He Whakaputanga me te Tiriti
The Declaration and the Treaty
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The Declaration and the Treaty

The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry

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HE MIHI

Tātai whetū ki te rangi, mau tonu, mau tonu
Tātai tangata ki te whenua, ngaro noa, ngaro noa

E koutou kua ngaro ki te pū o mahara
E koutou i pikau i tēnei take ki te aro o Tē Rōpū Whakamana i te Tiriti o Waitangi
Tēnei ka haku, tēnei ka mapu

Kua kore koutou i te tirohanga tangata
Kua kore koutou i te pīiao o te ata tū
Tē kīte i te mutunga o ngā mahi, tē rongo i te tutukinga o ngā moemoeā.
Tēnei ka auē, tēnei ka auhi

Mā ngā haumāuiui o tēnei kaupapa koutou e hahua mai anō
Ka rangona tonutia ō reo e ngā rau o te pūrongo

E Rima, Hōne, ko kōrua tēnā, ā, koutou katoa i te hinganga o te tini, i te moenga o te mano

He aha māku?
He tangi, he mihi, he poroporoaki

E moe, i te moenga roa, ki reira okioki ai

While the starry hosts above remain unchanged and unchanging
The earthly world changes inevitably with the losses of precious, loved ones

To those of you who have been lost to the void of memories
To you who heralded this inquiry before the Waitangi Tribunal
For you we lament

To those of you who are lost from sight
To you who will not see the dawn of a new day
Not see the completion of your work nor to hear of the achievement of your dreams
For you we cry of distress

You are remembered through the fruit of your toil and your voices are heard by the pages of our report

Rima Edwards, John Alexander, all of you who departed to the assembly of the hundreds and
the congregation of the thousands

What am I left to do?
Grieve, acknowledge, farewell

Rest now in peace
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The Honourable Te Ururoa Flavell  
Minister for Māori Development  
The Honourable Christopher Finlayson  
Minister for Treaty of Waitangi Negotiations  
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14 October 2014

E ngā Minita e noho mai nā i ērā taumata i te Whare Pāremata, ngā mihi maioha ki a kōrua.

I enclose a copy of our report on stage one of the Wai 1040: Te Paparahi o te Raki inquiry. The report is titled *He Whakaputanga me Te Tiriti – The Declaration and the Treaty*. It is concerned with the meaning and effect of:  
- He Whakaputanga o te Rangatiratanga o Nu Tireni, and the Declaration of Independence of New Zealand, and  
- Te Tiriti o Waitangi, and the Treaty of Waitangi, at the time of the first signings in February 1840.

As you will know, the claimants and the Crown agreed that our inquiry should be conducted in two stages. The first stage has been dedicated solely to addressing these questions concerning the ‘meaning and effect’ of the declaration and treaty. This was no easy task – but an essential step towards the second stage in which we consider claimant arguments that, since 6 February 1840, the Crown has caused them prejudice by acting inconsistently with treaty principles.

The Te Paparahi o te Raki stage 1 inquiry panel is the first Tribunal panel to have heard comprehensive historical claims from the descendants of the rangatira who signed te Tiriti in February 1840 at Waitangi, Waimate, and Mangungu. We are therefore the first to have had the
opportunity to hear and test the full range of evidence about the treaty's meaning and effect in February 1840.

It is our view that an agreement was reached at Waitangi, Waimate, and Mangungu in February 1840. That agreement can be found in what signatory rangatira (or at least the great majority of them) were prepared to assent to, based on the proposals that William Hobson and his agents made to them by reading te Tiriti and explaining the proposed agreement verbally, and on the assurances the rangatira sought and received.

We have concluded that in February 1840 the rangatira who signed te Tiriti did not cede their sovereignty. That is, they did not cede their authority to make and enforce law over their people or their territories. Rather, they agreed to share power and authority with the Governor. They agreed to a relationship: one in which they and Hobson were to be equal – equal while having different roles and different spheres of influence. In essence, rangatira retained their authority over their hapū and territories, while Hobson was given authority to control Pākehā.

The rangatira also agreed to enter land transactions with the Crown. The Crown promised to investigate pre-treaty land transactions and to return any land that had been wrongly acquired. In our view that promise, too, was part of the agreement made in February 1840. Further, as part of the treaty agreement, the rangatira may well have consented to the Crown protecting them from foreign threats and representing them in international affairs where necessary. If so, however, the intention of signatory rangatira was that Britain would protect their independence, not that they would relinquish their sovereignty.

The evidence is that this is the arrangement that Hobson explicitly put to rangatira – both through the Māori text and through his verbal explanations – and that they then assented to after receiving assurances in respect of their equality with the governor. Though Britain intended to obtain the sole right to make and enforce law over Māori as well as Pākehā, Hobson did not explain this. Rather, in keeping with his instructions, he emphasised that Britain’s intention was to control Pākehā in order to protect Māori. The detail of how this relationship was to work in practice, especially where the Māori and Pākehā populations intermingled, remained to be negotiated over time. It is clear that at no stage, however, did rangatira who signed te Tiriti in February 1840 surrender ultimate authority to the British.

While some may see our conclusions as radical, they are not. In truth, our report represents continuity rather than dramatic change. Leading scholars – both Māori and Pākehā – have been expressing similar views for a generation or more. When all of the evidence is considered, including the texts as they were explained to rangatira, the debates at Waitangi and Mangungu, and the wider historical context, we cannot see how other conclusions can be reached.

I reiterate that our report concerns the meaning and effect of the treaty in February 1840. It does not contain findings in respect of claims, and nor does it make recommendations. It makes
no conclusions about the sovereignty the Crown exercises today. Nor does it say anything about how the treaty relationship should operate in a modern context.

E ngā Minita – those who read our report will see that we have considered challenging and complex issues about how New Zealand was founded – about the places of both Māori and non-Māori in this land. These are issues we as a nation have struggled with. However challenging, they are important not only to the Tribunal and to the parties in this inquiry, but also to the nation as a whole.

Heoi anō, e ngā amokura, e ngā amokapua, kua whārikihia ngā whakaaro o te Roopū Whakamana i te Tiriti o Waitangi. Hei aha? Hei whakaaroaro mā koutou o te Whare Pāremata, waihoki, hei huritao, hei kohuki mā te motu whānui hoki.

Nāku noa

Judge C T Coxhead
Presiding Officer
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During hearings, the Tribunal relied upon the special skills of Pita Tipene (master of ceremonies), Rangi McGarvey (interpreter and translator), and Alan Doyle (sound technician).
ABBREVIATIONS

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‘Wai’ is a prefix used with Waitangi Tribunal claim numbers.

Unless otherwise stated, endnote references to claims, documents, memoranda, and papers are to the Wai 1040 record of inquiry, a select copy of which is reproduced in the appendix. A full copy is available on request from the Waitangi Tribunal.
CHAPTER 1

INTRODUCTION

1.1 THE MEANING AND EFFECT OF THE TREATY
Did the rangatira of the Bay of Islands and Hokianga cede sovereignty – that is, the power to make and enforce law – to the British Crown when they signed te Tiriti o Waitangi in February 1840? If not, what was their understanding of the relationship they were establishing with the Crown? These are questions we face in this, stage 1 of our Te Paparahi o Te Raki (the great land of the north) inquiry. They are momentous questions – ones that are important not only to the Tribunal and to the parties in this inquiry, but also to all New Zealanders.

None of these questions is new. Indeed, ever since rangatira affixed their moko, marks, or signatures to te Tiriti at Waitangi on 6 February 1840, there has been discussion about the exact nature of the agreement that was reached. The Crown has always seen the treaty as an act of cession, in which Māori submitted to British sovereignty and government in exchange for certain protections. Others have seen it differently. To many Māori, the treaty has been seen as an assertion of rangatiratanga, of chiefly authority, not its diminution. The treaty has also been hailed as New Zealand’s founding document, its Magna Carta, a sacred covenant between Māori and the Crown; and it has been dismissed as an irrelevance, a fraud, a sham, and a ‘simple nullity’. It has been seen as an act of humanitarianism, extending Britain’s protective arm around vulnerable Māori shoulders; and as an act of imperialism, designed to deliver Māori land, resources, and power into grasping British hands. It has been seen as affirming He Whakaputanga o te rangatiratanga o Nu Tireni – which was first signed in 1835 and is known in English as the Declaration of Independence of New Zealand – and as superseding that declaration. The treaty has been seen as a basis for national unity founded on a solemn partnership between two peoples, and as a basis for division and special rights; as a source of national pride, and as a source of national guilt; as an honest and well-intentioned act by Britain and its representatives, and as a dishonest one; as a pact founded on common understanding, and as an example of two cultures talking past each other.

For the claimants in this inquiry, te Tiriti has particular significance because their tūpuna were its initial signatories. On 6 February 1840, at Waitangi, some 43 to 46 rangatira signed. A few days later, six rangatira signed at Waimate, apparently without debate. Then, on 12 February at Mangungu in the Hokianga, some 64 rangatira debated and signed te Tiriti at an event that was even larger in scale than the previous week’s at Waitangi. Altogether, within our inquiry area, more than 150 rangatira signed te Tiriti.
during the course of the year, though our focus in this stage 1 inquiry is on those first signings in February 1840.²

We heard, during this stage of our inquiry, from descendants of many of the original signatories at Waitangi, Waimate and Mangungu, who told us how Māori understandings of the treaty had been passed down from generation to generation and could now be heard by a wider audience. ‘The truth has never been told or acknowledged so there is still much misunderstanding and apprehension about the place of Te Tiriti in New Zealand’s Constitution,’ Erima Henare of Ngāti Hine contended. The claimants, he said, sought to have ‘the myths that are perpetuated about us thrown off’.³

The task before us, then, was neither simple nor one we undertook lightly. Whatever the treaty means, it means something essential – to the claimants, to the Crown, to all people of New Zealand. No other document in the nation’s history has been written about so much, or generated so much controversy, or been seemingly open to so many wildly contrasting interpretations.

All of those interpretations reflect their time and place, and the concerns, preoccupations, and perspectives of whoever is speaking or writing. When rangatira gathered at Waitangi, Waimate, and Mangungu, they brought with them an understanding of the world that was based on whakapapa; on the values of whanaungatanga, manaakitanga, kaitiakitanga, and rangatiratanga; on the imperatives of mana, tapu, and utu, all of which we discuss in chapter 2. They came from a world in which each hapū was autonomous and exercised power over its own territories, retaining that autonomy even when acting in alliance or concert with other hapū. The rangatira brought also their own individual experiences and concerns, based on the interests of their hapū; on their relationships with the traders, missionaries, sawyers, whalers, and others who had visited or settled in their lands; and on their engagement with the ideas those people had brought.

The British brought their own perspectives and motivations, which typically included belief in an omnipotent God; in individual rights to life, liberty, and property; in the importance of commerce as a means of personal advancement; in the superiority of British institutions of law and government, under which Parliament held sovereign power; and in their own roles as agents of civilisation. In February 1840, the leaders of those two worlds established a formal relationship with each other through the mechanism of the treaty. It is our task to determine the nature of that relationship as each party understood it, and indeed to determine whether there was any common understanding at all.

An obvious question arises: why is the treaty’s meaning and effect being considered now, almost 30 years after the Tribunal’s jurisdiction was extended to cover historical claims? The answer, simply, is that this is the first Tribunal panel to receive the direct wero (challenge) to carry out that task, because we are the first to hear comprehensive historical claims from the descendants of te Tiriti’s original, February 1840 signatories. We are therefore the first to hear the claimants’ kōrero tuku iho (traditions handed down through generations) about what their tūpuna intended; and we are also the first to hear detailed

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² ‘Tiriti’ and ‘Treaty’

In this report, where we use ‘te Tiriti o Waitangi’ or ‘te Tiriti’, we are referring to the text in te reo Māori. Where we refer to ‘the Treaty of Waitangi’ or ‘the Treaty’, we are referring to the text in English. Where we want to refer to both texts together, or to the event as a whole without specifying either text, we use the term ‘the treaty’ in lower case.

Likewise, where we refer to ‘He Whakaputanga o te Rangatiratanga o Nu Tireni’ or ‘he Whakaputanga’ we are referring to the Māori text of the 1835 declaration; where we refer to ‘the Declaration of Independence’ or ‘the Declaration’ we mean the English text; and we use ‘the declaration’ to refer to both texts together, or to the event as a whole without specifying either text.

We explain our reasons for adopting this terminology in section 1.4.2.
Introduction

evidence about events prior to 1840 in the Bay of Islands and Hokianga which, we were told, profoundly shaped those original signatories’ understandings of and willingness to sign te Tiriti. Overall, we are the first panel that has been given an opportunity to hear and test the full range of evidence about the treaty’s meaning in February 1840 to both Māori and the Crown.

The status of this report needs to be understood. In spite of the importance of its subject matter, it does not stand alone. Rather, it is a contextual report, prepared as a preliminary step towards the completion of our inquiry into Te Paparahi o Te Raki treaty claims. This report represents the completion of stage 1 of that inquiry. In stage 2, we will consider the claims of Te Raki Māori that the Crown has in various ways acted inconsistently with the principles of the treaty and so has caused them prejudice. Consideration of what the treaty meant to its original signatories is an essential step in that process.

1.2 Te Paparahi o Te Raki Inquiry
Te Paparahi o Te Raki for our purposes encompasses all territories north of Auckland that have not been the subject of previous Waitangi Tribunal historical reports.
Between 1987 and 2006, the Tribunal reported on its inquiries into the Kaipara and Te Roroa districts covering much of Northland’s west coast, and the Muriwhenua (far north) district. Together, those inquiries covered about half of the land area from Auckland northwards. The areas that remain for this inquiry include the Hokianga and most of Northland’s east coast, broadly covering Whangaroa, the Bay of Islands, Whāngārei, Mahurangi, and the Gulf Islands (see map, page xxvi).

It was in this inquiry district – and, in particular, in the Bay of Islands and Hokianga – that many of the earliest encounters occurred between European explorers and Māori, and it was here that the relationship between Māori and Europe really began to grow. Rangatira from these areas were the first to reach out to Britain, seeking relationships at both trading and political levels. The missionaries came first to the Bay of Islands and Hokianga, and it was in these areas that trade and European settlement first flourished. It was also in the Bay of Islands that Britain’s first official representative landed in 1833, bringing a promise of the King’s friendship.

More than 180 years later, the claimants told us that the King’s promise to their tupuna had not been fulfilled. Many of those claimants identified themselves as Ngāpuhi, the largest of New Zealand’s iwi, whose territories are said to be bounded by ‘nga poupou maunga o te wharetapu o Ngapuhi’ (‘the mountain pillars of the sacred house of Ngapuhi’), broadly corresponding with the Hokianga, Whangaroa, Bay of Islands, and Whāngārei areas. Some claimants said they represented ‘the hapū of Te Tai Tokerau (Northland);’ or ‘Ngāpuhi-nui-tonu’ (‘great everlasting Ngāpuhi’, a term used by some to refer to all people from north of Tāmaki-makaurau (Auckland)); or even all descendants of Māui-tikititiki-a-Taranga. Many identified with individual hapū or iwi that are commonly seen as affiliated with Ngāpuhi. Other claimants did not identify as Ngāpuhi, but rather as members of other iwi. Some made claims based on location – for example, Whāngārei, Whirinaki, Kerikeri, Waitangi, Waimate, and Whangaroa – or marae, or whānau.

When discussions first began about moving forward with an inquiry into Te Raki claims, claimants told us they wanted an inquiry process that aligned with their understanding of both the declaration and the treaty. In other words, they wanted a process that would affirm the sovereignty of hapū. As discussions continued, the claimants suggested we hold our inquiry in two parts, with the first solely dedicated to understandings of the meaning and effect of the declaration and the treaty:
Waitangi in the Tai Tokerau as the constitutional foundation stone of the modern Aotearoa New Zealand nation, it is absolutely essential that this aspect of the argument . . . set the foundation of any claims process that must follow.¹⁰

The Crown and the great majority of claimants agreed with this approach, and as a result we made a decision to proceed with a two-stage inquiry.¹¹ In this first stage, our entire focus has been on determining the ‘meaning and effect’¹² of the declaration in 1835 and the treaty when it was first signed in February 1840. This includes consideration of how Māori and the Crown understood those documents; and the nature of the relationship they entered into and the mutual commitments (if any) they made through those documents.¹³

From the beginning of our discussions with the claimants, they emphasised that they wanted an inquiry that allowed hapū to relate their own understandings of he Whakaputanga and te Tiriti, and of the events that led rangatira to sign them. Specifically, they wanted to appear at Waitangi and share their kōrero ‘at the very place that these precious taonga were brought forth.’¹⁴ We, too, were

Nga Pou Kōrero (from left): Hōne Sadler, Rima Edwards, Patu Hohepa, Erima Henare, and Hirini Henare
eager to hear those views, along with the views of other witnesses. As we told the claimants, ‘We have always said that we want to hear “your kōrero, your history, your stories and your evidence.”’ To allow that to happen, during 2010 and 2011 we held a full five weeks of hearings, with the kaupapa focused on the declaration and the treaty. For the first two weeks, those hearings took place at Te Tii Marae at Waitangi. Subsequent hearings were held at Waipuna Marae at Panguru; at Whitiora Marae at Te Tii, Mangonui; and at Ōtiria Marae at Moerewa. The panel also visited sites of significance to the claimants in the Hokianga and Bay of Islands.

During those five weeks, we heard the kōrero of the claimants’ chosen representatives: their rangatira, their kaumātua, and their tohunga. Much of what they told us had, they said, never before been aired in a public forum. As Titewhai Harawira said on the first day of hearings:

"Today is a very important day in the history of Aotearoa. For the first time, in the history of Aotearoa, we will be hearing the Ngāpuhi story, the Ngāpuhi story as told by the tohunga of Ngāpuhi."  

Rima Edwards referred to the prediction of the prophet Papahurihia after the signing of the Tiriti:

"Kua mau tatou ki te ripo. Kaati ka taka ki tua o te rua rau tau ka tu mai te pono ki te whakatika i nga mea katoa."

"We have been caught in a whirlpool. Alas, it will last for beyond two hundred years when the truth will stand to put everything right."

The hearings, Edwards said, would allow that truth to emerge:

"We have come here to pass on our knowledge to you, much of which has never been shared in a public situation before, because we want you to be completely informed. We want you never again to be able to say that you did not know. We have come here to entrust you with the taonga of our learning, and our past, and our feelings and our hopes and desires for the future because we want you to understand us and to be able to address our issues comprehensively, meaningfully and effectively."

Patu Hohepa referred to the words of the Te Māhurehure rangatira Mohi Tāwhai before the signing at Mangungu: that Māori understanding of what was occurring ‘will sink to the bottom like a stone’, while British views ‘will float light, like the wood of the whau tree and always remain to be seen.’ Hohepa said, ‘the stones have now come up and they want to talk.’

Altogether, more than 70 witnesses spoke at the hearings, including hapū representatives, constitutional scholars, linguists, anthropologists, and historians. We have considered written evidence and reports provided by these witnesses, along with books, academic journals, and theses relevant to the issues, and archival material referred to by the witnesses. All parties to the inquiry had the opportunity to give their views on the evidence by way of closing submissions.

Our hearings were open to all members of the public, and on most days several hundred attended. The hearings were also broadcast. The written evidence presented to us is a matter of public record, as are the full transcripts and recordings of all of our hearings.

The hearings were held before an inquiry panel comprising Judge Craig Coxhead (Ngāti Makino, Ngāti Pikiao, Ngāti Maru, Ngāti Awa), a judge of the Māori Land Court, as presiding officer; Joanne Morris; Kihi Ngata (Ngāterangi and Ngāti Ranginui); Professor Ranginui Walker (Whakatōhea); Keita Walker (Ngāti Porou); and Professor Richard Hill (Victoria University of Wellington). Keita Walker attended the hearings, but was unable to take part in deliberations for this report, and so has not signed it.

