was made known they [the missionaries] were made use of in Sydney to remove me and get Hobson in my place.[128]

FitzRoy's impressions of Busby

245. These two difficult and incompatible characters were soon to be brought into collision over the reception of the letters from the self-styled 'Sovereign Chief', Thierry, offstage at Tahiti. Thierry encountered Robert FitzRoy of the Beagle at Tahiti on 18 November 1835:

> I went to see a person who styled himself Baron de Thierry, King of Nuhahiva and sovereign chief of New Zealand. About the house in which resides this self-called philanthropist – said to be maturing arrangements for civilizing Nuhahiva and New Zealand – as well as for cutting a canal across the Isthmus of Darien – were a motley group of Tatoowed New Zealanders, half clothed natives of Otaheite, and some ill-looking American seamen. I was received in affected state by this grandee, who abruptly began to question me with; "Well, Captain! What news from Panama? Have the Congress settled the manner in which they are to carry my ideas into effect?" I tried to be decently civil to him, as well as to the 'baroness'; but could not diminish my suspicions, and soon cut short our conference.[129]

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128 James Busby to Alexander Busby, 24 August 1839, cited in E. Ramsden, p. 227.

129 R. FitzRoy, *Narrative of the surveying voyages of His Majesty's ships Adventure and Beagle between the years 1826 and 1836* . . . (1839) v. 2 p. 515.

246. FitzRoy, after consultation with Queen Pomare, disarmed and disbanded Thierry's retainers. When the *Beagle* arrived at the Bay of islands on 21 December 1835, reports FitzRoy:

> We were amused by finding that the *Beagle* had been mistaken for a ship of the (so called) Baron de Thierry. Her small size; the number of boats; and her hoisting a white ensign (thought to be that of New Zealand), so completely deceived them all, that one boat only approached reluctantly, after we had anchored, to reconnoitre; but as soon as it was known that the expected intruder had not arrived, visitors hastened on board. Had he made such an experiment, he would hardly have escaped with life, so inveterate and general were the feelings then existing against his sinister and absurd attempt. He would have indeed found himself in a nest of hornets.[130]

247. FitzRoy's impressions of Busby were unflattering, although they are not so severe as his animadversions upon the 'Baron':

> Mr Busby's official occupations at New Zealand appeared to me of a very neutral character. An isolated individual, not even having the authority of a magistrate, encircled by savages, and by a most troublesome class of his own countrymen, I was not astonished at his anxiety to receive definite instructions and substantial support; or at the numerous complaints continually made by the English settlers.[131]

> I will not attempt to give the slightest sketch of events which had occurred anterior to the *Beagle*'s visit [. . .] farther than to say that the rumoured approach of de Thierry had stimulated Mr Busby (holding the undefined office of British resident) to take measures adverse to such foreign intruders by issuing a public announcement and calling together the principal chiefs of tribes inhabiting the districts of New Zealand north of the Thames, with a view of urging them to frame a sort of constitution (a copy of the constitution, or form of government decided upon at a meeting of all the chiefs of the northern districts excepting two or three of minor consequence, is in the Appendix no. 36) which should have a steadying influence over their unwieldy democracy, and leave them less exposed to foreign intrusion. Thus much had been done in words and on paper; the chiefs had departed, each to his perhaps distant home, and the efficiency of their authority, 'in a collective capacity' was yet to be discovered. No 'executive' had been organised; the former authorities each chief in his own territory hesitated to act as they had been accustomed, owing to a vague mystification of ideas, and uncertainty as to what had really been agreed upon, while the authority of Mr Busby was

130 R. FitzRoy, *Narrative* (1839) v. 2 p. 567.

131 Ibidem, v. 2 p. 576.

> absolutely nothing, not even that of a magistrate over his own countrymen; so of course he could have no power over the natives. [. . .] late events had impressed the natives with such a high idea of King William's men-of-war, that even the little *Beagle* was respected by them, and in consequence appeals were made to me by natives, by men of the United States of America, and by British subjects; but, not then aware of the peculiarity of Mr Busby's position, I referred them to him, under the idea that his office was of a consular nature, and that therefore I ought not to act in these cases, excepting as his supporter. Finding him unwilling to take any steps of an active kind, not deeming himself authorized to do so; and the aggrieved parties still asking for assistance, I referred them to the only real, though not nominal authority in the place, that of the missionaries.[132]

248. FitzRoy quickly realised that the 'Declaration of Independence of New Zealand' was of little or not practical effect. The assertions of Busby were just as hollow as those of the Baron. Actually, the most influential person at the Bay of Islands was none other than Henry Williams.