1.3 The Parties’ Positions
1.3.1 Claimant submissions
The essence of the claimants’ position in this inquiry is that their tūpuna did not cede sovereignty when they signed the Tiriti. Rather, the claimants argued, the Crown..."
was granted only limited powers, which did not amount to sovereignty. Some claimant counsel said the new Lieutenant-Governor William Hobson was to be subordinate to rangatira and would exercise authority only to protect the mana of the signatories’ hapū. Others saw the treaty as establishing a shared-power arrangement in which rangatira and the Lieutenant-Governor would be equals. In either case, most claimant counsel argued that the Crown would have authority only over Pākehā, or over territories that rangatira released to the Crown, while rangatira would retain authority in relation to their own communities. As Höne Pereki Sadler put it, his Ngāti Moerewa tūpuna ‘did not cede or relinquish anything by signing te Tiriti other than granting the Crown the right to regulate the conduct of its own settlers.’ Some claimants, in addition, argued that te Tiriti reinforced he Whakaputanga. As counsel for one claimant group put it, he Whakaputanga was ‘Aotearoa’s primary constitutional document, the source [from] which Te Tiriti flows.’

Claimants said it was clear that their tūpuna did not cede sovereignty both from the text of te Tiriti and from the debates that occurred before it was signed. Within the text, they said, ‘tino rangatiratanga,’ which article 2 of te Tiriti reserved for Māori, would have been clearly understood as superior to ‘kawanatanga,’ which under article 1 was ceded to the Crown. Claimants also argued that, during debates before signing te Tiriti, rangatira repeatedly sought and received assurances that Hobson would be their equal and would not have authority above them. Claimants argued that rangatira in 1840 debated...
and signed only the Māori text, and so it should be given greater weight than the English text. Indeed, they argued that the English and Māori texts were wholly separate documents with different meanings, and that the Māori text was the only one that we should consider if we are to understand the treaty’s meaning and effect.\textsuperscript{34}

1.3.2 Crown submissions

Crown counsel submitted that rangatira who signed te Tiriti ‘ceded sovereignty to the Queen’,\textsuperscript{35} and the treaty was ‘the means by which the Crown obtained Māori consent to assert sovereignty over New Zealand’.\textsuperscript{36} British sovereignty was acquired, counsel said, by a series of steps which included the treaty, Hobson’s proclamations of British sovereignty over the North and South Islands in May 1840, and Crown publication of those proclamations in the \textit{London Gazette} in October 1840.\textsuperscript{37}

Crown counsel submitted that rangatira who signed te Tiriti would have understood that they were giving ‘consent to the institution of a new Governor in New Zealand’; that the new Governor ‘would have authority to make laws for all people (Maori and non-Maori) and all land in New Zealand where the Treaty was signed’; that British laws would apply to all people (Māori and non-Māori); that the Governor would protect Māori property rights; that ‘Subject to the Governor’s authority over all people and places within New Zealand, the chiefs would retain chieftainship over their people and properties’; and that ‘Māori would gain the benefits of becoming British subjects’, and would be able to practise any beliefs, including traditional beliefs.\textsuperscript{38}

Counsel acknowledged that there was a ‘lack of clarity’ about the relationship between ‘kawanatanga’ and ‘tino rangatiratanga’.\textsuperscript{39} Nonetheless, they argued that rangatira who signed te Tiriti would have understood that the Governor would have ‘over-arching authority’ and that their continued ‘chieftainship’ over their people and territories would be subordinate to that authority.\textsuperscript{40} Counsel rejected claimant arguments that the treaty established ‘dual jurisdiction’ or ‘shared authority’ in which the Governor would have jurisdiction over British subjects and rangatira would have jurisdiction over their own people.\textsuperscript{41} They also rejected the claimant argument that the 1835 declaration remained in force after te Tiriti was signed.\textsuperscript{42}

Crown counsel submitted that rangatira would have understood the treaty on the basis of the Māori text and the ‘events surrounding the signings’, including the oral explanations given in Māori.\textsuperscript{43} However, they rejected claimant submissions that the Māori and English texts were wholly separate documents. Counsel submitted that ‘Te Tiriti / The Treaty’ was ‘one document that exists in two languages’, though they acknowledged that there are differences between the texts.\textsuperscript{44}

1.3.3 Oral tradition and written evidence

We heard a range of views on how we should treat oral tradition and written evidence in our inquiry. Several claimant counsel said that claimants’ oral traditions provided better evidence of rangatira intentions in 1835 and 1840 than nineteenth-century accounts written by Pākehā.\textsuperscript{45} Some also argued that we should give general preference to the evidence of claimant witnesses, because they were the experts on Māori understandings of the declaration and treaty, whereas the Crown’s expert witnesses lacked expertise in te reo Māori, or in the tikanga and history of te Tiriti’s original signatories.\textsuperscript{46}

The Crown did not make any general submission about how we should treat oral tradition. Its submissions relied heavily on written evidence, including accounts by European observers who were present when rangatira debated the treaty, though it acknowledged that such English-language accounts did not provide a perfect record of discussions or allow us to know precisely what was said in Māori.\textsuperscript{47} The Crown did accept some evidence from claimant ‘oral history’ that was not specifically supported by documented evidence, while also disputing other evidence that was presented as oral tradition and not substantiated by documents.\textsuperscript{48} The technical witnesses commissioned by the Crown told us they had relied mainly or entirely on written records.\textsuperscript{49}

Previous Tribunals have also addressed the issue of how to balance oral tradition alongside written records. In the \textit{Turangi Township Report} in 1995, the Tribunal concluded...
that both had limitations: both were likely to be incomplete, both reflected particular cultural perceptions and values, and both were subject to interpretation and reinterpretation over time before they were presented to the Tribunal.\footnote{The Tribunal’s view in the Muriwhenua Land Report in 1997 was that accounts written by nineteenth-century European observers were often self-serving, one-sided, and based on mistranslations and on European cultural perspectives that differed from those of Māori. That Tribunal also acknowledged that oral traditions had their ‘vagaries’, but nonetheless may contain ‘inner truths’.\footnote{Some of the scholars in this inquiry acknowledged the value of traditional evidence as a way of filling gaps and addressing flaws in written records arising from what Professor Dame Anne Salmond called ‘the [limited] linguistic abilities, cultural presuppositions, understandings and interests of [European] observers.’}{\footnote{We have, in this inquiry, taken into account both oral tradition and written records whenever they have been relevant to the issues under consideration. However, we have not preferred one type of evidence over another, nor any one type of witness over any other. Rather, we have sought to weigh all evidence on its merits taking account of factors such as whether it is independently corroborated (either by documents or oral tradition); and the source’s authority, purpose, expertise, biases, motivations, credibility, and proximity to the events being described. To take any other approach, in our view, would have been to prejudge the inquiry and fail to give the matters before us the consideration they deserve.}}

\section*{1.3.4 The meaning of ‘sovereignty’}

During this inquiry we heard various explanations from claimants,\footnote{The Crown and technical witnesses about the meaning of the term ‘sovereignty’. This included perspectives on what the term meant to British authorities in 1840; how its meaning had changed over time, both before 1840 and since; and whether the terms used in te Tiriti – ‘tino rangatiratanga’ and the transliteration ‘kawanatanga’ – as well as other words such as mana or kingitanga, could be considered equivalents of sovereignty.\footnote{We will discuss these perspectives in detail in relevant chapters. Since the question of sovereignty forms a central theme of this report, however, it is important to provide some clarity from the beginning.}} the Crown\footnote{The question of what sovereignty meant – and still means – is reasonably straightforward if kept at a sufficiently generic level. Crown counsel,\footnote{Crown counsel emphasised Blackstone’s definition of ‘sovereign power’ as ‘the making of laws; for wherever that power resides, all others must conform to, and be directed by it.’\footnote{The Crown in this inquiry used Blackstone to arrive at its own position that sovereignty meant “civil government”, especially government by legislation.”\footnote{Some claimant counsel also saw some overlap between Blackstone’s explanation of sovereignty as ‘supreme . . . authority’ and the Māori concept of mana.\footnote{In our view, ‘sovereignty’ can be understood in general terms as the power to make and enforce law. That, then, is the summary definition we will use for the purpose of determining whether, through the treaty, Māori ceded sovereignty to the Crown and consented to Britain asserting its sovereignty.}}}} and technical witnesses\footnote{In describing sovereignty in this manner, we need to be clear that for our purposes ‘law’ does not refer only to English law made by Parliament and the courts. Rather, we are referring more generally to the system of rules that regulate behaviour in a society. In the case of indigenous societies, this system of rules is typically referred to as ‘customary law’ or ‘custom law’, which the Law Commission in 2001 described as ‘the body of rules developed by indigenous societies to govern themselves.’\footnote{In that paper, former Waitangi Tribunal chairperson Chief Judge Edward Durie is quoted as describing Māori custom law as the ‘values, standards, principles or norms to which the Māori community generally subscribed for the determination of appropriate conduct.’\footnote{Separately, he has argued that Māori behavioural norms ‘were sufficiently regular to constitute law’, with ‘a predictable response’}} about the meaning of the term ‘sovereignty’. This included perspectives on what the term meant to British authorities in 1840; how its meaning had changed over time, both before 1840 and since; and whether the terms used in te Tiriti – ‘tino rangatiratanga’ and the transliteration ‘kawanatanga’ – as well as other words such as mana or kingitanga, could be considered equivalents of sovereignty.\footnote{We will discuss these perspectives in detail in relevant chapters. Since the question of sovereignty forms a central theme of this report, however, it is important to provide some clarity from the beginning.}} about the meaning of the term ‘sovereignty’. This included perspectives on what the term meant to British authorities in 1840;\footnote{The question of what sovereignty meant – and still means – is reasonably straightforward if kept at a sufficiently generic level. Crown counsel,\footnote{Crown counsel emphasised Blackstone’s definition of ‘sovereign power’ as ‘the making of laws; for wherever that power resides, all others must conform to, and be directed by it.’\footnote{The Crown in this inquiry used Blackstone to arrive at its own position that sovereignty meant “civil government”, especially government by legislation.”\footnote{Some claimant counsel also saw some overlap between Blackstone’s explanation of sovereignty as ‘supreme . . . authority’ and the Māori concept of mana.\footnote{In our view, ‘sovereignty’ can be understood in general terms as the power to make and enforce law. That, then, is the summary definition we will use for the purpose of determining whether, through the treaty, Māori ceded sovereignty to the Crown and consented to Britain asserting its sovereignty.}}}} how its meaning had changed over time, both before 1840 and since;\footnote{And whether the terms used in te Tiriti – ‘tino rangatiratanga’ and the transliteration ‘kawanatanga’ – as well as other words such as mana or kingitanga, could be considered equivalents of sovereignty.\footnote{We will discuss these perspectives in detail in relevant chapters. Since the question of sovereignty forms a central theme of this report, however, it is important to provide some clarity from the beginning.}} and whether the terms used in te Tiriti – ‘tino rangatiratanga’ and the transliteration ‘kawanatanga’ – as well as other words such as mana or kingitanga, could be considered equivalents of sovereignty.\footnote{We will discuss these perspectives in detail in relevant chapters. Since the question of sovereignty forms a central theme of this report, however, it is important to provide some clarity from the beginning.}}
when people failed to comply. Custom law was still law, he said, regardless of the fact that it was generated by ‘social practice and acceptance’ rather than by an overarching authority, or the fact that disputes were resolved between parties rather than by an external agency.

We will discuss Māori and British systems of law and authority in chapter 2 and in subsequent chapters. Here, our purpose is simply to acknowledge that, as we consider the question of who had the power to make and enforce law both before the February 1840 treaty signings and afterwards, we are referring to Māori as well as British systems of law.

1.4 ABOUT THIS REPORT
1.4.1 The scope of this report

(1) A contextual report, not a report into claims

One of the Tribunal’s functions under the Treaty of Waitangi Act 1975 is to inquire into and make recommendations on claims that the Crown has acted inconsistently with ‘the principles of the Treaty of Waitangi’ and so has caused prejudice to the claimants. For these purposes, it is our role to determine what ‘the principles of the Treaty’ are, and likewise to determine the treaty’s ‘meaning and effect’. The Act requires us, in carrying out our functions, to ‘have regard to’ both the English and Māori texts, and says that the treaty’s ‘meaning and effect’ are ‘embodied in the 2 texts’, though it is for us ‘to decide issues raised by the differences between them’.

This stage 1 report, as we said above, is a contextual one. Its purpose is to determine the ‘meaning and effect’ of the treaty when it was signed in February 1840, as well as the ‘meaning and effect’ of the declaration in 1835. It therefore does not contain formal findings and recommendations about claims that Crown actions since the first signing on 6 February 1840 have been inconsistent with treaty principles and have caused prejudice to the claimants. We will consider those matters in stage 2 of our inquiry.

The issues involved in the claim were complex, and our hearings and deliberations necessarily lengthy. Our conclusions needed to be framed within the broad parameters of the evidence presented, and to take account of both western and indigenous scholarly methodologies. Although individual members naturally held different views on a range of issues, these were addressed within the terms of the Treaty of Waitangi Act 1975, and we were eventually able to come to the common conclusions reached in this report.

(2) Events after the February 1840 signings of te Tiriti

When we were defining the issues to be considered during this stage 1 inquiry, some of the claimants asked us to consider events after the signing of te Tiriti – such as the 1845–46 Northern War, which, we were told, Māori entered ‘to defend their understanding of He Whakaputanga and Te Tiriti’. While sympathetic to their views, we thought that stage 1 of our inquiry should have a clear focus on the meaning and effect of the declaration and the treaty, and that later events, which are the subject of claims, should be considered in stage 2 when all relevant evidence can be heard and tested. Later, after submissions from claimant counsel, we said that we would not hear evidence ‘that has no causal relationship’ with the declaration or the treaty, and that post-1840 understandings of those documents were relevant ‘only insofar as’ the declaration and treaty ‘caused those later understandings’.

As a result, in this stage of our inquiry, we have focused on evidence that is directly about the meaning and effect of the declaration in 1835 and the treaty in 1840. We have, for example, considered post-1840 recollections of the debates over the declaration and the treaty from people who were there. We have also considered nineteenth- and twentieth-century back-translations – that is, translations of the signed Māori texts back into English. And we have mentioned Hobson’s May 1840 proclamations asserting British sovereignty. But we have not considered detailed evidence about events that will be the subject of claims in stage 2, such as the Northern War.

(3) Geographic scope

Although our inquiry district covers much of the territory north of Tāmaki-makaurau, this report has a narrower geographic scope, which arises from our focus on the meaning and effect of the declaration and the treaty. The
treaty was first signed in the Bay of Islands and Hokianga, by rangatira from those areas. The declaration, likewise, was signed at Waitangi, and most of its signatories were from the Bay of Islands and Hokianga. In this stage 1 report, therefore, we are mainly concerned with events in and people from those areas during the period from 1769 through to February 1840. We acknowledge, however, that during that period Bay of Islands hapū extended their authority into Whangaroa, and Bay of Islands and Hokianga hapū also acquired influence in many other parts of the north. Similarly, rangatira travelled and were influenced by events in other parts of New Zealand and the world, including New South Wales and London. While our principal focus has been on the Bay of Islands and Hokianga, we have therefore considered events in other locations both inside and outside the inquiry district where relevant.

1.4.2 Terminology

(1) Te Tiriti and the Treaty

As noted earlier, in this report we have chosen to use ‘te Tiriti’ to refer to the Māori text, ‘the Treaty’ to refer to the English text, and ‘the treaty’ to refer to both texts together or to the event as a whole without specifying either text. We have adopted this terminology with the intention of providing clarity for readers without prejudging the relevance of either text to the treaty’s overall meaning and effect (since that was a matter of contention between the parties). We will address these questions of interpretation in later chapters.

(2) Te Paparahi o Te Raki: the name of this inquiry

During early discussions with claimants, some suggested that our inquiry district be named ‘Te Paparahi o Ngāpuhi’ (the great land of Ngāpuhi). They also said they wanted an inquiry process that enhanced Ngāpuhi whanaungatanga, while allowing each hapū and community its own distinct voice. However, while many parties to this inquiry identified themselves as Ngāpuhi, not all did. In keeping with the principle of whanaungatanga, we therefore chose the name ‘Te Paparahi o Te Raki’ to ensure that no party should feel excluded.

(3) Ngāpuhi

While ‘Ngāpuhi’ today refers to people from throughout the Bay of Islands, Hokianga, Whangaroa, and Whāngārei areas, and is sometimes used to refer to people from throughout the north, that was not always the case. Rather, prior to the mid-nineteenth century, ‘Ngāpuhi’ appears to have been used within the Bay of Islands and Hokianga to refer to a smaller group of hapū. Throughout this report, when we refer to historical events, we use ‘Ngāpuhi’ as it was used at the time.

Where we use ‘Te Raki’, we are referring to the entire inquiry district; and where we use ‘the north’ we are referring to all territories north of Tāmaki-makaurau. Most often, we use more specific terms, such as area or hapū names, to specify the places or people we are referring to.

(4) The sound written as ‘wh’

In te reo Māori, the phoneme (distinct sound) now written as ‘wh’ was typically written by Europeans in the early nineteenth century as ‘w’. ‘Kaiwhakarite’, for example, was typically written ‘kaiwakarite’, and ‘Whakaputanga’ written as ‘Wakaputanga’. In this report, we use the original ‘w’ spelling only in direct quotations; otherwise, we use the modern digraph ‘wh’.

1.4.3 The structure of this report

Both the Crown and the claimants saw the treaty as part of a longer-term relationship between Britain and Māori which had begun with Cook’s arrival in 1769 and intensified rapidly during the 1820s and 1830s. Both also emphasised that the treaty could be understood only within its historical context: to know what both Māori and British intended in 1840, we would have to understand the events that preceded the treaty, and the intentions and perspectives of those involved. We have therefore structured this report to tell the story of Māori and British relationships from Cook’s arrival in 1769 through to the signings of te Tiriti at Waitangi, Waimate, and Mangungu in February 1840, and the subsequent British proclamation of sovereignty in May of that year. This is, however, not a general history of that period: our focus throughout is on matters that are relevant to the meaning and effect of the
declaration and the treaty – that is, matters relevant to the question of who had authority to make and enforce law in any particular time and place, and how that authority was exercised. Our conclusions on the declaration can be found in chapter 4, and our conclusions on the treaty can be found in chapter 10.

Our report is structured as follows.

(1) Chapter 2: Two Peoples, Two Worlds
When they met in 1769, both Māori and British brought their own systems of law and authority, which in turn were based on their own ways of understanding the world and their relationships with others. In chapter 2, we introduce those contrasting world views and systems of law and authority. We consider the whakapapa-based world view of Māori, with its overriding value of whananga-tanga; its spiritual and legal imperatives of mana, tapu, and utu; its systems of political organisation based on autonomous hapū guided by rangatira who embodied the mana of their people and territories. We also consider the eighteenth-century British world view, with its own way of understanding relationships among people and land; its concept of God; its science; its system of law based on personal rights and responsibilities; and its systems and concepts of government based on overarching sovereign authority.

(2) Chapter 3: From Encounter to Alliance?
The first encounters between northern Māori and Europeans were often characterised by conflict as their contrasting ways of understanding the world – and therefore lawful or correct behaviour – came into contact. Over time, each side made accommodations and began to adapt, finding ways to maintain peace in order to harness the benefits of contact – such as exchange of goods, resources, technology, and ideas. In chapter 3, we tell the story of those early decades of contact, and in particular how rangatira engaged with Britain and the wider world, during the period from 1769 through to 1834. We describe those first, uneasy encounters between Māori and visiting British or French crews; the rapid growth in contact during the early nineteenth century as whalers, traders, and missionaries arrived, and at times began to challenge Māori systems of law and authority; the journeys of rangatira to New South Wales and London, seeking alliances for political and economic purposes, as well as a greater understanding of the new world that had descended upon them; the increasing official engagement between Britain and Māori of the Bay of Islands and Hokianga during the 1830s, including the appointment of James Busby in 1832 as Britain’s first official representative in New Zealand; and the adoption of a national flag in 1834.

(3) Chapter 4: He Whakaputanga and the Declaration of Independence
Busby’s arrival marked a significant step in the official relationship between Britain and Māori. He had been sent to advance British imperial interests by controlling wayward Britons, and so bring peace to the colonial frontier and foster goodwill between Britain and Māori. All of this was to be achieved through the agency of rangatira, for Britain continued to recognise tribal independence and had granted Busby no legal authority in New Zealand. Māori engaged with Busby for their own reasons, many of which had also to do with trade, peace, and control of Europeans in New Zealand, as well as protection from perceived French threats.

The Māori and British agendas were to collide in October 1835, after Busby received a letter from the Anglo-French adventurer Charles de Thierry, who claimed to have purchased both land and sovereignty over the Hokianga. Busby called a hui, at which 34 rangatira signed he Whakaputanga, declaring their rangatira-tanga, kingitanga and mana over their territories. Busby intended the declaration to establish a Māori legislature which would have power over individual hapū. The claimants in this inquiry, however, saw it as an assertion of Māori sovereignty based on existing systems of authority and law, under which hapū were the main political unit after the declaration as before. In chapter 4, we consider how the declaration was created, and draw conclusions on its meaning and effect in 1835.

We also consider events in the Bay of Islands and Hokianga during 1836 and 1837, when a series of intertribal
conflicts, and escalating disorder among European settlers, led Busby and other Europeans to call for formal British intervention.

(4) Chapter 5: Contested Ground
The period between 1835 and 1840 was marked by significant growth in contact between Māori and Europeans, as traders, settlers, missionaries, and others arrived in increasing numbers. Around this time, a significant minority of Bay of Islands and Hokianga Māori were engaging with Christianity and literacy; the Māori economy had been reshaped from one based on subsistence to one based on trade; traditional practices such as polygamy and the keeping of slaves were becoming less common; and intertribal warfare was falling back to more usual levels following the major campaigns of the 1820s. Some European accounts in the late 1830s said that Māori were dying out through the combined effects of disease, warfare, and other vices arising from European influence. In chapter 5, we consider how Bay of Islands and Hokianga Māori society changed as a result of growing contact with Europeans. In particular we consider the effects of contact on Māori systems of law and authority – asking whether Māori were losing control over their lives in a manner that might have made them willing, in February 1840, to consent to Britain asserting its authority over them or within their territories.

(5) Chapter 6: The British Move towards Annexation
During the 1830s, private British interests attempted to persuade British authorities to approve plans for the colonisation of New Zealand, and to establish a British government here. Britain acknowledged the independence of Māori hapū, and initially resisted those pressures. By the end of 1837, however, its position was changing. Faced with reports of Māori depopulation and European disorder, the British Government decided to increase its involvement in New Zealand. Over the next two and a half years, it
considered various proposals for extending its authority before, in 1839, deciding to acquire sovereignty over 'the whole or any parts' of New Zealand where Māori would consent to that occurring. In chapter 6, we consider how these events unfolded during the second half of the decade, and what motivated Britain's decisions to seek sovereignty. We focus particularly on the instructions given to Hobson, including the reasons given for Britain's decision to seek sovereignty, the question of how Hobson was to explain the proposed treaty to Māori, and what was said about Māori consent.

(6) Chapter 7: The Negotiation and Signing of Te Tiriti o Waitangi

Hobson landed in late January 1840, immediately declaring himself Lieutenant-Governor over British settlements in New Zealand. He then set about obtaining Māori consent to a treaty that would legitimate, in British eyes, a declaration of British sovereignty. On 5 February, rangatira from the Bay of Islands and Hokianga gathered at Waitangi to listen to Hobson's proposal. The following morning, more than 40 rangatira added their moko, marks, or signatures to Te Tiriti. That document, of course, was a translation from Hobson's English text, and it is now well established that there were important differences between the two. Most significantly, in the English text, rangatira were said to give the Crown 'all the rights and powers of Sovereignty', in return for which they were guaranteed 'full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other Properties', as well as 'all the Rights and Privileges of British Subjects'. In Te Tiriti, rangatira were guaranteed 'te tino rangatiratanga' over their whenua (lands), kainga (homes), and 'taonga katoa' (often translated as 'treasured possessions'), and the Crown was granted 'kawanatanga' (most often translated as 'government').

A few days later, six more rangatira signed Te Tiriti at Waimate, and on 12 February at Mangungu another 64 signed. In chapter 7, we examine how the treaty was drafted and translated; consider the meanings of the English and Māori texts, and the differences between them; and discuss the debates – asking, for example, what assurances rangatira sought and received, and what conditions they placed on the transaction. We do not, however, draw any conclusions about the meaning and effect of the treaty in this chapter; those conclusions are in chapter 10.

(7) Chapter 8: Past Perspectives on Te Tiriti and the Treaty

More or less from the time Te Tiriti was signed, there have been differing perspectives about what it meant. Often, those perspectives have reflected the differences between the two texts. Māori have usually based their understandings on the Māori text, stressing Te Tiriti's guarantee of tino rangatiratanga, and rejecting the view that sovereignty was ceded. Pākehā have traditionally based their understandings on the English text, and so have seen the treaty as a document by which Māori ceded sovereignty to the Crown. Since the 1970s, scholars have focused considerable attention on the differences between the two texts, as well as what was said in the treaty debates. Also since that time, the treaty has been recognised in various statutes, including the Treaty of Waitangi Act 1975, and so has been the focus of Tribunal and judicial attention. In chapter 8, we explain the main developments in scholarship about the treaty since the 1970s, and consider what the courts and the Tribunal have said about the treaty. We do this as important context for the claimant and Crown submissions, and our own consideration of the treaty's meaning and effect.

(8) Chapter 9: Claimant and Crown Evidence and Submissions

In chapter 9, we consider the submissions of claimant and Crown counsel, and the evidence provided by the claimants and other witnesses. These included submissions and evidence about the debates that occurred immediately before the signings; about the signings themselves; about the key terms used in the texts of Te Tiriti and the Treaty, and the accuracy of the translation from English into Māori; about the relationship between the 1835 declaration and the treaty; and about the treaty's meaning and effect. We also consider submissions about interpretation, regarding the relative weight we should give to each text; the relative weight we should give to claimant traditions
and European written accounts; and how international law applied in 1840.

9) Chapter 10: Conclusion
In 1840, Britain’s view was that it had acquired sovereign authority over all of New Zealand. While the status and rights of rangatira would be respected, they would be subordinate to British government and British law. The Māori view, according to the claimants, was that rangatira would retain their full authority, with the Governor having only limited powers. In chapter 10, we consider all of the evidence before us and arrive at our own views on the treaty’s meaning and effect in February 1840.

Notes
1. The exact number is difficult to determine, as we will explain in chapter 7.
3. Document A30(a), p 3
5. The maunga are Pūhanga Tohorā, Te Ramaroa, Whiria, Panguru, Papata, Maungataniwha, Tokerau, Rākau-mangamanga, Manaia, Tūtāmoe, and Maunganui.
6. Claim 1.1.96, claim 1.1.287, claim 1.1.375, claim 1.1.380
7. Claim 1.1.12, claim 1.1.29, claim 1.1.84, claim 1.1.101, claim 1.1.173, claim 1.1.174, claim 1.1.232, claim 1.1.334, claim 1.1.351
8. Claim 1.1.356
9. Submission 3.1.19, pp 3–4. The Ngāpuhi-Nui-Tonu Design Group had been established in 2006 to engage with claimant groups and propose a process for the conduct of this inquiry. The group comprised Raniera (Sonny) Tau and Titewhai Harawira (Ngāpuhi Kaumātua/Kuia Council); Patu Hohepa (Te Rōpū Whakapiripiri o Te Tai Tokerau); and the coordinators of seven claimant clusters: Hokianga Claims Alliance; Whangaroa Papa Hapū; Te Waimate-Taia Mai Claims Alliance; Te Aho Alliance (previously Ngāti Hine Claims Alliance); Puhupuhu Te Maruata Claimant Forestry Alliance; Te Tai Tiriti o Waitangi Forum; and Maharangi and Gulf Islands Collective. The Whangārei Core Collective Claimant Group did not support the Design Group’s proposals: memorandum 2.5.11, pp 1–2; see also submission 3.1.19, p 13.
10. Submission 3.1.22, p 4
11. Memorandum 2.5.15, pp 1–2; see also memo 2.5.14, pp 1–2
12. Treaty of Waitangi Act 1975, section 5(2)
13. Memorandum 2.5.23, p 8
14. Submission 3.1.19, p 9
15. Memorandum 2.5.23, p 3
16. Transcripts 4.1.1, 4.1.2, 4.1.3, 4.1.4, 4.1.5
17. Memorandum 2.5.48, p 1; memo 2.5.49, p 1; memo 2.5.53, pp 1–2; memo 2.5.54, p 1
18. Transcript 4.1.1, p 20
19. Document A25(b), p 8; see also doc A25, p 72
20. Document A25(b), p 12
22. Transcript 4.1.1, p 306
23. The Crown Forestry Rental Trust (on behalf of the claimants) commissioned reports from, among others: Dr Grant Phillipson; Dr John Barrington; Ralph Johnson; Dr Vincent O’Malley and John Hutton; Dr Merata Kāwharū; and Drs Manuka Henare, Hazel Petrie, and Adrienne Puckey. The Crown commissioned evidence from Professor Alan Ward, Professor Paul McHugh, Dr Donald Loveridge, and Dr Phil Parkinson. The Tribunal commissioned reports or evidence from Professor Alison Jones and Dr Kuni Jenkins, Professor Margaret Mutu, Moana Jackson, Peter McBurney, and Dr Manuka Henare. Of these expert witnesses, O’Malley, Ward, Loveridge, McHugh, Parkinson, Salmond, Jackson, and Carpenter gave evidence at the hearings (transcripts 4.1.3 and 4.1.4). Manuka Henare gave evidence as a claimant (transcript 4.1.2). The Tribunal also invited three other scholars to provide evidence for this inquiry, but in the event none did so (memos 2.5.23 and 2.5.38).
24. Memorandum 2.5.17, memo 2.5.33
25. Submission 3.3.2, pp 10, 11–13, 23–24, 32; 194, 199; submission 3.3.11(c), pp 59–60, 63–67, 77–79; submission 3.3.23, pp 3, 12, 14, 17, 52–56; submission 3.3.9, p 2; submission 3.3.10, p 7; submission 3.3.13, p 4; submission 3.3.19, p 10; submission 3.3.21, p 20; submission 3.3.24, pp 22–23; submission 3.3.27, p 4; submission 3.3.28, pp 17, 97; submission 3.3.35, p 12; submission 3.3.38, p 4
26. For example, see submission 3.3.14, p 52; submission 3.3.28(a), pp 18, 88–89, 95; submission 3.3.11(c), p 46
27. For example, see submission 3.3.11(c), pp 63, 66, 78; submission 3.3.30, p 88; submission 3.3.21, pp 30, 39; submission 3.3.18, p 3; submission 3.3.24, p 17
28. For example, see submission 3.3.24, p 29; submission 3.3.28(a), pp 18, 88–89, 95; submission 3.3.30, p 86
29. More specifically, we were told, the Crown would be empowered to control disorder among Pākehā and to regulate land transactions in ways that accorded with tikanga (for example, see submission 3.3.14, p 52; submission 3.3.28(a), pp 18, 88–89, 95; submission 3.3.11(c), p 46). Some claimant counsel also said rangatira intended the Crown to act as their protector in international relationships, though others disagreed (for example, see submission 3.3.23, p 7 and, for the opposing
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view, submission 3.3.11(c), pp 63, 66, 78). Some said the Kāwana may
also have had a negotiating or mediating role in disputes between
tribes, or between Māori and Pākehā, though it was emphasised that
this did not mean the Kāwana could impose his decisions on Māori
(for example, see submission 3.3.24, pp 2, 16, 24).
30. Document B38, p 6
31. Submission 3.3.5, p [5]  ; see also submission 3.3.24, pp 8–9  ; submission 3.3.23, p 7  ; submission 3.3.2, pp 115, 121, 177  ; submission 3.3.14,
pp 71–73, 91  ; submission 3.3.30, p 35  ; submission 3.3.26, p 19  ; submission 3.3.11(c), pp 59–60, 64–67
32. For example, see submission 3.3.13, p 16  ; submission 3.3.24, pp 2,
16, 24  ; submission 3.3.11(c), pp 47–49, 52–55, 58–59  ; submission 3.3.20,
p 27  ; submission 3.3.14, pp 56–57, 75
33. Submission 3.3.11(c), pp 71–72, 80–81  ; submission 3.3.20, pp 28–29  ;
submission 3.3.36, pp 8–10  ; submission 3.3.24, pp 16, 20  ; submission
3.3.40, pp 6–7  ; submission 3.3.11(c), pp 63, 66, 78  ; submission 3.3.50,
pp 8–9  ; submission 3.3.36, pp 6, 8–10
34. Submission 3.3.2, pp 14, 16–17, 36, 42, 45, 48–49  ; submission 3.3.15,
pp 3, 15, 34  ; submission 3.3.30, p 9  ; submission 3.3.11(c), pp 26–28  ;
submission 3.3.6(a), p 8  ; submission 3.3.3, pp 7–10  ; submission 3.3.21,
p 17  ; see also doc A30(c), p 6  ; doc C10(a), p 7  ; doc D4, pp 42, 63  ; doc
C18(a), p 14  ; doc A25(b), p 12  ; doc A32(c), pp 6–7  ; doc B10, pp 66–68  ;
doc D14(b), p 7  ; transcript 4.1.3, pp 152–153. The claimants made similar
points about he Whakaputanga  : submission 3.3.14, pp 6, 17  ; submission 3.3.2, pp 14, 16, 36, 42, 45, 48–49  ; submission 3.3.3, pp 7–10  ; submission 3.3.21, p 17  ; doc B10, pp 66–68  ; doc A32(c), p 7  ; doc D14(b), p 7  ;
doc A30(a), p 4  ; doc A30(c), pp 6–7  ; doc D4, p 42  ; doc A25(b), p 12  ; doc
A16, p 187.
35. Submission 3.3.33, p 21, see also pp 182, 187
36. Ibid, p 21
37. Ibid, pp 84–85, 178–179
38. Ibid, pp 17, 104–105, 180–181, see also p 189
39. Ibid, pp 21, 188
40. Ibid, pp 17, 20–21, 145, 161–162, 189
41. Ibid, pp 98–100, 136
42. Ibid, pp 6–7, 21–22, 189
43. Ibid, pp 104–105
44. Ibid, p 8, see also pp 6–7, 16, 101–103
45. Submission 3.3.2, pp 13, 51–53, 168–169  ; submission 3.3.14, p 45  ;
submission 3.3.26, pp 38–39  ; submission 3.3.30, p 53
158  ; submission 3.3.28(a), p 12  ; submission 3.3.3, p 22
48. Submission 3.3.33, pp 6, 12, 19, 40–44, 163–169
49. See comments by Professor Alan Ward, transcript 4.1.4, pp 304–
305  ; Dr Donald Loveridge, transcript 4.1.4, pp 433–434  ; Professor Paul
McHugh, transcript 4.1.4, p 600  ; and Dr Phil Parkinson, transcript
4.1.4, p 620
50. Waitangi Tribunal, The Turangi Township Report 1995 (Wellington  :
Brooker’s Ltd, 1995) p 294

The Decl ar ation and the Tre at y

51. Waitangi Tribunal, Muriwhenua Land Report (Wellington  : GP
Publications, 1997), pp 2–3
52. Document A22, p 3  ; see also doc A11, pp 6–8  ; transcript 4.1.4, p 305
B26(a), pp 20, 26–27  ; submission 3.3.20, pp 8, 13, 15–17, 26–27  ; submission 3.3.13, pp 17–26, 31–32, 39–41  ; submission 3.3.24, pp 2, 15–16,
25–26  ; submission 3.3.11(c), pp 37, 46–48, 52–55  ; submission 3.3.24,
pp 16, 20  ; submission 3.3.2, pp 16–17, 159–165, 174–175, 211–212  ; submission 3.3.30, pp 50, 73–74
55. Document A17, pp 5–8, 27–35, 83–84, 139–168, 175–176  ; doc A19,
pp 73–78  ; doc A19(a), pp 49–50  ; doc A20, p 99  ; doc A21, pp 4–5, 7–8,
13–16, 22–26, 72, 78, 82  ; doc A22, pp 13–29  ; doc D1, pp 10–14, 85–98  ;
doc D2, pp 17, 27  ; doc A1, pp 302–303
56. Submission 3.3.33, pp 88–93, 98–101  ; doc A17, pp 5–8, 27–35, 139–
168  ; doc A19, pp 73–77  ; doc A19(a), pp 49–50  ; doc D2, p 27  ; submission
3.3.20, pp 2, 13, 15–17  ; submission 3.3.13, pp 31–32  ; submission 3.3.24,
pp 25–26
57. Document A21, pp 4–5, 7–8, 13–16, 18, 22–26, 72, 78, 82  ; submission
3.3.13, pp 17–26
58. Document A17, pp 83–84, 139–168, 175–176  ; doc A19, pp 73–78  ; doc
A1, pp 302–303  ; doc A22, pp 13–29  ; doc A25, p 92  ; doc B26(a), pp 20,
26–27  ; doc D2, p 17  ; doc D4, pp 22, 40, 48, 51–54, 63  ; submission 3.3.20,
pp 26–27  ; submission 3.3.13, pp 39–41  ; submission 3.3.24, pp 2, 15–16  ;
submission 3.3.11(c), pp 37, 46–48, 52–55  ; submission 3.3.2, pp 16–17,
159–165, 174–175, 211–212  ; submission 3.3.30, pp 50, 73–74  ; submission
3.3.33, pp 112–136
59. Submission 3.3.33, pp 89–91
60. Submission 3.3.30, pp 73–74  ; see also submission 3.3.15(a),
pp 16–17  ; submission 3.3.13, pp 154–155  ; submission 3.3.37, p 94  ; submission 3.3.8, p 10
61. Document A17, pp 34, 159–160  ; doc A22, p 24  ; doc A19(a), p 23  ; doc
D1, p 76
62. Document A17, p 34  ; William Blackstone, Commentaries on the
Laws of England, 3 vols, 15th ed (1809  ; repr Marston Gate  : Forgotten
Books, 2013), vol 1, pp 48–49  ; see also submission 3.3.33, pp 89–91
63. Submission 3.3.33, pp 90–91, see also p 89  ; Blackstone,
Commentaries on the Laws of England, vol 1, p 49
64. Submission 3.3.33, pp 88, 90–93
65. Submission 3.3.30, pp 73–74  ; see also submission 3.3.15(a),
pp 16–17  ; submission 3.3.13, pp 154–155  ; submission 3.3.37, p 94  ; submission 3.3.8, p 10. Rima Edwards referred to sovereignty as ‘the Power
and Authority to govern a Country and to make laws that affect everything within that Country’  : doc A25, p 92.
66. Law Commission, Māori Custom and Values in New Zealand Law
(Wellington  : Law Commission, 2001), p 15
67. Ibid, pp 15–16
68. Edward Taihakurei Durie, ‘Custom Law’ (Wellington  : Stout
Research Centre, Victoria University, 1994), p 4
69. Ibid, p 4
70. Treaty of Waitangi Act 1975, ss 5(1)(a), 6(1), 6(3)

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71. Ibid, s 5(2)
72. Memorandum 2.5.15, pp 1–2; see also memo 2.5.14, pp 1–2
73. Memorandum 2.5.26, p 4; see also memos 2.5.34, 2.5.50, 2.5.59
74. Submission 3.3.28(a), pp 96, 97–112; submission 3.3.24, p 20; submission 3.3.2, p 228; submission 3.3.27(a), p 15; submission 3.3.21, p 41; doc D14(b), pp 4, 11–13; doc D5, pp 46–52; doc C19, pp 16–17; doc B34, pp 18–31; doc A34, pp 5–6; doc A25, p 83
75. Submission 3.3.28(a), p 96
76. Memorandum 2.5.23, pp 2–4
77. Memorandum 2.5.26, p 5; see also memo 2.5.20, p 5; memo 2.5.52, p 3; submission 3.1.21, p 2; submission 3.1.104, p 4; submission 3.1.135, p 5. Questions concerning the Northern Wars and the ongoing exercise of tino rangatiratanga were subsequently included in the statement of issues for stage 2 of this inquiry (memo 2.5.97, annex A)
78. For the Crown's submissions on these points, see submission 3.3.33, p 8. For claimant submissions and views on these points, see submission 3.3.2, pp 14, 16, 36, 42, 45, 48–49; submission 3.3.3, pp 7–10; submission 3.3.21, p 17; submission 3.3.14, pp 6, 17; doc C10(a), p 7; doc D4, pp 42, 63; doc C18(a), p 14; doc A25(b), p 12; doc A30(a), p 4; doc A32(c), pp 6–7; doc B10, pp 66–68; doc D14(b), p 7; transcript 4.1.3, pp 152–153. See also doc A16, p 187.
79. Submission 3.1.19, p 8
80. Memorandum 2.5.11, pp 1–4
CHAPTER 2

TWO PEOPLES, TWO WORLDS

2.1 Introduction

This report is about Māori and British relationships in the Bay of Islands and Hokianga from first contact in 1769 through to the signing of te Tiriti in 1840. There were many facets to those relationships, including trade, the sharing of ideas and technology, personal bonds or rivalries, and much more. Our particular concern, though, is with political relationships between rangatira and Britain’s official representatives, and the questions of law and authority arising from those relationships.