The attitude of the Governor of New South Wales to the work of Busby

249. Gipps, as Hobson's direct superior, is especially withering in his criticism of Busby's motives in orchestrating the Declaration. The Governor's speech on the second reading of the New Zealand Bill (published as a pamphlet) contains his understanding, advised by his officials, of the legal situation in which the European inhabitants of New Zealand had been placed.[133] It reiterates the preamble of the Bill on its introduction:

> that the uncivilised inhabitants of any country have but a qualified dominion over it, or a right of occupancy only, and that, until they establish amongst themselves a settled form of government, and subjugate the ground to their own uses, by the cultivation of it, they cannot grant to individuals, not of their own tribe, any portion of it, for the simple reason, that they have not themselves any individual property in it.

250. This is quite orthodox legal thinking at the time. The second principle in the Bill, the cause of the settler outrage, was "that if a settlement be made in any such country by a civilised power, the right of pre-emption of the soil, or in other words the right of extinguishing the native title, is exclusively in the

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132 Ibidem, v. 2 pp. 590-591.

133 G. Gipps, *Speech of His Excellency . . . on the second reading of the bill for appointing commissioners to enquire into claims to grants of land in New Zealand.* (1840) pp. 3-4. According to T. M. Hocken *Bibliography,* p. 79, the speech was drafted by Judge John Walpole Willis (1793-1877).

government of that power, and cannot be enjoyed by individuals without the consent of their Government." Gipps states:

> The declaration of Independence was made, moreover, only by a few tribes, in the Bay of Islands, not extending even so far south as the Thames. Mr Busby has told you, that it was entirely a matter of his own concoction, and that he acted in it without any authority from either the Secretary of State, or the Governor of this Colony, who was his immediate superior: it was in fact, a manoeuvre played off by him against the Baron de Thierry, and it is not even pretended that the natives could understand the meaning of it; still less could they assemble in congress and pass laws, as Mr Busby, in his declaration, had made them to say that they would do. But even supposing the declaration to have been a genuine and a valid one, the only effect of it would have been to prevent Captain Hobson from taking possession of the Island in which it was made, by virtue of the right derived from the discovery of it by Captain Cook, and to make him have recourse to negotiation with the natives. And as this is the very course which Captain Hobson did pursue, and as Her Majesty's Sovereignty has now been acknowledged by the very chiefs who signed the declaration of Independence, it follows that all things are now returned to the state in which they would have been, if no declaration of Independence had ever been made.[134]

251. The "utmost effect" of the Declaration had been to make necessary a negotiation with the chiefs in the Northern Island. The other Islands had been taken possession of "without negotiation, by virtue of the right of discovery". And, in any event, "New Zealand has never been, in point of fact, independent: it was included in the commission of Governor Phillip; and in every one of my predecessors down to the time of Sir Thomas Brisbane, when in consequence of Van Diemen's Land being separated from New South Wales, new boundaries were assigned to the Government, and New Zealand, probably by accident, was omitted." It was not "Independence" which conferred on a people the right of disposing of the soil they occupy "as to give to individuals not of their own tribes a property in it" but rather "it is civilisation which does this, and the establishment of a Government capable at once of protecting the rights of individuals, and of entering into relations with foreign powers". And above all it was "the establishment of law, of which property is justly said to be the creature."

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134 Gipps, *Speech* pp. 23-34.

And that, of course was what the chiefs had been asking for, and that was what the cession of sovereignty now permitted.

252. Hence "Independence without civilisation could no more give to the New Zealanders the right to dispose of their soil to strangers, than it could take the tattoo marks off their faces." As for the former British Resident:

> If the mere declaration of Independence by the New Zealanders could have given to Englishmen the right to dispossess them by the pretended purchases of their lands, then would the persons who prepared and concocted that declaration of Independence, have been the most insidious enemy that the New Zealanders ever had; and better it would have been for the New Zealanders themselves, and better for the honour of England if they had barbacued [sic] him, as we are told they do their hogs, and eaten him up outright. But it is not so; and Mr Busby stands acquitted of any such insidious design: his declaration of Independence (for it was his) was indeed, I think, a silly, as well as an unauthorised act [. . .] a paper pellet fired off at the Baron de Thierry.[135]

Other attitudes to Busby

253. It is fair to point out, however, that not everyone was impressed by this logic.[136] Ruth Ross also points out the dissembling and false claims by Busby to have been the principal agent in the drafting of the Treaty: "Busby's claim to have 'drawn' the treaty is thus a considerable exaggeration even if applied to the various English versions. His contribution to the Maori text of the Treaty itself, was, as we shall see, minimal."[137] Busby's contribution consisted of a single word! On the passage of the Act, Hobson wrote in his despatch of 15 October 1840, to the Secretary of State for the Colonies: "The New Zealand land bill, which passed the Legislative Council of New South Wales in July last, is fully calculated to meet most of the difficulties that I enumerated in my letters of 17th February last and the 23rd May; but the inconvenience arising from the want of judicial and legal functionaries is still much felt and Sir George Gipps holds out no hope of

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135 Ibidem pp. 23-34.