In order to understand what ultimately led rangatira and the Queen’s representative to sign te Tiriti, we must first understand the people involved. We must understand how they viewed the world, how their societies were structured, how they understood leadership and authority, how they made decisions, what actions they saw as acceptable and unacceptable, and how those norms were enforced. The purpose of this chapter is to provide the beginnings of that understanding.

First, we will meet Bay of Islands and Hokianga Māori as they were prior to first contact with Europeans. We will see how whanaungatanga (kinship) provided a fundamental ordering principle for their society, encompassing not only relationships among living people, but also with whenua (land or territories) and tūpuna (ancestors) – all of whom embodied atua (ancestor-gods). We will see how the maintenance of spiritual balance among atua in their various manifestations was an essential driving force behind Māori actions; how that balance was enshrined in values such as manaakitanga (caring for or nurturing others) and kaitiakitanga (guardianship or care for the environment); how it gave people mana, empowering them to act in the world; and how it was maintained through the legal and spiritual imperatives of tapu (sacred, or set apart) and utu (reciprocity). We will introduce Māori systems of authority and social organisation, discussing how hapū and other kin groups interacted, both in competition and alliance, and how rangatira played a leadership role in which they embodied the mana of their people.

As we seek to understand these systems of law and authority, we will also explore some aspects of the claimants’ history. We will meet some of the tūpuna of those who signed te Tiriti in February 1840, and we will consider how their society was organised from earliest settlement to the time of first European arrival, and a little beyond.

We will also meet eighteenth century Europeans. European society at that time was in the midst of a period of almost unprecedented change, affecting all aspects of the social order – politics, science, religion, class, and commerce. The Protestant Reformation had splintered the religious unity of western Christendom. Europe was
exploring and expanding, so that its trade and settlement now encompassed swathes of the Americas, Africa, and Asia. Enlightenment values of reason and individualism were encouraging new explanations of an enlarged world. Many of these changes were most marked in Britain.

In the midst of so much change it is difficult to characterise briefly the British world view. Nevertheless, one common thread in these developments might be found in the idea of the individual. European and (especially) British elites emphasised individuals in relation to others, and in relation to authority. All individuals, even the monarch, had to comply with the law, but were also said to be protected by it, and might (if they were allowed to vote) have a say in its creation. Individuals had fundamental rights – to life, liberty, and property – which the state was expected to uphold. Protestant individuals had a personal relationship with God, by whom all were believed to be created equal, yet before whom some could rise above others if they lived Christian lives. They were also expected to abide by Protestant values, such as industry, thrift, discipline, and peace and fellowship, which were seen as keys to both material prosperity and spiritual advancement. Together, these institutions and values amounted to an idea of civilisation which imperial Britain saw as its gift to the world.

It is these two peoples and their two worlds – of Britain, and the Māori of the Bay of Islands and the Hokianga – that we will seek to understand in this chapter. We begin with Māori.

2.2 Te Ao Māori

2.2.1 Introduction: te ao o ngā tūpuna

Tradition has it that one of the first things the claimants’ forebears did after they made landfall on either side of the Hokianga harbour was to build whare (houses) to honour their atua. Nukutawhitihiti and Ruanui were close kin, descendants of Kupe, who had jointly made the decision to leave Hawaiki because of a great war that was raging there. As they completed their houses, a tohorā (whale) entered the harbour. Each wanted to use the whale as a gift to his atua during a ceremony to open his whare, and so each used karakia (incantations or prayers) to force the whale to beach on his own side of the harbour. In the spiritual battle that ensued, both Nukutawhitihiti and Ruanui used their entire repertoire of karakia – commemorated in the saying ’Hokianga Whakapau Karakia’ (Hokianga where the karakia became exhausted) – and the whale was lost to both when it swam out to sea.²

This tradition reveals a number of key values and motivations underpinning Māori systems of law and authority. It speaks to the vital role of atua and tūpuna, both in motivating and in guiding the actions of the living. It shows how great men and women interacted with the forces of nature at a spiritual level by using the spoken word. It signals the reciprocal nature of relationships, in which the actions of one party affected the other, demanding counter-action to restore balance. It tells how leaders were inspired to great deeds – such as ocean voyages to unknown territories – to seek better lives for their people; and how kin could be allies or rivals depending on the circumstances. And it shows how place names and narratives were used to remind future generations about the actions of atua and tūpuna; and how recalling those deeds has allowed the descendants of Nukutawhitihiti and Ruanui through many generations to demonstrate their kinship with each other and with the harbour itself.

2.2.2 The emergence of Te Ao Mārama

Claimants told us how their tūpuna understood their place in the universe through the principle of whakapapa – genealogical progression – in which all things could be traced back in a logical sequence to the beginning of creation. Through this principle, all people and all elements of the physical and spiritual worlds were seen as related at a fundamental level.³

All whakapapa, we were told, begin in Te Korekore: the absolute nothingness.⁴ According to the Ngāpuhi theologian Māori Marsden, Te Korekore was a void, a realm of formless potential, of ’primal, elemental energy or latent being’. From there, all things emerged and took form – wairua (the spirit that infused all things), mauri (essential energy or life force), consciousness, darkness, light, sound, sky, earth, water, and everything else both
Papatūānuku, the earth mother
material and spiritual. First, there was Te Pō, the world of darkness or night, 'the realm of becoming'. A soft light entered Te Pō, creating Pō-tahuri-atu (the night that faces day), within which Hawaiki-nui, Hawaiki-roya, Hawaiki-pāmamao and Hawaiki-tapu (great, extensive, far-distant and sacred Hawaiki, respectively) were formed, as homes for ancestor-gods and heroes.

The first gods were Rangi-nui (god of the heavens) and Papa-tū-ā-nuku (mother earth), representing the male and female principles. Their offspring – including Tāne, Tangaroa, Rongomātāne, Tūmatauenga, Haumia-tiketike, Rūaumoko, Tāwhiri-mātea, Uru-te-ngangana and Whiro – were born into this dim, pre-dawn world, but made the momentous decision to separate their parents, ushering in Te Ao Mārama, the world of light or the world of being.

Within this world, each of these atua were said to play a vital creative role. Tāne clothed the world by creating the insects, birds, plants, trees and rocks of the forests; and fashioned the first woman, Hine-ahu-one, from the soil of Hawaiki. He also ascended into the heavens to obtain the three baskets of knowledge – broadly corresponding to knowledge of the worlds of Te Korekore, Te Pō and Te Ao Mārama, only the last of which could be perceived through the physical senses. Tangaroa fashioned the oceans and marine life; Rongomātāne governed the realm of food crops such as kūmara, and was also responsible for peace and for lifting the state of tapu (sacredness); Tūmatauenga created the first man, and oversaw war; Haumia-tiketike was responsible for foods growing above ground, such as fern; Rūaumoko was the god of earthquakes and volcanic eruptions; Tāwhiri-mātea governed weather; Uru-te-ngangana cared for the heavens and their constellations, including the Mangorora (the Milky Way) and Matariki (the Pleiades); and Whiro was the atua responsible for ‘death, sickness, all bad things’.

Later, Māui, the youngest-born, and the mythic personification of discovery, used his enchanted fishhook to pull up from the ocean depths the North Island – Te Ika-a-Māui – and many other Polynesian islands. Within Ngāpuhi tradition, as related to us by Rima Edwards, the motivating force behind all of this creation was a supreme being, Io, who dwelt within Te Korekore, and from whose consciousness the worlds of Te Pō and Te Ao Mārama were formed. Edwards referred to the various manifestations of Io, including Io matua te kore (‘The first God who came out of Te Korekore’), Io te kakano (‘The seed from which all things in the World grow’), Io-te-mana (‘The supreme power of Io Matua Te Kore from beyond’), Io te mauri (‘The living element in all things created to the world’), Io te tapu (‘The pure spirit that is free of evil’), Io te wairua (‘The spirit of Io that is given to the heart of the world’), Io matangaro (‘Knowledge that cannot be seen or known by mankind’), and Io te wananga (‘The spring and source of all knowledge’).

2.2.3 Whanaungatanga, mana, tapu, and utu

These kōrero about the emergence of life from Te Korekore, Marsden has written, were deliberate constructs by the holders of esoteric knowledge ‘to encapsulate and condense into easily assimilable forms their view of the World, of ultimate reality and the relationship between the Creator, the universe and man’. In this reality, all things were recognised as personifications of atua, who were related to living humans through whakapapa. Edwards explained it thus:

Na runga i tenei whakapapa ka noho whanaunga nga mea katoa o Te Ao. Nga rakau, nga ika, nga manu, nga pēpeke, nga purerehua, nga otaota, nga Turehu, nga Whatukura, nga Mareikura, nga Kararehe, nga Ponaturi me te Tangata hoki.

It is on the basis of this genealogy that all things of the world are related. The trees, the fish, the birds, the insects, the butterflies, the small plants, the Fairy people, the male elements and the female elements of the heavens, the people who live under the sea and mankind of [course].

The actions of atua determined events within the physical world. As Edwards explained, if heavy rain caused flooding this was not a mere physical event, but Tāwhiri-mātea expressing his anger against Tāne. In similar manner, atua also determined human actions: planting, fishing, gathering food, constructing whare or waka, mourning the dead, making war, making peace,
and asserting rights over land and other resources. Life in Te Ao Mārama therefore involved a constant dialogue between the living and their ancestor-gods. Hōne Sadler said:

Kua pēra katoa ki te taiao, ō tātou tūpuna i a rātou e hīkoi ana, i hikoi tonu, i karakia tonu, karakia tahi, i hikoi tahi me ō rātou atua. Hei ārahia atu nei i ā rātou i roto i wā rātou mahi katoa, kāhore he mahi kia timata, kia karakia anō, mehemea he tuar-akau, mehemea he hi ika, mehemea he hanga whare, he iwi whakapono, he iwi marama ki tō rātou ao, e taea e rātou katoa i ngā karakia te tāhuri atu i ngā tohu o te ao, kia rite ki tā rātou e hiahia ana.

Our ancestors when they walked the earth they prayed and they walked with their gods, they walked with their gods all through their world. They led them everywhere in all the things they did. There wasn't a single thing they did without karakia at first. Whether they went to fell a tree, when they went fishing, whether they were erecting a house, they were people of faith and belief. People who understood their world, they could achieve through their karakia, to read the signs of the world, to accomplish [what] they wanted.

The view that all things were related, and that the well-being of any person or group was intimately connected to the well-being of their kin, could be encapsulated in the principle of whanaungatanga (kinship). So intimate were kinship connections that the actions of any individual within a group were seen as the actions of the group as a whole. Rangatira could refer to their tūpuna and their hapū as ‘ahau’, which literally meant ‘myself’, but also meant that their hau, their breath of life, was shared. In this way, according to Marsden, to serve one’s kin through acts of ‘loyalty, generosity, caring, sharing, fulfilling one’s obligations to the group, was to serve one’s extended self.’ ‘Whanaungatanga is a sacred thing,’ said the claimant Tom Murray, ‘the expression of true relationships between whanau and hapu, based on their shared whakapapa.’

According to the Tribunal in Ko Aotearoa Tēnei, whanaungatanga was ‘the defining principle’ of the Māori world view, and could be seen as a ‘revolving door between the human, physical and spiritual realms’. Not only did whanaungatanga explain how all things were related, it also ‘assert[ed] hierarchies of right and obligation among them’, defining how people should act in relation to each other and environmental resources, and affirming their ongoing, active connections with tūpuna and atua. As one example, ‘humankind... has dominion over plants because whakapapa tells of the victory of Tū-mata-uenga over his brother Tāne-mahuta,’ but that dominion must be balanced with care since Tāne was also a human ancestor.

It is, therefore, only through this web of spiritual relationships that Māori systems of law and authority can be understood. According to Edwards: ‘Ka poua te mana, te tapu, te mauri me te Wairua o Io Matua Te Kore e ia ki roto ki enei uri katoa.’ (“The supreme power, the state of spiritual purity, the life element and the spirit of Io Matua Te Kore was imbued by him into all these, his descendants.”) Wairua, Edwards said, could be understood as ‘te hau o Io Matua te Kore’ (“the breath of Io Matua te Kore”). According to Marsden, mauri was the cosmic energy or ‘life-force’ imparted by wairua, which ‘generates, regenerates and upholds creation’, both unifying all things and giving each its distinct essence.

Tapu is commonly translated as ‘sacred’, but we were told that encompassed only a part of its meaning. As Marsden described it, tapu had both spiritual and legal connotations:

A person, place or thing is dedicated to a deity and by that act it is set aside or reserved for the sole use of the deity. The person or object is thus removed from the sphere of the profane and put into the sphere of the sacred. It is untouchable, no longer to be put to common use. . . . any profane use is sacrilege, breaking of the law of tapu.

Although tapu was delegated from atua, it was not a permanent state. Through sacred rites, a person or thing could be dedicated for use by atua and so become more tapu; and tapu could also be neutralised through ritual and also through contact with profane objects such as
cooked food. In an environmental context, resources such as trees, fish and so on could be set aside from use by making them tapu through the imposition of rāhui; and conversely they could be used only if their tapu was removed through appropriate incantations to atua.

Edwards described how tapu regulated behaviour in pre-European times, with transgressions being punished either in the physical or the spiritual realms:

Ko te Tapu tetahi ahua e whakarongo ai te wairua o te Tangata. Ko te tapu he wairua horomata horekau nei he kino kei roto. Engari ki te takahia tera tapu ko nga hua puta he kino katou. I konei ano ka puta te mana o Whiro [te Atua o nga mea kino]. Ko te tapu tetahi mea e matakutia ai te tangata Maori na runga i tana mohio ki te takahia e ia te tapu ka pa mai ki runga kia ia ki tana whanau, hapu Iwi raney tetahi rarurarau nui. He aitua, he mate, he mauui, he parekura he muru me era atu momo kino o roto o te whare a te Atua nei a Whiro. Ko tenei tapu horekau nei he kino kei roto ko te tapu Io Matua te Kore.

Sacredness is an element that gains the respect of the spirit of man. Tapu is a state of spiritual purity that contains no evil. But if sacredness is trampled on the outcomes are all bad. It is here that the mana of Whiro [the God of all things bad] becomes active. Desecrating that which is made sacred brings enormous fear to the Maori person because he accepts that if he desecrates that which is sacred he invites great tragedy for himself [and] his whanau, hapu and Iwi. Violent injury, death, illness, many deaths, plunder and other bad things that are contained within the house of this God. This sacredness that contains no evil is the sacredness of Io Matua Te Kore.

According to Marsden, the legal aspect of tapu involved a contract between people and atua, ‘whereby a person dedicates himself or an object to the service of a deity in return for protection against malevolent forces and the power to manipulate his environment to meet needs and demands.’ When a person was dedicated to an atua in this way, he or she was infused with the spirit of that atua and so acquired mana – spiritual power or authority – allowing the person to act in the physical world. Marsden therefore defined mana as ‘lawful permission delegated by the gods to their human agents and accompanied by the endowment of spiritual power to act on their behalf and in accordance with their revealed will’. Since this power was delegated, no human could ever be more than the ‘agent or channel – never the source of mana.’

Edwards said that humankind had access to only a fraction of the mana handed down from Te Korekore; most of it was retained by Io and his nearest descendants:

te mana tukuiho ko te mana motuhake ko tera te mana i tukua mai i Tuawhakarere ka pouheretia kia Ranginui me Papatuanku ka pouheretia ki a raua tamariki maha kia Tane ma, ka pouheretia ki a ratou uri maha o te Taiao ki nga rakau ki nga manu, ki nga ika me era atu, tukuiho hoki ki te Tangata. Koia tenei te mana tukuiho e korerotia nei e te Tangata ara iti noaiho o tenei mana i tukua maie ia ki te tangata ko te nuinga o te kaha o tona mana i puritia e ia kia aia ano ara kia Rangi me Pata me a raua tamariki a Tane ma.

the supreme power and supreme authority was handed down from the beginning which was then imbued into Rangi and Papa and then into their many children such as Tane and then it was imbued into their many descendants of nature that is the trees the birds the fish, and the many others and finally handing it down to mankind. This is the supreme power that is talked about by man and only a small part of Io’s mana he handed down to mankind the greater part of his powers he retained to himself [and] to Rangi and Papa and to their children Tane and the others.

Whatever happened on earth, including storms, earthquakes, floods or other actions, was therefore an expression of the supreme authority extending back to Te Korekore. Höne Sadler, too, described how mana derived from whakapapa relationships could not be broken or transferred:

ko tō rātou here ki te whenua, ehara i te mea here noa iho ki te taura ka taea te tapahi. Engari ko te here ko te here o te pito ki te whenua. Nā reira koia ko tāku e kī ake ana ko te nohonga a ō tātou mātua a ō tātou tūpuna i hangai e rātou i runga i ngā
whakapapa mai i haere mai rātou ko ō rātou nohunga katoa he mea ū he mea tūturu, e kore ra e taea i te wetewete.

their connection to the land was not like a rope that can be cut, but it [was] like the connections of the umbilical cord to the land. Therefore that is why I say that how our ancestors lived was established through the lines of descent that they came from and all of the settlements were maintained and cannot be separated.\[31\]

In 1994, then Waitangi Tribunal chairperson Chief Judge Edward Durie described the same concept another way: ‘The land was contained in the people.’ To establish mana in relation to land, therefore, it was only necessary for a person ‘to say who they were.’\[32\]

Another fundamental imperative was utu. As the Tribunal said in Ko Aotearoa Tēnei:

Though it [utu] is often rendered in English as revenge, its true meaning is the use of reciprocity in the pursuit of balance. To put it in another way, in the web of kinship every action demands an equal and opposite reaction in order to maintain balance. This idea underpins rules of positive conduct (hospitality, generosity, and so forth) as well as negative conduct (punishment and retribution).\[35\]

Nuki Aldridge saw utu as ‘effecting a law and restoring balance’.\[34\] Drs Manuka Henare, Hazel Petrie, and Adrienne Puckey described it as a law aimed at the promotion of harmony or balance.\[35\] Durie explained it as being concerned with ‘the maintenance or balancing of mana through reciprocity between individuals, between descent groups, and between the living and departed.’\[36\] As we will see throughout this report, there were various means of achieving utu. The use of force against people was one; others included the taking of material possessions as compensation (muru); and appeals to atua through the use of mākutu.\[37\]

Together, mana, tapu, and utu can be seen as fundamental aspects of a system of law and authority that applied long before Europeans arrived.\[38\] That system, Aldridge said, was based on fundamental laws or principles which could be applied selectively to specific situations. In his view, tikanga (which he referred to as ‘the science and philosophy of law’) could be seen as ‘guiding commandments underlying behaviour’, which derived from atua. In turn, kaupapa were ‘the body of principles that create the laws’, including tapu and utu. These principles might demand that resources be conserved (tapu) or that action be taken to achieve balance (utu). Ritenga (often translated as rules) were the actions required to enforce kaupapa. An example of ritenga, Aldridge said, was the requirement for people who went fishing to return the first fish to Tangaroa.\[39\] Durie, similarly, referred to tikanga as ‘principles for determining justice’, noting that the word tikanga derived from tīka – ‘that which is right or just’.\[40\]

According to Durie,

Maori norms were sufficiently regular to constitute law, in this context a social norm being defined as legal if its application or neglect provoked a predictable response.