136 The critic Samuel McDonald Martin observed of it: "So conceited was the Governor of Botany Bay of his speech, that he actually incurred the expense of printing it, for the purpose of permanently delighting his friends and admirers with his eloquence, learning and justice."S. Martin, *New Zealand in a series of letters* (1845) letter vi, pp. p. 114.

137 Ross, 'Te Tiriti' p. 135.

obtaining them."[138] The cession of sovereignty and establishment of law was still very much a work in progress, even a year later, when an Attorney General (William Swainson) arrived.

A neglected French view of the Declaration

254. The British understanding of things is also consistent with an important French report, which is also seldom referenced but which sheds valuable light on the Declaration. Although Professor Ward mentions 'the swashbuckling Captain Du-Petit Thouars' at page 6 and elsewhere in his evidence, his brief of evidence makes no reference to what Du-Petit Thouars says about the Declaration, which Du-Petit Thouars clearly received from Busby's hand, so I have explained that matter here. The French warship *La Vénus*, under Du-Petit Thouars was sent in late 1838 to see that Pompallier was not being harassed by Protestant missionaries, and his report was almost as scathing about the Declaration as Gipps, after Pompallier and Rewa explained it to him and after he called on Busby (the account is in French, which I have translated, with assistance from Dr Thoron Hollard):

> M. Busby était, à la Baie des îles, le résident officiel de la Grand-Bretagne, c'est-à-dire ici un fonctionnaire sans fonctions apparentes. C'était, d'ailleurs, un homme jeune, aimable, bien élevé, de bonnes manières, et ce qui les Anglais nomment un gentleman. [. . .] M. Busby avait été envoyé à la Nouvelle-Zélande avec mission spéciale d'y planter le pavillon de S. M. Britannique, et seul de faire faction à côté de son drapeau; il occupait ce territoire *ipso facto* au nom de l'Angleterre, et son devoir était d'en informer tous les commandements des bâtiments de guerre étrangers qui pourraient se présenter dans la baie, afin que si leur intention était d'en prendre possession pour l'occuper, ils apprissent qu'il était désormais trop tard pour eux. A notre arrivée dans cette baie, nous avions effectivement reçu la visite de M. Busby et sa déclaration.[139]
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> (Translation:) Mr Busby was, at the Bay of Islands, the official Resident of Great Britain, that is to say, a functionary without apparent functions. He was, however, a pleasant, well-bred, well-mannered young man, what the English call a 'gentleman'. [. . .] He had been sent to New Zealand with the particular mission of raising the flag of His Britannic Majesty and to stand

138 W. Hobson to Secretary of State, despatch no. 40/8 dated 15 October 1840, duplicate holograph in Archives New Zealand G 30/1 pp. 243-261, the original printed in GBPP 1840 (311) p. 113.

139 A. Du Petit-Thouars, *Voyage autour du monde sur la frégate la Vénus pendant les années 1836-1839 [. . .]* . (1840-43) vol. 3 pp. 29-30.

> sole guard over it; he was to occupy this territory *ipso facto* in the name of England and his task was to inform any commanders of visiting foreign warships who should arrive at the Bay of this so that if it were their intention to take possession of the Bay with the intention of occupying it, they would realise that they were now too late! On our arrival at the Bay we received a visit from Mr Busby with his Declaration.