Under this definition, Durie continued, it did not matter whether disputes were ‘settled through an external agency, or whether, as was usual amongst Maori, disputes were adjusted by the parties themselves’. In either case, law was still law.\[41\]

In an oral culture, sacred or specialised knowledge was transmitted from generation to generation verbally – through pepeha (sayings), whakatauki (proverbs), tauparapara (formal incantations), waiata, place names, and other kōrero, as well as through whakairo (carving), rāranga (weaving), and tā moko (tattooing). Through speech, song and visual forms, whakapapa were described, and the exploits of ancestor-gods told to others. These were the histories that the late Sir James Henare expressed as: ‘Ko ngā tohu ō rātou tapuwae i kakahutia i runga i te mata o te whenua,’ the footsteps and teachings of past rangatira etched into the landscape.\[42\] They were also sources of knowledge not only about history and identity, but about who had authority to make and enforce law, and about law itself. Hōne Sadler told us, it was the ancestors who created the laws, and they who provided guidance on how to live in this world.\[43\]
2.2.4 Rāhiri’s people

Claimant traditions speak of Kupe-ariki as the navigator who first discovered the land fished up by his tūpuna Māui. Kupe’s sojourn to these islands on the Matawhao is remembered in the names he bestowed on the landscape which are still in use today. His first landfall on the west coast was commemorated in ‘Te Ramarama-roa a Kupe’ (the eternal beacon of Kupe), inspired by the afternoon glow on the hills above Hokianga that guided the waka’s approach from the North Cape. Te Pouahi (the pillar of fire), at the entrance to the Hokianga harbour, also commemorates this first landing. Hokianga itself derives its name from Kupe’s words of farewell before returning home:

Hei konei rā, e Te Puna o te Ao Mārama,
Ka hoki nei tēnei, e kore e hoki anga nui mai.

Goodbye, Spring of the World of Light,
This one is going home and will not return this way again.44

It is said that in addition to taunaha whenua (naming the land), Kupe buried the bones of his son Tumutumu-whenua (or Tuputupu-whenua) to lift the tapu over the new territory for the future generations. He is also said to have left behind his dogs, his anchor, and his taniwhā to watch over Hokianga. Kupe passed on the knowledge of his exploratory travels to his people on his return to Hawaiki, and in so doing inspired subsequent migration from Polynesia and, eventually, the permanent settlement of Aotearoa by his descendants Nukutawhiti and Ruanui.45

‘Kupe [was] our beginning point,’ John Klaricich told us, ‘the foundation and substance that remains unchanged’:

Innate courage, curiosity, confidence in [his] own belief systems and technology, and deep understanding of the natural world, is how Kupe arrived. Here in Te Wahapu every place name is accounted for, recorded and remembered in the tapestry of the land.46

In turn, Nukutawhiti and Ruanui are remembered by many of the claimants as their earliest ancestral...
permanent residents. Ruanui set forth with his people in the Māmari waka, while Nukutawhiti re-adzed and enlarged Kupe’s waka to become Ngātokimatawhaorua. Traditions tell of this voyage following a path set by Kupe, and coinciding with a nova explosion which allowed Ngātokimatawhaorua to speed across Te Moana-nui-a-Kiwa on a crest of surging waves under a sky lit up as if it were day. In this version, Aotearoa was not the long white cloud first perceived by Kupe’s wife Kura-marotini, but Ao-o-te-ra-roa or Awatea-roa – the long day – to commemorate the waka’s supernatural passage. As Ngātokimatawhaorua reached Hokianga, great waves almost swamped it, forcing it towards rocks. Nukutawhiti responded with a karakia to Tāne and Tangaroa. He removed his amokura (sacred feather) and cast it into the ocean as a gift to the atua, causing the sea to calm so landfall could be made. It is due to this event that some of his descendants now say the mauri of their people can be found in the water.

Ruanui initially settled at Te Pouahi at the northwestern entrance to the Hokianga, and Nukutawhiti settled on the opposite shore at Ōpononi, and it was from those locations that their spiritual battle took place. Over time, their descendants spread out to explore both sides of the harbour and many other parts of the north, naming the land as they went. Claimant traditions recall other waka following theirs: the Kurahaupo, Mataatua, Takitimu, Tinana, and Mahuhukiterangi all either travelling from Hawaiki and making landfall on the tail of Māui’s fish, or migrating there from other parts of Aotearoa during the early settlement period. Descendants of Nukutawhiti and Ruanui intermarried with each other and with people from these other waka, creating multiple, overlapping lines of descent – yet all of which could trace to Kupe, Ruanui, Nukutawhiti, and one of Nukutawhiti’s descendants, Rāhiri. For this reason, according to Patu Hohepa, all of today’s major tribal groupings in the north are karanga maha, relatives through multiple lines of descent.

Of these founding tūpuna, Rāhiri – the shining day – is seen as having consolidated and expanded the influence of the people who came ultimately to be known as Ngāpuhi. Rāhiri’s tūpuna refer to him as ‘te tumu herenga waka’, the stake to which the multiple waka of the north are bound. Others put it more baldly, repeating an old saying: ‘Kotahi ano te tangata horekau i puta i a Rāhiri, He Kuri’ (‘The only Ngapuhi person that did not descend from Rahiri is a dog’).

The descendants of Rāhiri came to dominate Hokianga and much of the interior, before their power spread to the coastal Bay of Islands and Whangaroa during the early decades of contact with Europeans. It was they who entered the first arrangements with traders and missionaries, and they who first signed he Whakaputanga and te Tiriti, as we will see in later chapters.

Rāhiri’s father, Tauramoko, was an eighth-generation Hokianga-born descendant of Nukutawhiti; and his mother, Hauangiangi, was a high-ranking woman of Ngāti Awa and the Mataatua line. The name ‘Ngāpuhi’ – today used to refer to all of Rāhiri’s descendants – is sometimes said to come from Hauangiangi’s father, Puhimoana-ariki, though many dispute that. Another explanation is that Puhimoana-ariki (also known as Puhite-awa or Puhite-taniwhā-rau) is a taniwhā from Hawaiki who watched over Nukutawhiti on his journey. Nukutawhiti is said to have adopted the name Ngāpuhi in honour of that taniwhā, while Ruanui’s people initially took the name Puhite-aewa after the taniwhā’s other name, later becoming Ngāti Aewa (and later still Ngāti Ruanui). Another explanation is that the three names (Puhimoana-ariki, Puhite-awa and Puhite-taniwhā-rau) were given to the son of the high-born woman Arikatapu, to commemorate the circumstances surrounding his birth. Yet another version says that ‘nga puhi’ refers to ‘the chiefly women’, and refers to Kupe’s wife Kuramarotini and her sister Rongorongo.

Just as there are many explanations for the origins of the name ‘Ngāpuhi’, so there are many different explanations of Ngāpuhi identity. Ngāpuhi today does not associate with any single waka, or maunga, or awa. It has many significant tūpuna, of whom we have named only a few. Claimants described the territories of Ngāpuhi-tūturu (true or authentic Ngāpuhi) as being encircled by ‘nga pou pou maunga o te wharetapu o Ngapuhi’ (‘the mountain pillars of the sacred house of Ngapuhi’), broadly covering the territories of Hokianga, Whangaroa, Bay of Islands...
They also referred to ‘ngāpuhi-nui-tonu’ ('great, everlasting Ngāpuhi') or ‘ngāpuhi-whānui’ ('broad Ngāpuhi') are said to encompass all people and territories north of Tāmaki-makaurau (Auckland).\(^6\) It is important to be clear that in pre-European times, Rahiri’s descendants referred to themselves by hapū names, and not by the overarching name ‘Ngāpuhi’. Even well into the nineteenth century, ‘Ngāpuhi’ seems to have been used only by a group of hapū from the northern Bay of Islands (see sections 2.2.7 and 3.1).\(^5\)

Rāhiri grew up at Whiria pā at Pākanae in the Hokianga, and married Āhuaiti, of Ngāi Tāhuhu, which was then the dominant group in the Bay of Islands interior and southwards to Whāngārei. His second wife, Whakaruru, was of Ngāti Awa, which had influence in the Hokianga and the Bay of Islands interior, as well as northwards to Whangaroa. Through other marriages, he extended his influence south to Waipoua, and across to Whangaruru and Whāngārei, as well as into Taranaki.\(^6\) Over the course of his life, Rāhiri would base himself at Whiria, which acquired the reputation of an impregnable fortress as he and his sons forced their Ngāti Awa kin southwards. In these ways, like many of the great leaders who would follow, his reputation was forged from a
combination of military exploits and diplomacy (as shown in particular by his use of intermarriage to expand kinship ties and influence). Sir James Henare said it was Rāhiri who brought together the scattered groups descended from Nukutawhiti and called them Ngāpuhi, providing yet another explanation for the tribal name. Rāhiri’s legacy is recalled in the phrase ‘ngā maramara o Rāhiri’ (the chips of Rāhiri), referring to the influence that his descendants would ultimately have throughout many parts of the north.

It is the story of Rāhiri’s sons Uenuku-kūare and Kaharau that best captures his influence, both as a tribal progenitor and as a source of political kawa (custom). The tradition is that Rāhiri and Āhuaiti separated when she was pregnant, and so their son Uenuku-kūare was born and grew up among his mother’s Ngāi Tāhuhu people at Pouerua. Rāhiri’s second son, Kaharau, grew up at Whiria with him and his second wife Whakaruru. As a young man Uenuku ventured west to find his father, but Kaharau – motivated by jealousy – challenged his tuakana (brother). Rāhiri, fearing harm to either of his sons, intervened, sending them to plait twine for a kite. It is from this that Whiria (‘plait’) received its name. When the kite was set free, it flew east and landed near Kaikohe, which then became the dividing line between Uenuku’s territory in the east (Te Tai-tamawhine: the female coast), and Kaharau’s territory in the west (Te Tai-tamatāne: the male coast). In this way, Rāhiri intended that the brothers would stand as equals, independent of each other but offering aid in times of need.

This covenant was enshrined in the whakataukī:

\[ Ka \text{ mimiti te puna i Taumarere}, \]
\[ Ka \text{ toto te puna i Hokianga} \]
\[ Ka \text{ toto te puna i Taumarere}, \]
\[ Ka \text{ mimiti te puna i Hokianga} \]

When the spring of Taumarere is empty, 
the spring of Hokianga is full; 
[When the spring of Taumarere is full, 
the spring of Hokianga is empty.]

According to Hohepa, the saying has multiple meanings. It can refer to the tides of both coasts: when one is out, the other is full. It is also a reference to the underground waterways linking Hokianga on the west coast and Taumārere on the east, said to be the pathways of taniwhā. At its most profound, however, it refers to the ancestral ties between the two coasts, which are said to bind each to support the other in times of conflict or strife. According to Erima Henare, the pepeha talks of

the springs of human beings. When the people of Hokianga require assistance, the people of Taumārere help them. When the people of Taumārere require assistance the people of Hokianga help them.

Other claimants said the pepeha also recognises the equality and autonomy of Rāhiri’s two sons and their descendants. It is, John Klaricich said, ‘a covenant expressed poetically.’

The pepeha also speaks to the dominance that Rāhiri and his descendants would ultimately hold over territories spanning both coasts. Consistent with his father’s wishes, Uenuku based himself at Pouerua, where he married Kareāriki of Ngāi Tāhuhu people at Pouerua. Kaharau remained with his father at Whiria, and together they fought several battles against Ngāti Awa. In subsequent generations, kin relationships between the brothers’ descendants were cemented through intermarriage: the most famous was between Uenuku’s daughter Ruakiwhiria and Kaharau’s son Taurapoho, who established themselves midway between Pākanae and Pouerua. The east–west axis was also strengthened through ongoing exchange: Uenuku’s daughter Uewhati, for example, electing to return to her grandfather’s rohe at Hokianga, rather than remain at her birthplace at Pouerua. Four generations after Rāhiri – according to Henare, Petrie, and Puckey – his great-grandsons Māhia and Tūpoto finally achieved complete dominance over greater Hokianga and the interior south of Lake Ōmāpere, along with kinship ties to Whangaroa, the Bay of Islands coast, and Whāngārei.
2.2.5 Hapū and rangatira

Like other Māori, the earliest permanent residents of the Hokianga and Bay of Islands lived in small, highly mobile groups, mainly in unfortified kāinga (villages), sustaining themselves by foraging, hunting large fauna, and cultivating introduced crops such as kūmara. By Rāhiri’s time, however, larger groups were emerging, and territorial relationships were becoming more important as the focus of economic activity turned towards year-round cultivation and the taking of fish and shellfish. Fortified pā, of which Whiria was one, were built on hillsides and became bases from which territories were defended.

From this time onwards, the fundamental unit of economic and political organisation was the hapū. In many respects, everyday life continued to revolve around whānau, who might cultivate their own crops and gather food for themselves. But, increasingly, the demands of larger-scale economic activities, along with defence and the acquisition of territory, demanded that whānau work together in larger kin-based groups under coordinated leadership. Hapū were not simply large whānau but political and economic groupings based on a combination of common descent and interest. Most often they took their name from a shared ancestor. Whānau groups typically lived in dispersed, small-scale settlements throughout the territories of their hapū, moving about seasonally to make the most of food sources. But it was the hapū that held the rights in land. It was also hapū who held rights over other resources such as fishing grounds and shellfish beds, and over significant assets such as whare tūpuna (meeting houses), large waka, fishing weirs, nets, and pā, all of which were the products of community labour.

Māori Marsden has described the hapū as an ‘[an] organism rather than [an] organisation’, referring to the willingness of individuals to act and view themselves as aspects of a whole rather than separate members of a group. Edwards described the role of hapū this way:

ko te Hapū te kaipupuri i te mana kaitiaki o nga whenua me era atu taonga. Ko nga Hapu ano hoki te mana whakahaere i nga tikanga me nga mahi. Ko te whanau kei roto i te Hapu. Ka whanau mai he uri horekau i whanau mai ki roto i te whanau engari i whanau mai ki roto ki te Hapu. Ko te Iwi horekau ano kia pakari noa . . .

the Hapu held the mantle of guardianship of the land and other possessions. It was also the Hapu that held the mantle of governance of the customs and things to be done. The whanau was within the Hapu. When a child is born that child was not born into the whanau but was born into the Hapu. The Iwi had not yet matured . . .

Henare, Petrie, and Puckey noted that ‘hapū’ literally translates as ‘pregnant’, and ‘whānau’ can mean ‘to give birth’. In their view, hapū can be translated as ‘tribe’. They noted that ‘iwi’ is today commonly translated as ‘tribe’. In their view, ‘iwi’ only began to acquire political functions from about the 1850s onwards, and prior to that amounted to no more than ‘a loose association of related peoples who did not act on a day-to-day basis as a corporate group’.

Within hapū, political leadership was provided by rangatira – a word that means ‘weaver of people’. Rangatira played many roles. One of their principal responsibilities was to coordinate community effort in activities such as hunting, horticulture, and building waka, pā, whare, or other communal property. They also mediated in disputes among their people, built consensus in group decision-making, and allocated land and other resources for people to live on within their role. In relations with other hapū, rangatira were diplomats, arranging alliances or cooperative relationships for military and economic purposes and cementing them through intermarriage, gifts, and shared feasting. They were also leaders in warfare and territorial expansion, as the stories of Rāhiri and Kaharau suggest.

In an environment of resource scarcity and territorial competition, mana over hapū territories had to be actively asserted, exercised, and defended. All territories were under the authority of one hapū or another, and the boundaries were typically well known. Often, they were clearly defined by natural features such as ‘Streams, rivers, hills, rocks, cliffs and prominent trees’, or by other markers such as piles of stones.

Continued occupation and use (ahi kā roa) was one means of defending rights over land and resources.
According to Henare, Petrie and Puckey, whakapapa relationships had to be kept active, in fulfilment of duties and obligations to atua: blood ties alone were not enough. Another way of asserting mana over land or resources was through place names, pepeha, whakataukī and other kōrero linking the territory to significant tūpuna, showing how they had established rights in it. Territories could also be acquired or lost through gifting – a practice that served to cement relationships between neighbouring hapū, or to rebalance those relationships after periods of conflict. Finally, rights in land could be lost, gained or defended by conquest. The ability to hold land in this way was known as ringa kaha (literally ‘strong arm’, though also translated as strong defence).

While rangatira exercised authority in relation to both territories and people, in neither case did that authority belong to them as individuals. Rather, they embodied the mana of their atua, the ancestor-gods from whom the other members of their hapū also descended. Their authority to lead depended on how successful they were at advancing hapū interests. Their mana could grow or diminish depending on exploits in warfare, diplomacy, hospitality, and in making their people more prosperous. In all of these things, their mana and that of their people and whenua were closely aligned. Mana, in other words, was bestowed by virtue of their relationships with people (mana tāngata), land (mana whenua), and tūpuna (mana tūpuna): all of which embodied atua.

Many of the claimants stressed the consensual relationship between rangatira and their hapū as one of the defining aspects of the political kawa of Rāhiri’s people. Rangatira did not lead their own people by coercion, but rather by example, persuasion and effective management. Within hapū, many decisions were made following discussion among whānau leaders, with rangatira acting as mediators. Pita Tipene described the relationship between rangatira and hapū in this way:

Mā ngā hapū e whakahaere ngā tikanga, ko te hapū te rangatira o ngā rangatira. Mai rānō i pērā ai, he kawa tūturu i heke mai i ō mātou mātua tūpuna. Mehemea kei a koe te mana hei whakahaere, kei a koe te whakapapa, mehemea ka piki haere tō [pai] mō te whakamahi i ēnā mahi, ka whakaitūria koe, he kai-hau-tū hei rangatira mō te iwi. Engari, rerekē ki a mātou te rangatira ki ētahi atu. Ko te rangatira, ko te kai-whakarāranga i te tira, i tō taha. Ehara te rangatira kei runga ake i te hapū, koia me whakarongo ki te hapū i runga hoki i te tikanga, ka kore koe e whakarongo ka whakarerea koe . . .

It is the hapu who are in charge, the hapu is the chief of the chiefs. This is how it has been since time immemorial, these traditions and principles that descend from our ancestors. If you have the mana to lead, if you have the genealogy, if you have the capacity to do the work, you will be recognised and you will be the chief for your people. But our own views of what a rangatira is, are different to others views. To us a rangatira is a person who weaves people together, a person at your side. The rangatira is not above the hapu. The rangatira must listen to the hapu, in accordance with tikanga. If they do not listen they will be cast aside . . .

Erima Henare told us that the roles of rangatira were ‘determined by meritocracy’:

There was no lineal descent as of right. Leadership was earned. The [principal] pathway to earning that leadership followed the footsteps in the martial arts of Tumatauengenga, the Warlord of the Māori metaphysical term. In other words . . . [rangatira] were proven battle hardened warriors. This was a cultural imperative of those times. You’ve proved your mettle on the battlefield and you’ve earned that respect accordingly.

Although rangatira were ‘entitled to respect’, they were also duty bound to protect the mana of the hapū, its lands and the lives that were led there . . . Because it was the hapū who gave Rangatira their status, it was to the hapū that Rangatira owed their allegiance.

One way in which this combination of authority and obligation manifested itself was in relationships with the environment. According to Marsden, ‘all life was birthed from Mother Earth’ and thus ‘the resources of the earth did not belong to man but rather, man belonged to the
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earth'. Rangatira were obliged to exercise their authority in accordance with this principle, caring for and nurturing resources to preserve their mauri and keep them available for future use. This is the sacred contract between humans and atua that Marsden described earlier, and the value now referred to as 'kaitiakitanga'. In practical terms, this value was exercised through the imposition of rāhui, temporary bans on the use of places or resources. Marsden said that rāhui could be imposed on forests, rivers, lakes, harbours or other places in order to conserve or replenish resources such as fish or bird life. The area would then be monitored and, 'when it was considered that the resource had regenerated itself sufficiently, the tapu was lifted in accordance with the appropriate kawa and the resource restored to general use.'

A decision to impose rāhui could be made by rangatira or by tohunga with expertise on the relevant resource, often in consultation with kaumātua (elders). Appropriate rituals would be conducted to impose rāhui, summoning forth mauri to aid replenishment of the resource. Often, a physical marker such as a stone, fern branch, or carved rākau (stick) would be placed within the area under rāhui, warning people not to use the area and also serving as a repository for that mauri. According to Aldridge, 'how did Maori apply the law? The simple answer is that people lived it. They lived the tapu and rahui... and they knew what it meant to transgress.' We are reminded, too, of Edwards's comment: 'ki te takahia tera tapu ko nga hua ka puta he kino katoa' ('if that sacredness is trampled the outcomes are all bad').

As well as conservation, rāhui could be imposed for other purposes. A particular tree might be set aside for use in carving, or a flax bush reserved for a woven cloak. Rāhui were also imposed on places where accidental deaths occurred.

Whereas rāhui were temporary and deliberately imposed, some places and people were intrinsically tapu. The dead, and any place associated with them such as burial grounds and battlefields, were highly tapu. So, too, were leaders – rangatira and tohunga – whose roles demanded that they be set aside for use by atua. The head, also, was particularly tapu. In the landscape, maunga were perceived as sacred, serving atua by standing guard over the territories of Rāhiri’s people. Likewise, other places or landscape features embodying atua were also tapu.

When a rangatira named a place, he imbued it with his tapu and so reserved it for use by his people. According to Henare, Petrie and Puckey, the tapu nature of relationships with land were then 'spelled out in the pepeha’ – allowing future generations to assert their rights by recalling the maunga, moana, awa, whenua and tāngata from whom they descended.

At a personal level, tapu could be passed on by contact. According to Marsden, a tapu person ‘must observe strict laws of behaviour and conduct in regard to both their personal lives and in the conduct . . . of sacred ritual’. Failure to do so would result in the weakening of their tapu and so a loss of personal mana. For this reason, rangatira and tohunga were often fed by servants, since contact with cooked food was believed to neutralise their tapu. When a tohunga came into contact with a highly tapu object, he would conduct a cleansing ritual before returning to secular life, ‘to avoid spreading this contamination or . . . offending the gods’.

For people who were less tapu themselves, or who challenged atua by violating tapu intentionally, the consequences were more severe. According to Marsden, because of [its] prohibitive aspect, tapu persons, places or things may not be interfered with or transgressed. Such transgression invites divine retribution – illness, death, mental ill-health, misfortune.

The ultimate physical sanction for transgression was to be killed and eaten – an action that resulted in the complete removal of the victim’s tapu and its consequent transfer to the victor.

2.2.6 Relationships between groups

Mana and tapu also played vital roles in relationships between groups, guiding hapū either to cooperate with each or to compete as circumstances demanded. In a world based on whakapapa, the choice between cooperation
and competition depended to a significant extent on the closeness of kinship links, though other factors – such as whether cooperation served the hapū’s economic interests – were also relevant.\textsuperscript{114} Among closely related groups, the principle of manaakitanga was a significant influence on behaviour. Closely related to whanaungatanga, manaakitanga is often translated as hospitality, though it also encompassed values such as generosity, kindness, caring and support for others, all of which served to cement social relationships between groups as well as within them.\textsuperscript{115}

Together, whanaungatanga and manaakitanga found their expression in various ways. Though hapū exercised autonomy over their rohe, they also cooperated with each other. Coastal groups, for example, sometimes gave inland kin access to the fishing and shellfish grounds for which they were kaitiaki, to the extent of allowing them to build villages. One hapū might be granted rights to travel through, occupy or use land for which another had ancestral rights. Closely related hapū sometimes worked together when cooperative effort was needed, for example to provide labour for large cultivations. They also came to each other’s aid in times of conflict, offering sanctuary or military reinforcement.\textsuperscript{116} Though he was not writing specifically of the Bay of Islands and Hokianga, Dr (later Professor) James Belich has noted that it was typical among pre-European Māori for small hapū comprising perhaps 30 people to rapidly coalesce into much larger groups of perhaps several hundred, suggesting ‘that such large groups were not ad hoc but were accustomed to acting together’.\textsuperscript{117}

Ties between kin groups were strengthened and reinforced in a number of ways. Exchanges of gifts enhanced the mana of the giver and created an obligation to reciprocate, in ways that reinforced common bonds ‘until the parties were so close and accepting of one another that each could rely on the other to be generous in times of local privation, and to expect no immediate response.’\textsuperscript{118} Hākari (feasts) and hahunga (ceremonial scraping of bones, often accompanied by feasting) provided similar opportunities for hapū to reinforce social bonds, discuss political matters, and enhance mana through generous hospitality.\textsuperscript{119}

Interruption was a cornerstone of whanaungatanga, with unions between high-ranking individuals also bringing together their respective hapū. Marriages could be used to keep mana whenua within existing hapū, or to reinforce ties between closely related peoples. They could also create bonds with previously distant or unrelated peoples, both close to home and further afield. The alliances created through marriage could serve economic purposes, such as securing access to distant food sources, and could also reinforce military alliances or secure peace between warring hapū.\textsuperscript{120}

While hapū could cooperate, breaches of tapu and threats to mana (including challenges over territory or resources) could also lead them to conflict. Forceful responses were seen as legitimate and indeed essential means of restoring mana, reflecting universally accepted tikanga. Failure to respond would itself be degrading. Consistent with the principle of whanaungatanga, utu would be taken against the group, rather than solely against the offending individual if there was one.\textsuperscript{121} The nature of the response would depend on a number of factors including the take (cause), how closely related the parties were, and their relative power. Among close kin, the most common means of dispute resolution was the taua muru (plundering party), through which the offended group restored its mana by visiting the offenders and taking or destroying property. Often, taua muru ended in hākari which also contributed to the restoration of balance. If a taua muru was resisted, force might be used to extract utu; for the most part, however, taua muru was ‘a ubiquitous Maori system for peaceful dispute resolution’, commonly used in the Bay of Islands and Hokianga as well as other parts of New Zealand.\textsuperscript{122}

Among unrelated groups, disputes were more likely to lead to warfare, but warfare was still considered tika – legal and right – if fought for a legitimate take.\textsuperscript{123} Typical take involved violations of the tapu of a living person or their tūpuna or atua. For example, violence against a person of high rank might be cause for war, as might desecration of a burial ground, or encroachment on the land or resource rights of other hapū.\textsuperscript{124} In such cases, utu was most often sought from the offending individual or group,
but might be sought from others such as the offenders’ kin, and sometimes from others who had no direct link to the original cause. Victory could be a considerable source of mana for those involved, who not only would gain reputations for military prowess but might also acquire new territories for their people.

Once war had begun, utu could be achieved and peace therefore restored by a range of methods including intermarriage, the gifting of land, and mediation by neutral rangatira. Captives could be taken during the conflict, and might later be returned as part of peacemaking. The important point for our purposes is that warfare was generally considered tika among pre-European Māori. Put simply, it was a commonly understood system for enforcing commonly understood laws.

2.2.7 Hokianga and the Bay of Islands in the 1700s
In the generations that followed Uenuku and Kaharau, their descendants maintained a hold on the Hokianga and significant parts of the interior. Every so often new hapū formed as populations grew, rivalries developed, marriages occurred, and circumstances otherwise changed. By the second half of the eighteenth century, the territories spanning Hokianga and the Bay of Islands were heavily populated by New Zealand standards, with many kāinga and pā, and extensive gardens in the interior. As populations grew, so did competition among the groups occupying these lands.

In the Hokianga, prominent hapū included Te Māhurehure, Ngāti Korokoro, Ngāti Hau and Te Uri o te Aho. According to Henare, Petrie and Puckey, it had been Tūpoto – the son of Uenuku’s daughter Ruakiwhiria and Kaharau’s son Taurapoho – who had united this region, naming many of its locations and marking boundaries for the hapū of his children just as Rāhiri had once done. Te Māhurehure, Ngāti Korokoro, Ngāti Hau and Te Uri o te Aho, they said, could all trace descent from Tūpoto and could be seen as members of the overarching kin group Ngāi Tūpoto. For these reasons, the maunga ringing the harbour were known as ‘te whī-tiki o Tūpoto’ (the belt of Tūpoto). We are wary, however, of oversimplifying what are inevitably complex and overlapping lines of descent. Hohepa referred to these Hokianga hapū as also descending from another of Uenuku’s daughters, Maikuku, and her husband Hua, while Sissons, Hongi, and Hohepa also recorded whakapapa showing Ngāti Korokoro and Te Māhurehure descending from Uewhati, another of Uenuku’s daughters.

Around Kaikohe, the key hapū groupings by the mid-eighteenth century included Ngāi Tautahi, Ngāi Tawake, Ngāti Whakaeka, and Te Uri o Hua. According to Sissons, Hongi, and Hohepa, these hapū could trace descent to Tūpoto’s brother Māhia, and more specifically to Māhia’s descendant Te Wairua. Te Uri o Hua could also trace descent from Maikuku and Hua through their son Te Rā, as could Ngāti Rāhiri which was based around Waitangi. In turn, these hapū were closely aligned with Ngāti Rēhia, into which Māhia’s son Tautahi (eponymous ancestor of Ngāi Tautahi) had married. Sissons, Hongi, and Hohepa described this as the ‘northern alliance’ of Bay of Islands hapū – an alliance ‘between the descendants of Maikuku . . . and those of her sister, Ruakiwhiria’. It appears that only hapū from this ‘northern alliance’ initially called themselves ‘Ngāpuhi’, the name being applied to all of Rāhiri’s descendants only much later, probably not until after 1840 (see section 3.1).

From about 1770 onwards, these ‘northern alliance’ hapū began an expansion that would continue well into the nineteenth century. Their first conquest, under the leadership of Te Wairua’s son Auha and his brother Whakaaria, took Waimate and Kerikeri from Ngāi Miru and Te Wāhineiti. Both of those hapū affiliated to Mataatua waka and could trace descent from Nukutawhithi and Ruanui, but not from Rāhiri. Later, Auha’s son Te Hōtete, and Te Hōtete’s son Hongi Hika would, with their allies, extend their authority into the coastal Bay of Islands and Whangaroa, and much further as well, through a combination of conquest, absorption and intermarriage. Another important hapū within this alliance, at least as it evolved during the early nineteenth century, was Te Hikutū, which had territories in the southern Hokianga and at Rangihoua and Te Puna in the north-western corner of the Bay of Islands.

The south-eastern Bay of Islands group included the
hapū Ngāti Manu, Ngāti Rangi, Ngāti Hine, Ngāti Hineira and Ngare Hauatu. According to Henare, Petrie, and Puckey, these hapū could also trace descent to Maikuku through her daughter Rangiheketini and granddaughter Hineāmaru. This group – today referred to as the southern alliance – would in the late eighteenth century capture Taiamai from Ngāti Pou, who had migrated into that area from Hauraki, perhaps in the sixteenth century. Through intermarriage, Ngāti Pou could also trace descent to both Uenuku and Kaharau, the latter connection being through Tūpoto. Later, Hongi and his allies would push Ngāti Pou from Whangaroa.138

The south-eastern Bay of Islands coast, meanwhile, had been held from the fifteenth century onwards by Ngare Raumati, early migrants from the Bay of Plenty. Though generally regarded as unrelated, they too could whakapapa to Uenuku. Ngare Raumati would also be challenged and absorbed by parties led by Te Hōtete and Hongi, from the late eighteenth century onwards.139

This, then, was the dense web of kinship and rivalry that dominated the territories from Hokianga to the Bay of Islands in the period shortly before the Endeavour came upon the scene. Crucially, hapū remained the primary political unit – not only at the time of first contact with Europeans but for many decades afterwards. Although alliances were forming, they were no more than loose coalitions of autonomous hapū brought together by common interest and kinship; they were not new political entities. Indeed, the claimants scarcely mentioned these alliances in their evidence, but placed considerable emphasis on the kawa of fully autonomous hapū who were able to cooperate or compete with related hapū as circumstances demanded. Aldridge told us:

In times of war or ceremonial occasions, hapu joined readily with other hapu groups, but each hapu was responsible for its own government, autonomy was fundamental.

The ‘hapu was the governing body’ and ‘one hapu would not tell another hapu what to do. But they would provide assistance to maintain the social order’.140 Similarly, Hohepa told us how, among Rāhiri’s descendants, no single line would dominate, either in pre-European times or indeed today:

Kei i a hapū, kei i a iwi, kei i a whānau tōnā ake mana. He rerekē mātou ki ētahi atu iwi, he ariki kei runga, he whānau-ariki kei runga he whakahaere, he hapu-ariki kei runga, kāhore ko te mana, i timata mai i te kōtahi, puta atu ki te whānau, puta atu ki te hapū mehemea e hiahia ana ka hono
He Whakaputanga me te Tiriti
The Declaration and the Treaty

hei iwi, mehemea hiāhia ana ka hono hei roopū mō te katoa, arā, ko Te Tai-Tōkerau.

Each hapu was responsible for its own mana. Other iwi have ariki on top. There’s an Ariki family. We don’t have that. So it’s a reversal, you begin at the bottom with one into the whānau, then to the hapu and then you might come together [as a larger group] on specific purposes.141

This kawa is today summed up in the pepeha ‘Ngāpuhi kōwhao-rau’ (Ngāpuhi of one hundred holes).142 According to Hohepa:

Ko te kōwhao-rau he kupenga, ko te kōwhao-rau he whakapapa, ko te kōwhao-rau he kāinga-rau, he kāinga-toru, ko te kōwhao-rau he whanaunga-maha, na reira, mātou i ora ai, nā te kōwhao-rautanga.143

The kowhao-rau we speak of can be likened to a net with many holes. Kowhao-rau refers to genealogy and relationships. Kowhao-rau can be likened to a second and third house. Kowhao-rau refers to our many kin relationships. And that is why we have survived, because of all of these separate but related connections.144

We do not know when this pepeha came into use. As we have already noted ‘Ngāpuhi’ was not used as a name for all of Rahiri’s people until well into the nineteenth century. Henare, Petrie and Puckey noted that Ngāti Hine had a similar saying – “Ngāti Hine pukepukerau” (Ngāti Hine of a hundred hills).145 In their view, ‘kōwhao-rau’ referred to the ‘fiercely independent and autonomous nature’ of each hapū within its own boundaries, both in terms of authority and identity.146

It was Rāhiri’s descendants who would dominate the early decades of contact with Europeans – the early exchanges with explorers, the trading relationships, the early encounters with missionaries and their new ideas, and above all the formal relationships with Britain and its officials. They lived according to Rāhiri’s kawa: as distinct hapū, staunchly independent, each maintaining authority over its own people and territories, and each also highly conscious of kinship, capable of cooperating with others or of fighting as circumstances demanded. Like their forebears, they remained fundamentally concerned with relationships, and their lives continued to be governed by the spiritual and legal imperatives of mana, tapu and utu.

2.3 The British World

2.3.1 Cook’s instructions illuminate the British world
When James Cook sailed south on his first Pacific voyage of 1767 to 1771 he carried two sets of instructions, reflecting the voyage’s twin purposes. The first set told him to observe the Transit of Venus at Tahiti, and so help provide the data that the Royal Society needed to decide the distance between the Earth and the Sun. This in turn would allow them to determine the dimensions of the known universe.147 The second set was secret Admiralty instructions written in ‘Obedience to the King’s Commands’. Cook was instructed to sail on into southern seas, to discover Terra Australis Incognita – the fabled unknown southern continent whose mirage had captured the European imagination.148 Should he fail to find it, however, Cook was instructed to ‘fall in with the eastern side of the Land discover’d by Tasman and now called New Zealand’.149

Cook’s twin sets of instructions spelt out the British motives for this ambitious voyage of exploration. In short, Cook was sent to extend the reach of Britain’s knowledge and its commerce, and if possible to expand its empire’s borders. Like other early British explorers into the Pacific, he was reminded that ‘Discoverys of Countries hitherto unknown’ or ‘imperfectly explored’ would add to the honour of the nation, to ‘the Dignity of the Crown of Great Britain’, and ‘tend greatly to the advancement of the Trade and Navigation thereof’.150 To these ends, Cook was accompanied by a party of scientists, including astronomers and naturalists, most famously the botanist Joseph Banks, who were to help him observe the nature and properties of the geography, fauna, and flora of any lands he encountered, and to bring home specimens of any rocks, minerals, seeds, fruits, and grains it was practicable to collect.
Cook was also instructed to ‘observe the Genius, Temper, Disposition and Number’ of any ‘Natives’. With ‘the Consent of the Natives’, he was instructed ‘to take possession of Convenient Situations in the Country in the Name of the King of Great Britain’. If Cook found any country uninhabited, however, he should simply ‘take Possession for his Majesty by setting up Proper Marks and Inscriptions, as first discoverers and Possessors’.¹⁵¹

Cook’s instructions in part reflected the eighteenth-century British concerns which helped bring an end to slavery within Britain itself at about this time (though not British involvement in the slave trade, nor in its empire).¹⁵² Cook was urged by the Royal Society’s President the Earl of Morton to

exercise the utmost patience and forbearance with respect to the Natives . . . To check the petulance of the Sailors, and restrain the wanton use of Fire Arms. To have it still in view that shedding the blood of those people is a crime of the highest nature: – They are human creatures, the work of the same
omnipotent Author, equally under his care with the most polished European; perhaps being less offensive, more entitled to his favor.

Instead of the use of force, Cook was advised that ‘[t]here are many ways to convince them of the Superiority of Europeans’. 353

How Cook’s voyage opened contact between Māori in the Bay of Islands and the wider world is a subject of our next chapter. We have discussed Cook’s instructions here, however, because they so clearly mirror the motives, values, and institutions of the British authorities who sent him forth. They illustrate that British science and imperialism were conjoint enterprises. They show the intense British desire to expand its trade, and where ‘convenient’ its Empire, through acquiring newly discovered lands. And they demonstrate a belief that ‘Natives’ awed by Europeans’ superiority in so ‘many ways’ might be persuaded to give up authority and possession over their own lands.

The ambitious nature of Cook’s instructions demonstrates a powerful belief in British cultural superiority and national destiny. A spectacular series of victories over France (and Spain) in the Seven Years War (1756–63) redrew the imperial map in North America, forcing out the French entirely and evicting Spain from Florida; France also had to relinquish valuable ‘sugar islands’ in the West Indies, and allow the British to consolidate their presence in India. These victories made Britain the world’s pre-eminent imperial and naval power, and helped bind the British together as a nation. 354

There was tremendous pride in British institutions of government. These provided protection for core British elite values such as the importance of the rule of law, the sanctity of private property rights, the advance of science and reason, and the spread of Christ’s Protestant gospel. 355 British imperialism, based on naval power, relied heavily on advances in scientific fields such as astronomy, navigation, and cartography. 356 Underpinning both the pursuit of knowledge and empire was a belief that British expansion fulfilled God’s purposes. 357 The spread of civilisation, commerce, and Christianity was thus the holy trinity of British imperialism generally, not least to evangelicals seeking to save native souls. 358

In the following sections, we briefly explore the history of the institutions, beliefs, and values which the British of the mid-eighteenth century saw as key to their identity and their power.

2.3.2 The power of property rights

Despite Parliament’s power, Britain in the mid-eighteenth century was not yet a democracy as we now know it. Only a small proportion of the population could vote, being roughly one in 10 men who owned a sufficient quantity of land and other property, and who were neither Catholic nor Dissenters. 359 But a much smaller group of a few thousand aristocrats and gentry dominated Britain, controlling Parliament, the legal system, and the armed forces. A principal source of their power and status was the wealth they derived from their ownership of substantial lands. Agriculture remained the principal source of wealth, and four or five thousand individuals owned three quarters of all agricultural land in Britain. 360 This tiny group leased most of their land to tenant farmers, who in turn exploited a mass of landless labourers. 361

Britons in the mid-eighteenth century experienced unprecedented increases in agricultural production, and a rising and increasingly urban population. British elites attributed much of the improvement in production to the power of private property rights. 362 This followed a European tradition stretching back to antiquity that associated ‘improvement’ with the individual ownership of land, most famously elaborated by the seventeenth century British philosopher John Locke. 363 Individual property rights were the hallmark of commercial civilisations based on agriculture. 364 Indeed, the word ‘improvement’ originally meant to put to a profit, and in particular applied to the transformation of open fields or common land into individual ownership, through the process of ‘enclosure’. 365 This process had long been under way in Britain, but as late as 1700, about half the arable land in England remained treated as common. Enclosure accelerated markedly throughout Britain, however, in the eighteenth century. 366
pasture or firewood were eroded as access was restricted to individual owners. Simultaneously, many wetlands were drained, and forests destroyed. Much more was produced, but it was controlled by fewer people.

Whole rural communities were dislocated through this agricultural revolution, supplying an urban workforce (and a pool of potential colonists) to a Britain that was just beginning to industrialise. Meanwhile, in London, and also in ports such as Glasgow, Liverpool, and Bristol, an increasingly prosperous and powerful merchant class provided British global trade with most of its capital and credit. British society was thus in flux in the mid-eighteenth century; what, however, of British identity?