255. Like Robert FitzRoy three years earlier, Du-Petit Thouars went on to observe that there were many tribes:

> sans aucun lien politique qui les unisse entre elles, aucune ne prétend avoir de droits au-delà du territoire qu'elle habite; il résulte de là que lorsqu'une d'elles cède une partie du sol qui lui appartient, elle ne se réserve, sur ce territoire, aucun droit qui ressemble à ceux de souveraineté ou de suzeraineté dont elle n'a pas même l'idée; elle se trouve donc dans le fait, et sans le savoir, avoir vendu tout à la fois la propriété comme la souveraineté. Les Anglais, trop clair-voyants et trop habiles pour n'avoir pas aperçu du premier moment tout le parti qu'on pouvait tirer d'un tel état de choses, se sont empressés d'acheter de vastes étendues de terrain, où ils se sont proposé de coloniser en établissant tout à la fois leur civilisation, leur lois et leur coutumes, pour s'étendre ensuite, peu à peu et progressivement, par la possession et par l'occupation effective, sur le territoire entier de la Nouvelle-Zélande.[140]
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> (Translation:) without any political tie uniting them, none claims to have any rights beyond the territory they live in. As a result, when one of them cedes part of the land belonging to it, it does not retain over this territory any rights of sovereignty or suzerainty, which is not even a concept they possess; it means that in fact and unknowingly a tribe has sold both the property and sovereignty. The English, being too clearsighted and clever not to have at once realised what advantage they could take of such a state of affairs, have rushed to buy vast stretches of terrain which they propose to colonise, establishing at the same time their civilisation, their laws and their customs, in order to extend control, hereafter, little by little and progressively by possession and effective occupation over the entire territory of New Zealand.

256. And so it was. Du-Petit Thouars observes also that on his arrival in New Zealand Thierry had found all his hopes were founded on illusions because he had not known of the system of land tenure. He gives a translation of Busby's circular to the English settlers of 10 October 1835[141] and also a

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140 Ibidem, vol. 3 p. 46.

141 Ibidem, vol. 3 pp. 50-52.

translation (French from English) of the Declaration of Independence.[142] He comments on the latter:

> Cette proclamation de M. Busby, motivée sur l'annonce de l'arrivée de baron Thierry, qui était a cette époque à O-Taiti à attendre les moyens nécessaires pour mettre son project à exécution, est le premier acte officiel émané de cet agent, dans un but futur d'occupation. [. . .] car ses droits quoique peu fondés, l'étaient cependant autant qu'ont pu l'être depuis ceux sur lesquels on s'est appuyé pour offrir, au nom des chefs et des *principaux* indigènes du district de la Baie des Iles, la souveraineté de la Nouvelle Zélande entière à S. M. le roi de la Grand-Bretagne. Je le répète, les chefs de la Nouvelle-Zélande ne sont unis par aucun lien politique ou civil; ils sont complètement étrangers les uns aux autres et à tout ce qui a pu être dit ou écrit à ce sujet, en leur nom collectif; tout ce qui a rapport à ces prétendus congrès ne repose que sur une pure fiction, à laquelle les Anglais établis sur les lieux ont donné, autant qu'il a dépendu d'eux, un corps et une apparence de réalité.[143]
>
> (Translation:) This proclamation of Mr Busby, motivated by the announcement of the arrival of the Baron de Thierry, who was at that time in Tahiti to wait for the means necessary to execute his plans, is the first official action emanating from that agent looking towards a future as an occupying power [. . .] for his [Busby's] rights, though with little foundation, were, however, as much as they could have been since, those that were depended on to offer in the name of the chiefs of the principal natives of the district of the Bay of Islands the sovereignty of all of New Zealand to H. M. the King of Great Britain. I repeat, the chiefs of New Zealand are not united by any civil or political alliance; they are complete strangers one to another and to everything that has been said or written on this subject in their collective name; everything relating to these claimed associations is nothing but a pure fiction to which the English established in the area have given, as far as they are able, a substance and semblance of reality.

257. The French text expresses the sense in a convoluted and perhaps even ironic manner, but the general import is that neither Busby nor the Baron were acting with any legitimate authority. The deals made in the name of Thierry by his 'agent' Kendall in the 1820s had no more standing than those later published by Busby and presented as the outcome of 'deliberations' (which never in fact took place):

142 Ibidem, vol. 3 pp. 54-56.

143 Ibidem, vol. 3 p. 53.

> tout a été dicté par M. Busby à un petit nombre de chefs, vivant dans sa dépendance ou dans celle des missionnaires, et autour desquels on a groupé tout ce que l'on a pu rassembler d'indigènes établis auprès des blancs et à qui, dans cette circonstance, on a donné le nom des *principaux*. Aucune confédération de tous les chefs de l'île n'a jamais eu lieu, et la raison en est simple: c'est que l'état social de la Nouvelle-Zélande la rendait impossible. Ce qui est vrai, c'est que cette affaire a été fort habilement dirigée par M. Busby qui, par son acte du 10 octobre 1835, a posé le premier jalon de la ligne de conduite qu'il a tenue; il annonce, par cet acte, qu'il va réunir les chefs; effectivement, il rassemble autour de lui, sur son habitation de Wai-Tanguy, à la Baie des Iles, les chefs des environs de la Baie et ceux des pâhas les plus voisins, ainsi que les indigènes qui vivant au milieu des blancs; mais non, comme il a été dit, tous les chefs de l'île du Nord, dont cette réunion n'était, en effet, qu'une fraction non-commissionnée. Avec ce simulacre d'assemblée nationale, fausse représentation de la réunion des chefs notables de l'île, il fait dresser la déclaration d'indépendance qu'ils sont censés avoir délibérée; acte que dans le fait il a dicté lui-même et publié en leur nom, le 28 octobre 1835."[144]
>
> (Translation:) everything was dictated by Mr Busby to a small number of chiefs living in dependence on him or on the missionaries and around whom were grouped as many natives living in proximity to the whites as could be brought together and who were called for this purpose the 'principals'. No confederation of all the chiefs of the island has ever existed, and the reason for this is simple: it is that the social state of New Zealand made it impossible. The fact is that this affair has been very ably orchestrated by Mr Busby who, by his deed of 10 October 1835, sets out to blaze a trail for the line of conduct [against Thierry] which he has continued; he announces by this deed that he will unite the chiefs, but in effect he is gathering to himself at his dwelling at Waitangi, the chiefs of the Bay and of the nearest surrounding pahs, as well as those living among the whites, but not (as has been alleged), all the chiefs of the North Island, of which this meeting was in fact a non-representative sample. With this simulated National Assembly, fraudulently representing a meeting of the notable chiefs of the island, he is drawing up a Declaration of Independence which they are supposed to have to deliberated upon, a deed which he dictated and published in their names on 28 October 1835.

258. This explanation of what had happened, given on the authority of Rewa and Pompallier, is entirely consistent with the other contemporary accounts. As for the 'New Zealand Standard' Du Petit-Thouars is equally scathing:

144 Ibidem, vol. 3 pp. 53-54.

> Aucune des tribus de la Nouvelle-Zélande n'avait de pavillon; celui dont il est ici question est un pavillon de fantaisie, dans lequel on a mis le yacht national anglais et qui a été donné par les Anglais eux-mêmes, au chef Rewa-Rewa de la Baie de Iles, ainsi que nous avons donné un au roi Youtâti a l'île Christine *des Marquises*. Cet emblème de nationalité n'existait pas plus à la Nouvelle-Zélande qu'aux Iles Marquises, et la valeur politique de ce signe n'était pas mieux compris dans un lieu que dans l'autre. Toute cette affaire est une comédie jouée pour les journaux d'Europe, et afin de donner à l'usurpation de la Nouvelle-Zélande une couleur de légitimité dont elle manque."[145]
>
> (Translation:) None of the tribes of New Zealand had a flag; it is a flag of fantasy on which has been put the national yacht of the English and which was given by the English themselves to the chief Rewa-rewa of the Bay of Islands just as we gave one to the king Youtâti at the Island Christine of the Marquesas. This national emblem no more existed in New Zealand than it did in the Marquesas and the political value of this emblem is no better understood in the one place than in the other. This whole affair is a comedy played out for the benefit of the newspapers of Europe and is intended to give the usurpation of New Zealand a hue of legitimacy which it lacks.

259. Besides that, he adds, it was obvious that such weighty matters could not have been deliberated upon in a mere eighteen days between the letter of the 10 October and the Declaration of 28 October. The country had been "confiscated by England from its legitimate owners."[146] At Sydney, on 30 November, Du-Petit Thouars met Gipps: "Eclairé depuis mon arrivée sur le caractère de M. Gibbs [sic] et informé de la haine violente qu'il porte aux catholiques" (Enlightened since my arrival about the character of Mr Gipps and informed about the violent hatred he bears towards Catholics) Probably because the text is in French and not widely available it has been largely ignored.

260. Du-Petit Thouars gives a translation of Busby's circular to the English settlers of 10 October 1835[147] and also a translation (French from English) of the Declaration of Independence.[148] He reiterates that:

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145 Ibidem vol. 3 p. 55.

146 This is rather rich, coming from the man who had just extorted a considerable sum from Queen Pomare and whose colleague Captain Laplace of *Artémise* had recently demanded a sum of $20,000 from King Kamehameha III not to bombard Honolulu when he reached Hawaii on 9 July 1838.