2.3.3 The emergence and expansion of Europe

Britain in the mid-eighteenth century was at the forefront of a Europe in ferment. Revolutions in politics, culture, science, agriculture, finance, and industry were transforming it into a rich and powerful civilisation of ever-increasing global reach.

Europe's new-found power and confidence represented a profound change. Its consolidation in the centuries following the collapse of the western Roman Empire in the fifth century had suffered serious setbacks when it was riven by war, and wracked by famine and plagues towards the close of the Middle Ages, most significantly in the fourteenth century Black Death, which carried off perhaps a third of Europe's population. By the fifteenth century, however, there had emerged a new Europe, of Christian states with a common elite culture, similar institutions, and a fairly integrated economy. Some of those states then began an expansion beyond Europe, as first Portugal and Spain, then the Dutch, French, and the British, all established colonial empires on the edges of Africa, Asia, and in the Americas. Europe's dynamism from the sixteenth century was stimulated by trade, plunder, slavery, and (over time) settlement in the American 'new' worlds especially.

Increasing contact with the wider world gave a renewed focus to the question of identity, and what it meant to be European and, later and more particularly, British. This was not at issue for most European people, who were overwhelmingly rural, with horizons limited to family, village, and perhaps religion. Europe's educated elites, including British elites, however, had much more in common with one another than they did with either the rural peasantry or the growing urban working class. Europe does not have a clear boundary with Asia and so has always been culturally defined. It was the establishment of the Roman Empire, above all, which created an enduring idea of Europe as the centre of civilisation. After the Roman Empire's collapse its pieces, including Britain, were first re-forged as medieval Christendom, to be defended against the barbarian and infidel. Following the Enlightenment, European elites reconceived of themselves as the civilised heirs of Greek thought and the Roman Empire, fused together in particular by a common system of law and conception of property.

There is remarkable continuity to the cultural power of law in Europe. Herodotus, the father of history who lived in the fifth century BC, held that individual Greek citizens were free because, unlike Asians, they were not subject to the will of any other individual, but only to the law. The origin of law was the city — the Greek polis, the Roman civitas — from which derives the European vocabulary of politics, police, and civilisation.

Eighteenth century Enlightenment thought considered that, just as all people were created equal before God, all cultures could aspire to civilisation. In this 'stadiol' view of human development, there were several rungs to be climbed up the ladder of civilisation, as peoples rose from being hunter-gatherers, through pastoralists, to becoming agriculturalists. Eighteenth-century elite Europeans regarded their civilisation as founded upon agriculture, and very powerful connections were made between the practice of agriculture and the right to property. But, just as it had been for Greeks and Romans, civilisation's crowning stage was the city and its commerce, secured by the laws provided by a settled form of government.

As we shall see, educated eighteenth-century Britons found this vision of human individual and social perfection especially attractive. Britons began to believe that they could help other peoples achieve such a vision in the course of incorporating them into the British Empire.
The Thames and Westminster Bridge from the north, circa 1750. The bridge symbolised the growth of London into a city from where political power was wielded around the globe.
2.3.4 The state of the nation: British sovereignty and government

George III, King of the United Kingdom of Great Britain and Ireland, and Supreme Governor of the Church of England, sent Cook south. King George's power was restrained by Parliament. In this respect, the British saw themselves as very different from other Europeans – especially their great rivals the French and Spanish – most of whom were ruled by absolute and Catholic monarchs. The British establishment understood their constitutional history as distinguished by the struggles to extricate themselves from the authority of the Catholic Church, and to make their monarchs subject to the will of the people, as expressed by Parliament, and through law.

Key constitutional documents symbolised and conveyed this understanding of British history. The most famous was the Magna Carta (Latin for ‘Great Charter’) of 1215, through which the King was forced to guarantee individual rights and liberties against the monarch's authority, and to make that authority subject to ‘the law of the land’. These rights included security of property, and personal liberty, in particular the right to freedom from imprisonment without a trial by jury. Also of great constitutional significance was the Bill of Rights 1688, through which the King of England relinquished to Parliament almost all significant powers.

The ‘cult of Parliament’ was shared by English, Welsh, and (after the Union of 1707) Scottish ruling elites, as an emblem of being British: a people whose constitution uniquely assured their ancient rights and liberties. A third key constitutional document was the Act of Settlement 1700 – still in force in Britain and the Commonwealth today – which was passed ‘for the further limitation of the Crown, and better securing the rights and liberties of the subject’; it both compelled the monarch to accept the independence of the judiciary, and ensured a Protestant succession by barring any Catholic (or anyone married to a Catholic) from ascending to the throne.

The changing balance of power between the monarch and Parliament had the effect of reducing the monarch’s role in executive government. Over the course of the eighteenth century, monarchs were increasingly required to act on the advice of their Cabinet Ministers, who together formed the government of the day. This was a complex and fitful process of constitutional change, and one that was very far from complete in the 1760s. The influence of King George III in government was ‘still potentially strong’. The constitutional convention that Britain’s government should be provided by a politically aligned Cabinet, presided over and led by a prime minister who owed his position to the support of Parliament (not the favour of the monarch), was only just being ‘securely established’ at the time of the treaty.

This indeed, became – certainly by 1840 – the ‘principal convention of the British constitution’: that (save in very few exceptional circumstances) the monarch must exercise his or her formal legal powers ‘on and in accordance with ministerial advice’. This meant that the monarch's powers to govern were in effect those of the Ministers of the Crown, who together formed the government drawn from Parliament. Thus, the Crown – the monarch in his or her public capacity as an institution, rather than as a person – had become for all significant purposes synonymous with Her Majesty's Government. The concept of the state captures this meaning of ‘the Crown’.

Just prior to Cook’s voyage, William Blackstone’s Commentaries on the Laws of England provided the definitive statement on the British constitution in 1765. Blackstone defined sovereignty as “a supreme, irresistible, absolute [and] uncontrolled authority” which must exist in every form of government. As Blackstone explained, the sovereignty of Britain was by now in effect lodged in Parliament, itself made up of three independent powers, the monarch, the House of Lords, and the House of Commons.

Parliamentary rule through the making of law reflected, said Blackstone, the fact that the ‘spirit of liberty’ was ‘deeply implanted in our constitution, and rooted even in our very soil’. Thus, it was believed, liberty defined what it meant to be British. The conjunction of liberty and law was for eighteenth century Britons, some suggest, ‘a supreme ideology’, even ‘a form of religion’. According to Blackstone, three rights or liberties were primary, and in combination ensured that all British individuals were
‘perfectly free’: ‘the free enjoyment of personal security, of personal liberty, and of private property’.

2.3.5 Being British in the mid-eighteenth century

British identity by the mid-eighteenth century was founded on ‘Protestantism, social openness, intellectual and scientific achievement, and a prosperity based upon trade’. Above all, as we have seen, it was based on constitutional liberty. Indeed, eighteenth century Britons thought the reasons for both Britain’s break with Rome, and for its commercial success, were ‘the intellectual and political independence of the free-born Englishman.’ In E P Thompson’s words, liberty – popularly conceived of as the British ‘birthright’ – encompassed a moral consensus consisting (as noted above) of security of property, above all, but a host of other notions also:

Freedom from absolutism (the constitutional monarchy), freedom from arbitrary arrest, trial by jury, equality before the law, the freedom of the home from arbitrary entrance and search, some limited liberty of thought, of speech, and of conscience, the vicarious participation in liberty (or in its semblance) afforded by the right of parliamentary opposition and by elections and election tumults (although the people had no vote they had the right to parade, huzza and jeer on the hustings), as well as freedom to travel, trade, and sell one’s own labour. Nor were any of these freedoms insignificant; taken together, they both embody and reflect a moral consensus in which authority at times shared, and of which at all times it was bound to take account.

The eighteenth century proclaimed itself an enlightened age, and Britons of all classes were encouraged to use reason to improve themselves – technologically, scientifically, and morally. Yet, for all the advancements in understanding of the natural world, most Britons – even including the educated – still inhabited a world peopled by spirits, ghosts, demons, sorcerers, and witches. Furthermore, many educated Europeans believed fearsome giants guarded the entrances to the Pacific Ocean at Van Diemen’s Land, and Tierra del Fuego. So, as Professor Dame Anne Salmond has noted, though this was the Age of Reason, ‘fantasy was far from dead, and the worlds that came together’ in the meeting of British and Pacific peoples ‘were as much imaginative as real.’

In this respect, it is also important to remember that science and religion were still in harmony: Isaac Newton knew the world as one planet among many in a universe ruled by scientific law, yet he saw no contradiction in identifying this as God’s ‘divine or natural law also.’ Scientific enquiry was a matter of natural theology, in which the world was the pages of God’s mind laid open to the inquiring and systematic mind of man that was extending and disseminating knowledge in every direction at marvellous speed. The three volumes of the first edition of the Encyclopaedia Britannica were published between 1768 and 1771, just as Cook was sent to explore the Pacific. Reading and writing became much more widely practised in Britain at this time. Literacy was critical to the ongoing construction of being British. Commercial achievement in an increasingly contractual age also placed a premium on literacy. And, above all Protestant identity depended on reading one’s Bible.

The British were increasingly busy spreading ‘the good word’ too: evangelicalism had been on the rise throughout Britain and its colonies from the 1730s, as religious practice increased and diversified. Evangelicals initially concerned with irreligious British soon began to turn their attention to other peoples. This reflected an ever-deepening cultural commitment to empire as integral to British identity. It was, asserted one cleric in 1759, not just a duty but a British ‘birthright’ to spread ‘the purest Light of the Gospel, where Barbarism and Ignorance totally prevailed.’ For, as we now explore, by the mid-eighteenth century Britain’s power and the British people’s sense of who they were was increasingly bound up in the idea of empire.

2.3.6 Imperial Britain

Britain came late to empire, but by the mid-eighteenth century was the pre-eminent imperial power. After the Seven Years War, the Empire was seen as not just economically significant, but vital to Britain’s standing as a great power. Indeed, it was for the first time conventional for
Britons to speak and write about ‘the British empire’. While that Empire had both formal and informal components, for our purposes we generally use the term to relate to formally acquired territories.

The legal basis for the expansion of the British Empire was the royal prerogative powers – the monarch’s powers that can be exercised without reference to Parliament. While the royal prerogative was once the source of a broad range of powers held by the reigning monarch, over time, as we have seen, those powers were whittled away by Parliament and the courts so that they became ‘the residue of discretionary or arbitrary authority . . . legally left in the hands of the Crown’ (the executive government).

The prerogative powers of the Crown to act independently of Parliament remained more intact abroad, and especially in the Empire, than they were in the realm of Britain. Two prerogative powers are especially significant for our purposes. First, the Crown has always had the power to conduct foreign affairs, including the power to acquire new territory. Second, the Crown has certain prerogative powers to establish the institutions of government (legislative, judicial, and executive) in that territory.

The Crown’s prerogative power meant that ‘monarchy was at the legal core of the Empire’. Well into the eighteenth century, the expansion and governance of empire was a matter of royal authority in name and in fact. All colonies required royal authorisation, for no body of British subjects abroad could presume to govern themselves without royal permission. Further, the formal Empire’s governance long remained founded on the authority of the monarchy, through ‘royal approval of relevant Parliamentary legislation, royal proclamations, appointment and instruction of royal Governors, [and] review of acts passed by colonial legislatures’.

However, by Cook’s time Parliament was ‘the ultimate arbiter’ of the empire also. The British Parliament was asserting the authority to make law for all British colonies, and to regulate the whole Empire. From the mid-seventeenth century, a series of Navigation Acts, for example, required all colonial trade in key commodities such as sugar and tobacco to be funnelled back to Britain, and required all goods destined for the colonies to pass through Britain first. In doing so, they created the empire as a unified trading area. Most famously, in the 1760s the British Parliament would assert the power to tax its colonies, which challenged American colonists’ perception that liberty was the essence of being British and provoked them into rebellion. Subsequently, the American Revolutionary War of 1775 to 1783, which resulted in the loss of the 13 colonies that were to become the United States, would prompt British authorities to reconsider how to allow British subjects the liberty to govern themselves.

From the outset, the engagement with empire had posed fundamental questions about the basis upon which British legal authority could be established beyond the realm. Initially, the focus was how to justify a legal jurisdiction to control and discipline British people trading and settling beyond the boundaries of Britain. The British were not especially concerned with exercising a legal authority over indigenous peoples. This reflected the fact that Britain, like other European powers, was focused on building a maritime trading empire. Eventually, the ‘most distinctive feature of the future British Empire’ was ‘the prominent place enjoyed by colonies of white settlement’, but establishing such colonies was a slow and uneven process. British bridgeheads onshore only gradually extended to become substantial settlements. Meanwhile, relationships with the surrounding indigenous peoples were framed by strategic or trading considerations.

As a result, according to Paul McHugh, British imperial practice during the seventeenth and eighteenth centuries did not deny ‘the political and legal distinctiveness of the native polities’ within their colonies. Rather, it invariably left their political structures intact, and indeed wherever possible ‘relied upon collaboration with such indigenous structures’. This practice reflected the notion of sovereignty that then prevailed, one that could simultaneously claim Crown sovereignty whilst also recognizing the continuity of the indigenous polity and the exemption of indigenous peoples from English law [in their dealings among themselves].

But over time, the British answers to the questions of
how legal authority could be established in new areas of empire changed. Their answers evolved along with their imperial experience, and indeed that experience also shaped how they conceived of the key ideas at issue, of sovereignty, property, and subjecthood. It is important, at this point, to stress the diversity of the British empire; the British developed many different ways and means of applying their authority, depending on local circumstance. Only a few general points on British imperial practice are therefore useful at this stage.

First, wherever the British went they remained wedded to the belief that their relations with other peoples had to be legitimated. They renounced ‘the image of their Empire as one based on conquest’, even though conquest was an acknowledged mode of acquiring colonies. Indeed, as McHugh has emphasised, the British almost invariably made treaties whenever and wherever their empire went:

Britain willingly treated as sovereign any non-Christian polity enjoying a perceptible degree of political organization, this recognition requiring the presence of rulers and leaders with whom it could negotiate.

In these respects, Britain’s imperial practice concerning the relations between nations was affirmed and influenced by the eminent Swiss jurist Emmerich de Vattel, whose The Law of Nations (as translated into English in 1765) argued that all nations, no matter how small, are independent and equal. The theory, if not necessarily the practice, had it that regardless of their relative power, no nation could lawfully interfere with another without consent. In McHugh’s view, Vattel’s work ‘became the handbook of the Foreign Office’, making Britain’s imperial practice explicable on no basis ‘other than something approaching Vattel’s theory of independent and equal state sovereignty.’

If so, others of Vattel’s arguments had perhaps more troubling implications for British imperial practice. Vattel argued that the Law of Nations would only recognise the ownership and sovereignty of a Nation over unoccupied lands when the Nation is in actual occupation of them, when it forms a settlement upon them, or makes some actual use of them.

For, in similar vein to the stadial view of human development outlined earlier, Vattel considered that ‘The cultivation of the soil is an obligation imposed upon man by nature, so that those who ‘disdain’ it, ‘fail in their duty to themselves . . . and deserve to be exterminated like wild beasts of prey.’ This was already an old thought. Locke had said much the same a century earlier when arguing that ‘in the beginning all the world was America’, and that in such a state of nature, those opposing the European right to occupy vacant lands might ‘be destroyed as a Lyon or a Tyger, one of those wild Savage Beasts, with whom Men can have no Society nor Security.’

It is, indeed, the long and very varied British experience in America which did much to inform its approach to the new theatres of empire in the Pacific, including New Zealand, that voyages such as Cook’s had opened up to the rival European powers.

From the early seventeenth century numerous royal Charters provided rights to establish colonies and to settle over vast territories in North America that paid no regard to whether the land was already inhabited. The first charter of Virginia, for example, granted to a handful of colonists all ‘the Lands, Woods, Soil, Grounds, Havens, Ports, Rivers, Mines, Minerals, Marshes, Waters, Fishings, Commodities, and Hereditaments’ to be found there.

Since the charters largely ignored the existence of the original Native American inhabitants, it was left to the various colonies that they authorised to decide how to engage with them. As McHugh notes, ‘this created a patchwork’ of policy. Nevertheless, it is perhaps possible to describe some broad ‘patterns of similarity.’ For, despite extraordinary devastation wrought by disease that left colonists marvelling at how God had ‘cleared the land’ for them, the British in all their various colonies did have to engage with Native American peoples, and under broadly similar circumstances.

First, relations with Native American tribes were often ‘based upon treaty or compact.’ Secondly, the settlers bought Native American land more often than they took
it. Indeed, the various colonies all regulated sales within a short time, and, henceforth, government purchase of Native American land preceded grants to settlers. Crucial to this policy was the early recognition that the Indians of eastern North America were agricultural peoples with a clear system of property rights. The British colonists bought land because it suited them: it was much easier and cheaper to buy from Native Americans than to fight them (and besides they were needed as allies against the French). Thirdly, during the late sixteenth and for some way into the seventeenth century they also typically sought to accommodate those peoples within the Christian and civil community. The hope that this could be achieved was often expressed by making comparisons between Native Americans and Ancient Britons, who had been civilised by the Romans, through persuasion and force; as one observer put it, “The Roman swords were best teachers of civility to this and other countries near us.”

These British policies concerning Native American people and property had differing fortunes. The various British colonies continued to declare that land should preferably be purchased, not plundered. However, as settler land hunger grew, the colonies also acquired Native American land through violence and war. Many wars were fought, and when the colonies won them they always took land, even if they did not generally acknowledge that these wars had been fought in order to acquire land.

The British policies for integrating Native American peoples as citizens of the civic and Christian community in eastern North America were even less consistently followed. Instead, through disease, war, and landlessness Native American peoples all along the eastern seaboard were reduced either to occupying very marginal positions on the fringes of settler society, or were isolated and separated from settlers in what were already, in effect, reservations.

In the end, after much resistance, and at the closure of the Seven Years War, the British imperial authorities intervened and attempted to close off the colonial frontier. They did so through the Royal Proclamation of 1763, which attempted to stop the spread of uncontrolled settlement by drawing a line right along the Atlantic watershed from Florida to Quebec. This was necessary, the Proclamation explained, so that Native Americans west of that line ‘should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been Ceded to or Purchased by Us, are reserved to them.’

McHugh suggests that the Proclamation represented a ‘pivotal moment in the history of imperial Britain’s relations with aboriginal peoples.’ Through it, British authorities intended to take over colonial relations with the Native Americans in the unsettled area, and contain settler aggression, by establishing a peace, conducting treaties, and controlling land sales. The British authorities therefore proclaimed that only the Crown could buy Native American land in the vast area west of the Atlantic watershed. Needless to say, settlers, whose numbers were now growing very rapidly, chafed at their confinement, and their dissatisfaction contributed to their subsequent rebellion.

Indeed, it is this time, immediately prior to Cook’s voyage, that represents a significant turning point in the character of the British Empire, and in particular its engagement with indigenous peoples. After the Seven Years War, Britain gained control of territories containing large non-Christian populations, especially in India, and British rulers throughout the empire now became increasingly preoccupied with asserting authority over other peoples and their lands. At the same time, emigration began to surge, especially to America. This was also the point when both in North America and in India the former empire of maritime trade began to change. In parts of India and elsewhere, the British went to war and became rulers through conquest. In America, the empire became ever more clearly a matter of white settlement and domination. Unsurprisingly, the British notion of sovereignty became more exclusive, and less accommodating of indigenous political authority within the formal boundaries of Empire.

Britain soon lost the American (but not the Canadian) colonies and it then established a foothold in Australia. As the British imperial theatre expanded out from that
foothold to become a presence throughout much of the Pacific, the lessons it would draw from its long and ongoing experience in applying empire in the new world remained open questions. Would the British Crown recognise Pacific peoples as sovereign, and seek treaties with them as they generally had with indigenous peoples elsewhere? Would they continue to buy land – or try to take it? Would the Crown renew a commitment to assimilation, or would it seek to separate Pacific peoples from settlers as had become the practice in America? And, while interacting with Pacific peoples, how would the Crown accommodate settler expectations that they would enjoy both English law, and the liberty of self-government? As we shall see, the evolving answers to such questions shaped how the British Crown began to approach New Zealand.