147 Ibidem, vol. 3 pp. 50-52.

148 Ibidem, vol. 3 pp. 54-56.

> the chiefs of New Zealand are not united by any civil or political alliance; they are complete strangers one to another and to everything that has been said or written on this subject in their collective name; everything relating to these claimed associations is nothing but a pure fiction to which the English established in the area have given, as far as they are able, a substance and semblance of reality.[149]

Summary of the deficiencies of Mr Busby

261. Already, by October 1836, James Stephen and the Colonial Office were fed up with Busby and could not understand why Bourke had not already eliminated him. Stephen asked Gardner to look into the matter ("I have not the present leisure to give the necessary attention to it") and Gardner replied in his memo: "Nothing can be more miserable than the picture which Mr Busby draws of the state of things there, and the last enclosure to his letter 2230 shows how little cordiality exists between him and the Governor. It is remarkable that Sir R. Bourke has not acted on Lord Glenelg's suggestion and superseded Mr Busby by a more efficient officer." After a further despatch Gardner wrote to Stephen:

> I have read through all Mr Busby's reports and it does not appear to me that anything remains to be done on them. They are mere copies of what he has written to the Governor of New South Wales and he sends them here with the full understanding that he is not to correspond direct with the Secretary of State. The state of New Zealand is shewn to be lamentably bad and Mr Busby has long been regarded as unfit for office. Sir R. Bourke was authorised to remove him and in one of his communications to Mr Busby he intimates that fact to him.[150]

262. The New Zealand Company officials were also critical of the actions of Busby:

> The authority of the British Crown was frequently enforced by means of Ships of War and although it cannot be asserted that regular government was ever established in New Zealand, far more that was essential to creating a British Dependence seems to have been performed. But in October 1835 this diplomatic agent [Busby] assembled certain native chiefs residing in the northern part of the north island, called them a confederation and sanctioned a Declaration of Native Independence to which

149 Ibidem, vol. 3 p. 53.

150 Notes to James Stephen from Gardner, 23 October 1836, and response 15 November, PRO CO 209 / 2 pp. 228-287-288, 291-292. Stephen annotated the latter: "I confess I do not perceive the possibility, or rather the utility of moving at all in these matters at present."

> their names were appended. This last act appears by all accounts to have been a mere mockery of its ostensible purposes. The tribes of New Zealand are so entirely distinct, so utterly destitute of nationality as to have no name for the whole country which they inhabit. A national name, therefore, was invented for the occasion; the words "Nu Tireni' which expresses the native pronunciation of the English words "New Zealand'. The only parties besides to the so-called declaration of independence were the chiefs of a few tribes then inhabiting a small part of one of the islands. These, even inasmuch as their language contains no words to express nationality, sovereignty or independence must have been unconscious instruments of the Resident, or of the missionaries to whom that officer was accredited as if *they* had been sovereigns of New Zealand. If indeed the sovereignty was delegated to the missionaries they could, being British Subjects, *not have held it but as trustees for the Crown.* If the sovereignty of the natives was then acknowledged, it extended only to that small part of one island inhabited by the parties to the declaration. And in either case this mockery of an independent sovereign jurisdiction has been set at naught by the power whose name it took, inasmuch as the jurisdiction of British Law and the armed authority of British ships of war have been exercised since in the same way as before the Bay of Islands declaration of independence. [i.e. by the actions of Captain Lambert of the *Alligator* in 1834 and of Captain Hobson of the *Rattlesnake* in 1837].[151]

263. A week later, correspondence of the New Zealand Company also puts Busby in an unflattering light:

> The Directors imagine that foreign attempts either to colonise New Zealand or to maintain the mockery of a native Sovereignty there, in pursuance of the Declaration of Native Independence, which was sanctioned by our Colonial Department and of the Instructions recently given to Captain Hobson (of which an extract is enclosed) may have the effect of impeding Captain Hobson in the execution of that part of his instructions by which he is directed to establish a British authority, and they fear that the period of anarchy in the settlement may thus be very mischievously prolonged.[152]

The criticism by the settlers at the Bay of Islands

264. British settlers at Kororāreka (now called Russell) petitioned the king (William IV) in March 1837, expressing their disapproval of Busby's proceedings:

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151 Joseph Somes to Lord Palmerston, 7 November 1839, Archives New Zealand, New Zealand Company Papers NZC 102/1, 240-241.

152 New Zealand Company Papers NZC 102/1, 193 (14 November 1839).

> Your humble petitioners seriously lament that when complaints have been made to the British Resident of these acts of outrage he has expressed his deep regret that he has not yet been furnished with authority and power to act, not even the authority of a civil magistrate to administer an affidavit. Your humble petitioners express with much concern, their conviction that unless your Majesty's fostering care be extended towards them, they can only anticipate that both your Majesty's subjects and also the aborigines of this land, will be liable in an increased degree, to murders, robberies, and every kind of evil. Your petitioners would observe that it has been considered that the confederate tribes of New Zealand were competent to enact laws for the proper government of this land, whereby protection would be afforded, in all cases of necessity, but experience evidently shows that, in the infant state of the country, this cannot be accomplished or expected. It is acknowledged by the chiefs themselves to be impracticable. Your petitioners therefore feel persuaded that considerable time must elapse before the chiefs of this land can be capable of exercising the duties of an independent government.[153]

265. One issue which did stir Busby to action in 1835 was a dispute over liquor traffic at the Bay of Islands and Hokianga. Missionaries and traders wanted to stop the traffic, impressed by a similar scheme trialled at Tahiti by its Queen. Busby opposed the temperance movement, saying he had no authority to act. When he would not act, others did, especially the 'Additional British Resident' at Hokianga, McDonnell, with whom Busby was feuding.

266. It was at this point, in early October 1835, that the letter was received from the 'Baron de Thierry' claiming to be a 'sovereign chief of New Zealand' which he said he was about to occupy as his new kingdom. As John Ross explained well, Busby seized the opportunity to see off both MacDonell and Thierry ('tenei tangata pokanoa') at a blow by summoning a hui at Waitangi to persuade the local 'high chiefs' to assume the sovereignty of New Zealand as a Confederation called Te Wakaminenga o nga hapu o Nu Tireni (Confederation of the Tribes of New Zealand). [154] He had had that idea since his arrival in 1833, as he discusses it in his letter to the Colonial Secretary of New South Wales of 13 May 1833, in his despatch book.[155] In

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153 The full text and list of signatories is reproduced in R. A. A. Sherrin and J. H. Wallace's *Early history of New Zealand* (1890) pp. 463-464, and by Lee, *'I have named it the Bay of Islands'* (1983) pp. 301-306.

154 See especially John Ross, 'Busby and the Declaration of Independence', *New Zealand Journal of History* v, 14 no. 1 (1980): 83-89.

155 Alexander Turnbull Library, qMS-0344.

his own report to the Waitangi Tribunal Mr Samuel Carpenter also discusses the issue, but I differ from him in two areas. Firstly I consider Mr Carpenter is insufficiently critical of the self-serving Resident's armchair diplomacy and secondly I think he over-values the pro-Busby stance taken by Ramsden.

How the Declaration came about

267. On 13 May 1833, after only a few days experience of New Zealand, and three days *before* his formal reception, Busby had already formulated grand plans (somewhat shortened here):

> From all I have been able to learn it appears that there are in the Northern part of the Island from 25 to 30 tribes of natives who are in every respect independent of each other and who exercise separately and each without reference to the rest all the functions of sovereignty which their simple sovereignty requires. [. . .] The chiefs of New Zealand should be acknowledged in any transaction which might be considered of an international character, in their collective capacity only. I am not sure, however, that they have ever had an idea of confederating for any national purpose. And even in warfare I believe it is very unusual for more than two or three tribes to unite their forces. I have also reason to suppose that it would be extremely difficult to persuade the individual chief or tribe to yield to the majority; but I am so strongly impressed with the advantages which would result to themselves in putting a stop to their frequent sanguinary conflicts that I am resolved to bend the whole strength of my mind to effect this object. I have been advised however that it would be inexpedient to allude to it at the approaching conference and it is probable that the surest method of commanding success is, if possible, to discover a case in which such a union would prove to their advantage and give it the appearance of originating with themselves.
>
> Such a case it appears to me would arise out of the adoption of a national flag. [. . .] I have good hopes it will afford me an opportunity for bringing the chiefs to consent that they will henceforth act in a collective capacity in all future negotiations with me. [. . .] A tribunal will thus be brought into existence [. . .] and individual chiefs may be compelled to acquiesce in the deliverance of runaway convicts. [. . .] Besides these advantages I contemplate so many others as likely to arise out of an established Government of which the confederation of the chiefs may be considered the basis, that I shall continue to look

> forward with great anxiety to the receipt of your answer to this letter.[156]

268. His long desired plan was effected in 1835, two years later. It would have the effect of ending any legal or sovereign authority asserted by anybody else (including MacDonnell or Thierry, or any corporate body set up by local associations of settlers). He personally drew up the document in English, as a Declaration of the Independence of New Zealand, declining to consult the missionaries over the content of it but having it translated into Maori by Henry Williams, then transcribed afresh by one of the literate Maori scribes (Eruera Pare, te kai-tuhituhi = Edward Parry, the scribe) to disguise the fact that it was his work. He also made sure that neither his name not that of any missionary appeared on it, prevailing on Clendon and Mair to act as witnesses instead. Or perhaps the missionaries declined to involve themselves with a potitical matter without seeking advice. As with the Treaty in 1840 there was never any question of the chiefs considering a written draft, making amendments and so forth. It was a matter of "take it or leave it, this is our advice." There was no protracted consideration either, nor any written advice supplied to the chiefs for consideration. There is just a short letter inviting attendance at a meeting (reproduced as (BiM 24).

269. The document was signed quickly by 34 'high chiefs' Busby selected, including most of those who had signed the earlier petition to King William IV in 1831. Busby did this without any formal consultation or approval from the Governor of New South Wales and he sent a copy direct to the Colonial Office in England, in breach of his obligations. After the event on 12 January 1836, when there was an armed attack by Waikato's people in another group, Busby crossed Waikato's name out of the list of 'united' chiefs and the name does not appear in the subsequent printed list of 8 March 1836. On 18 January 1836, a week after the fracas, Busby acknowledged this debacle to Governor Bourke, saying that:

> we must delay for the determination of the King whether justice should be done by his Govt. or by the Govt. of this country alone and when this was known I would assemble the chiefs and communicate it to them as it was the duty of the Confederation to see justice administered and not that of the injured tribe. They replied that they had considered my

156 J. Busby to Colonial Secretary NSW, Sydney 13 May 1833, in Busby Despatches, no. 3 ATL-qMS-0344.

> residence as sacred and they had therefore attended at my summons but they would assemble there no more, that murder was committed under the cover if its sanctity, and they did not know who would be murdered next.[157]

270. He added:

> I trust that H.E. will not suppose [. . .] I have lost sight of the duties which fall on the Confederated Chiefs by their late act of union. I have not lost sight of them but it would be more difficult still for me to close my eyes to the fact that these duties as to them exist as yet only in theory.[158]

271. After consulting his Executive Council Bourke declined to send a punitive expedition against the errant chief Waikato, as it would have amounted to an invasion of a neighbouring state, and the Chief Justice of New South Wales acidly remarked that "Mr Busby appeals to the laws of God, but unfortunately the laws of God become inoperative, unless reduced to positive legislation and made capable of being carried into effect."[159] Henry Williams had not been present at the *hui* on 12 January but his brother William Williams had attended.[160] In his following despatch Busby concluded, that under the circumstances, even if he did attempt to convene another meeting the chiefs who were opposed to peace would not attend, and that "British interference in the Govt. of this country has now become indispensable".[161] The short-lived scheme for the 'Confederation' was abandoned and Busby sent his family to Sydney for safety. Memory of this fateful meeting still lingered when the 'Confederation' met again, for the first and last time, on 5-6 February 1840, to 'cede' its notional sovereign authority. Mr Carpenter has a good understanding the all of these facts, but it seems to me that he does not recognise that Busby's intervention was catastrophic and undermined fatally both government, missionary and settler reliance on him and the self government schemes he was contriving.

272. It follows, therefore, that there is general agreement among Busby's contemporaries that he and his schemes to establish some form of self-

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157 J. Busby to Colonial Secretary NSW, 18 January 1836, Despatch no. 84, ATL-qMS-0344.

158 Ibidem.

159 Chief Justice Forbes to Governor Bourke, 17 March 1836, quoted in Ramsden, *Busby of Waitangi* (1942) p. 149, note 16.

160 He gives an account in his journal entry for 12 January (see ATL-Micro-MS-Coll-04-31 (CMS Archives CN/ M v. 8 p. 176): "Mr Busby will make this case, in addition to many others, the ground of an application to the British Government for a more efficient support to his authority."

161 J. Busby to Colonial Secretary NSW, 26 January 1836, Despatch no. 85, ATL-qMS-0344.

government among the Northern Tribes were abject failures and some other person and some other strategy would become necessary. Even as the chiefs left Busby's hui in 1835 he was told that he must not expect any chief to subordinate his rights to a confederation. Although signatures were collected from the 'high chiefs' (there were eventually 52), effective sovereignty lay not with the 'United Tribes' but with the chiefs of the individual hapu and iwi.

273. On the other hand I think Mr Carpenter makes a good case for distinguishing the various forms of sovereignty which the period to 1850 entertained. The missionaries were also cognisant of these matters, referring to chiefs as 'sovereigns of their soil' even though no nation-state in New Zealand was apparent. In New Zealand in 1840 there was simply no intelligible way of thinking of its islands as a single 'sovereign state' and nobody thought it really was one. The Treaty of Waitangi was intended to set up a civil government within a new colony in which the rights and privileges of both Maori and settlers would be recognised under law.

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