### 2.4 Conclusion

For all of their differences, the Māori and British views of the world were united by one thing: both typically saw their own lives as expressions of their relationships with their gods. For Māori, divinity was expressed through whakapapa, and infused all aspects of creation. Ultimately, there was Te Korekore, the absolute nothingness, from which emerged atua who guided, motivated and authorised all actions among living people. For most British people, there was one God, whole and indivisible, with whom each individual could enjoy a personal relationship, advancing himself or herself in life by doing good deeds, working hard, reading the Bible, and otherwise acting in ways that were seen as reflecting Christian values. From these different conceptions of how the universe was organised, and from different experiences within the temporal world, there had evolved distinct values systems, distinct approaches to social and economic relationships, and distinct systems of law and government.

In the Māori world, Te Korekore was the ultimate source of law, authority, and indeed life itself. From there flowed wairua and mauri, infusing all things. From there, too, flowed the whakapapa through which all things were connected by bonds of kinship. A fundamental imperative was to maintain spiritual purity – tapu – in all living things. Without that purity, they had no mana, no authority to act in the temporal world. Where tapu was violated, action must be taken to restore it and so restore balance among Te Korekore's offspring. This was utu.

In practical terms, the mana flowing from Te Korekore rested with hapū, who were groups of families united by bonds of kinship. It was hapū who held authority in relation to land and other resources such as fishing grounds, cultivations, pā, waka and whare tūpuna. In turn, a portion of their collective mana flowed to their rangatira, their 'weavers of people', who acted as guides, mediators, managers, diplomats and leaders in war. Rangatira sometimes wielded considerable power, but it was a power exercised with hapū consent.

Both within and between hapū, the system of law was based on tapu and utu, applied as circumstances demanded. Guidance on how those principles might apply could be found in kōrero about the actions of tūpuna, which also provided guidance on who had authority in any given place or situation. Specific ritenga could be laid down by those who were sufficiently tapu, and rāhui could be imposed, but only for so long as those actions served the underlying spiritual requirements. Violations of tapu could be punished either in the physical or spiritual worlds. In the physical world redress would be sought by kin of the affected party, against kin of the offender. That redress could include mākutu (spiritual curses), stripping of possessions, or death, depending on what was required to restore tapu; equally, tapu could flow back to the offended party through restorative actions such as gifts, feasting and intermarriage – all of which were common as means of restoring peace between conflicting parties.

There were, by the time Cook sailed onto the horizon, dozens of hapū in the Hokianga and the Bay of Islands. All were autonomous, and all exercised authority over the entirety of their own territories and the people within them. Many of these hapū were also linked by bonds of kinship. Those who were close kin were used to cooperating – sharing access to fishing grounds, working together on common cultivations, and forming military alliances to defend their territories or attack the territories...
of more distant kin or non-kin. Yet, just as these groups could cooperate, they could also compete and fight among themselves. In Māori eyes, this complex interplay of cooperation and rivalry involved no contradiction: under customary law, each hapū simply acted as tapu and utu demanded in any given circumstance. Whether acting together or separately, none relinquished its own autonomy.

Whereas Māori authority was distributed, British authority remained highly centralised. Sovereignty resided in Parliament – the monarch, lords and commons. It was Parliament that made law, delegating the application and administration of that law to courts and the various agencies of executive government. The king or queen was the nominal head of state but was not above the law. Individuals, in this system, ostensibly had rights which the law protected, most particularly the rights to personal security, personal freedom and privacy demanded in any given circumstance. Whether people came to dominate the relationship, assert their authority over the other, and each, at times, would also bend its own rules in order to smooth its relationships with the other. Just how far those accommodations and adaptations went is a key part of our story, as indeed is the question of whether either people came to dominate the relationship, asserting its own systems of law and authority over the other. We begin that story now, as 12-year-old Nicholas Young becomes the first person on HMS Endeavour to sight land.

Notes
1. Patu Hohepa, in his evidence to the Ngāwhā Tribunal, said: ‘The descent lines from Kupe flow to both Nukutawhiti and Ruanui.’ In the case of Nukutawhiti’s descent from Kupe, Hohepa referred to whakapapa written down by the prophet Aperahama Taonui in 1848; doc A37(b), p 64. Hone Sadler, in his evidence to this Tribunal, described Nukutawhiti’s descent from Kupe: transcript 4.1.1, pp 147, 153, 159.
2. Jeffrey Sissons, Wiremu Wi Hongi and Pat Hohepa, The Pārirī Trees are Laughing: A Political History of Ngā Puhī in the Inland Bay of Islands (Auckland: The Polynesian Society, 1987), pp 51, 53; doc A25(a), p 35; Malcolm McKinnon, ed, Bateman New Zealand Historical Atlas: Ko Papatuanuku a Takoto Nei (Auckland: Bateman, 1997), plate 18. Ruanui is sometimes referred to as Nukutawhiti’s brother-in-law and sometimes as his nephew. According to Patu Hohepa, Ruanui was Nukutawhiti’s nephew by marriage: that is, Ruanui was the son of Te Hou-o-te-Rangi, the brother of Nukutawhiti’s wife Aniwaniwa: doc A37(b), p 68.
4. Document A25(a), p 2
5. Royal, The Woven Universe, pp 20–22, 47; doc A25(a), pp 2–3

Manuka Henare, in his doctoral thesis, acknowledged that metaphorical descriptions of Io as ‘supreme creator’ may have been influenced by Christianity, but nonetheless argued that belief in Io as an originating cosmic source of power predate European influence: doc A16, p 73. Several claimants giving evidence to the Tribunal during the first week of hearings referred to Io as a source of all creation. Rima
Edwards also explained how the spirit of Io is seen as inhabiting every person: doc A25(a), pp 17–18.


12. Document A25(a), pp 8–9

13. Ibid, p 12


15. Transcript 4.1.1, pp 170, 175; see also doc A25(a), pp 43–69. We also note the view of Tom Murray that ‘Maori believed that nothing could be achieved on or under the land without spirituality at the beginning. Maori today believe that spirituality is the beginning of everything’: doc B25, p 5. Similarly, we note the view of Nuki Aldridge that ‘To Maori, if a thing did not possess a wairua then it could not possess form – it would be lifeless, and so decay’: doc B10, p 19. Manuka Henare (doc B3, p 18) referred to ‘Māori vitalism [which] is the belief in an original singular source of life in which life continues as a force, which imbues and animates all forms and things of the cosmos. Accordingly, life itself cannot be reduced to matter or form and in Māori thought; life itself is independent from form. See also doc B3, pp 10–17, 22–26.


19. Document B25, p 8

20. Waitangi Tribunal, *Ko Aotearoa Tēnei, Te Taumata Tuarua*, vol 1, pp 13, 17, 35–37; see also doc A25(a), pp 12–13

21. Document A25(a), pp 8–9

22. Ibid, p 17

23. Royal, *The Woven Universe*, pp 44, 47; see also pp 19, 49, 60, 70

24. Ibid, p 5


27. Document A25(a), pp 16–17


29. Ibid, pp 4–6

30. Document A25(a), pp 9–10; see also transcript 4.1.1, pp 176–177

31. Transcript 4.1.1, pp 178, 182


33. Waitangi Tribunal, *Ko Aotearoa Tēnei, Te Taumata Tuarua*, vol 1, p 37

34. Document B10, p 53

35. Document A37, p 302

36. Durie, ‘Custom Law’, p 54


39. Document B10, pp 27–30; see also doc B18(a), p 36; doc A37, pp 313–314

40. Durie, ‘Custom Law’, p 3

41. Ibid, p 4; see also doc A37, pp 313–314

42. Waitangi Tribunal, *Ko Aotearoa Tēnei, Te Taumata Tuarua*, vol 1, p xxxii

43. Transcript 4.1.1, pp 171, 175


45. Document A37(b), pp 65–64; transcript 4.1.1, pp 91–93; see also transcript 4.1.1, pp 67, 73, 101, 108; doc A37, p 52. According to Hone Sadler, Tumutumu-whenua was Kupe’s son, who was left behind at Te Puna o te Ao Marama and to whom Kupe’s words of farewell were directed: transcript 4.1.1, pp 157, 167.

46. Document C9, pp 5–6


48. Document A37(b), pp 65–66; see also doc C9, pp 9–11

49. Transcript 4.1.1, p 94; Sissons, Hongi, and Hohepa, *The Pūriri Trees are Laughing*, p 53; doc C9, pp 11–12


and Ngāti Kahu’s kinship ties with these other groups: doc A37(b), pp 9, 50, 72, 78; transcript 4.1.1, pp 107, 111, 113. Hohepa and others gave further details of these overlapping whakapapa, explaining for example how Ngāti Ruanui, Te Rarawa, Te Aupūrū and Ngāti Kuri were all descended from Ruanui, but later intermarriage also linked them closely with Nukutawhiti’s people: doc A37, pp 114–116, 169; doc A37(b), p 69. Sadler spoke about his Ngāti Moerewa whakapapa uniting Nukutawhiti’s line with Rāhiri’s: doc B38, p 3. Hohepa and Henare, Petrie and Puckey also explained how Ngāti Wai and Ngāti Mania can whakapapa to Rāhiri, as can many who identify principally as Te Parawhau, Te Roroa, and Ngāti Whātua; and how Ngāti Rehia can whakapapa both to Ngāpuhi and Ngāti Wai: doc A37, pp 197–201; doc A37(b), p 78; transcript 4.1.1, pp 218, 224; see also Ballara, Iwi, p 203.

53. Transcript 4.1.1, pp 103, 109; doc A37, pp 23–25, 45–47, 179–181, 366; doc A37(b), pp 3–7, 9–11, 40–44, 70–71, 76; doc A25(a), pp 31–32, 35–36. Further reinforcing Rāhiri’s importance, Edwards provided whakapapa showing Rāhiri’s descent from both Kupe and Māui: doc B38, p 3. Hohepa and others explained how Ngāti Wai and Ngāti Manaia can whakapapa to Rāhiri, as can many who identify principally as Te Parawhau, Te Roroa, and Ngāti Whātua; and how Ngāti Rehia can whakapapa both to Ngāpuhi and Ngāti Wai: doc A37, pp 197–201; doc A37(b), p 78; transcript 4.1.1, pp 218, 224; see also Ballara, Iwi, p 203.

56. Document A37, pp 70–71; doc A37(b), p 57–60; Kawhara, Tākuwahine, p 109. The story of Arikitapu is that, while pregnant, she consumed the heart of another high-born woman (Puhi-moana-ariki). Another version has it that ‘ngā puhi’ refers to (Puhi-taniwhā-rau). After the boy was born he was taken for baptism by a tōhunga, who then asked 100 taniwha to return him to his parents (Puhi-taniwhā-rau). Another version has it that ‘ngā puhi’ refers to Kupe’s wives, Kuramorotini and Hineiteaparangi: doc A37(b), p 64.

59. Document A37(b), pp 5–7, 10–12, 47–48; doc A37, pp 23–24; doc A25(a), pp 33–42


61. Document A25(a), pp 38–40; transcript 4.1.1, pp 39, 44, 104, 111, 154–155, 165–166, 233, 236, 251; doc B15(d), p 7; doc B8, pp 12, 19; doc B10, pp 54–55; doc A37, pp 23–24, 46–47; doc A37(b), pp 5–7, 9–11, 62; transcript 4.1.1, pp 233, 236. The maua are Pūhanga Tohorā, Te Rarawa, Whiria, Panguru, Papata, Maungataniwhā, Tokerau, Rakaumangamanga, Mania, Tutanoo and Maunganui. Each is said to look out towards the next, so that together they encircle and stand guard over Ngāpuhi territories while also acknowledging the autonomy of individual hapū. Concerning the name ‘Tokerau’, see doc B15(d), p 7; doc B8, pp 12, 19.


66. Kawhara, Tākuwahine, p 113; doc A37(b), p 70

67. Transcript 4.1.1, pp 103, 110, 153, 164; doc A37(b), p 71

68. Document A37, pp 25–26, 184; doc A37(b), pp 41–42, 71–72; transcript 4.1.1, pp 51–52, 104, 110–111, 153–154, 164–165, 312–313; doc A25(b), p 40; doc A30(c), pp 24, 87. Another version is given in Sissons, Hongi, and Hohepa, Ngā Pūriri o Taiamai, pp 66–69, 74–77. Te Tai-tamawāhine is variously said to have been named for its gentler waters, for Uenuku’s milder temperament, and because Rāhiri’s wife came from that coast; and te Tai tamatāne is said to have been named for its rougher seas, Kaharau’s warrior prowess, and because Rāhiri was from this coast: transcript 4.1.1, pp 51, 113, 233, 312

69. Document B10, p 33; see also doc A32, p 4; doc C9, pp 13–14; doc C11, p 16; Kawhara, Tākuwahine, p 51

70. Transcript 4.1.1, pp 104, 110–111; doc A37(b), pp 41–42, 72

71. Document A30(c), p 87

72. Document C9, pp 13–14; doc B10, p 33


74. Document A37, pp 174–175


Regarding pā, Hōne Sadler gave the example of Tuanui, from which his tūpuna could 'see from coast to coast . . . Hokianga, Ruapekapeka, Motatau, the pā in Maungaturoto, Ngawha, and others,' and so defend themselves or respond to others' calls for help: doc B38, p 4.


78. Royal, The Woven Universe, p 41

79. Document A25, p 59. Edwards was referring to the time of te Tiriti. However, we think his explanation applies equally to earlier times.

80. Document A37, pp 136–137, 152. Durie also referred to iwi becoming more clearly defined and assuming political functions only from the late nineteenth century onwards. Prior to that, he said, iwi referred to 'a social category, those of common descent' but not to a 'social group, those who regularly operated together' (emphasis added): Durie, 'Custom Law', pp 30, 59.


82. Document A37, p 98; Durie, 'Custom Law', p 87

83. Document A37, pp 99, 144, 320–321

84. Ibid, pp 98–103, 320–321

85. Ibid, p 321; Durie, 'Custom Law', pp 41–45, 63–65

86. Document A37, pp 229, 321, 344; doc A30(c), pp 24–29, 83


88. Transcript 4.1.1, pp 77–78, 108, 114, 154, 165, 310; doc A30(c), p 7; submission 3.3.2, p 99; see also doc A37, pp 225–230, 314


90. Transcript 4.1.1, p 77

91. Ibid, pp 77–78, as adapted by the Tribunal

92. Document A30(c), p 7

93. Ibid. Hōne Sadler explained the relationship of hapū and rangatiratanga in this way: 'ko ngā hapū, ko ngā tūpuna o ngā hapū, he ariki kia tū ai he hapū' ('the hapū and the ancestors of the hapū were ariki for the hapū'); transcript 4.1.1, pp 154, 165. Patu Hohepa told us 'ko te hapu, te rangatira o ngā rangatiratanga' ('the hapū is the leader of the leaders'); transcript 4.1.1, pp 108, 114

94. Royal, The Woven Universe, p 67

95. Waitangi Tribunal, Ko Aoteaoro Tēnei, Te Taumata Tuarua, vol 1, p 17

96. Document A37, pp 133, 139–140; Waitangi Tribunal, Ko Aoteaoro Tēnei, Te Taumata Tuarua, vol 1, pp 7–8, 13, 17, 37–38, 116–118


98. Royal, The Woven Universe, p 49

99. Ibid, pp 50, 70; doc A37, p 107

100. Document A37, pp 106–108; Royal, The Woven Universe, pp 50, 70

101. Document B10, p 28

102. Document A25(a), p 16

103. Document A37, pp 106–107


105. Royal, The Woven Universe, pp 6, 41; doc A37, pp 56, 62–63, 66–69, 75

106. Document A37, pp 57–60, 66

107. Ibid, pp 77, 79

108. Ibid, pp 83–84

109. Royal, The Woven Universe, p 41

110. Ibid, p 8

111. Ibid, pp 6–7, see also pp 40–41

112. Ibid, p 41; see also Durie, 'Custom Law', pp 52–54; Quince, 'Maori and the Criminal Justice System in New Zealand', pp 340

113. Document A25(a), pp 14–15; Ballara, Taua, pp 133–135; see also doc A37, pp 68, 165, 253, 285, 385, 468


115. Document A37, pp 133, 139–140


117. Belich, Making Peoples, p 84


119. Document A37, pp 307–312

120. Ibid, p 153. Some of the claimants spoke of marriages used in these ways. For example, see doc C40, pp 3–4; doc C6, p 3; doc B18, p 34

121. Document A37, p 156; Ballara, Taua, pp 103–111


124. Ballara, Taua, pp 82–85; Durie, 'Custom Law', pp 43–44; doc A25(a), p 16; doc A37, pp 157, 344–346, 368, 520, 607; Quince, 'Maori and the Criminal Justice System in New Zealand', pp 338

125. Ballara, Taua, pp 82–83; Durie, 'Custom Law', pp 43–44. Ballara gave an 1830s example of Bay of Islands taua (war parties) travelling...
to Tauranga seeking utu against a group that had not been involved in the initial conflict: Ballara, Taua, pp 99, 147.


130. Document A37, pp 287, 363; Salmond, Two Worlds, p 234; doc A37(b), pp 95–96; Sissons, Hongi, and Hohepa, Ngā Pūriri o Taiamai, pp 87–90


132. Document A37(b), pp 74–75; Sissons, Hongi, and Hohepa, Ngā Pūriri o Taiamai, p 81

133. Sissons, Hongi, and Hohepa, Ngā Pūriri o Taiamai, pp 24–25, 36–42, 87–95; doc A37(b), pp 73–75; doc A37, pp 176, 181, 368–370; transcript 4.1.1, p 13; see also transcript 4.1.1, pp 149, 160, 161

134. Sissons, Hongi, and Hohepa, Ngā Pūriri o Taiamai, p 93; doc A37(b), pp 95–97; doc A37, pp 287–290


136. Document A37, pp 179–180, 184, 363–365, 368–370, 375; Sissons, Hongi, and Hohepa, Ngā Pūriri o Taiamai, pp 36–37, 40–41, 47–52, 60, 64, 81–83, 87–146; doc A37(b), p 74; Salmond, Two Worlds, p 220; see also transcript 4.1.1, pp 218, 225. Henare, Petrie and Puckey described Ngāti Miru and Te Wahiheiti as hapū of Ngāti Pou, but elsewhere they referred to the three as separate hapū: doc A37, pp 145, 176. Sissons, Hongi, and Hohepa described them as separate hapū: Ngā Pūriri o Taiamai, p 87. Sissons, Hongi, and Hohepa noted that Hongi was descended from Hua, Tautahi and Tawekehuanga, eponymous ancestors of the three principal Kaikōhe and northern alliance hapū: Ngā Pūriri o Taiamai, p 36. Henare, Petrie and Puckey referred to intermarriage among the various northern alliance hapū during the eighteenth and early nineteenth centuries, which reinforced kinship ties: doc A37, pp 147, 252. See also Jack Lee, The Bay of Islands (Auckland: Reed, 1996), p 32.

137. Sissons, Hongi, and Hohepa, Ngā Pūriri o Taiamai, pp 18–19, 36, 38; doc A37, pp 147, 252, 287, 369–370, 622, 785; see also Kathleen Shawcross, 'Maoris of the Bay of Islands, 1769–1840: A Study in Changing Maori Attitudes towards Europeans' (M.A. thesis, University of Auckland, 1966), pp 204, 206; Ballara, 'Warfare and Government in Ngapuhi Tribal Society: 1814–1833', pp 32–33, 52, 289, 291; Binney, The Legacy of Guilt, pp 11, 209 n 6, 218 n 43. The name Te Hikutū refers to the upright tail of a whale which is said to have signalled to Kupe that his journey to Aotearoa was complete: doc A37, p 52. Hongi Hika’s first wife was of Te Hikutū: doc A37, pp 147, 252. Sissons, Hongi, and Hohepa said that Te Hikutū was ‘closely related to Ngāti Korokoro and Ngāti Pou’: Sissons, Hongi, and Hohepa, Ngā Pūriri o Taiamai, p 38.

138. Document A37, pp 175–176, 181–183, 371; Sissons, Hongi, and Hohepa, Ngā Pūriri o Taiamai, pp 57, 87; Ballara, Iwi, pp 129–130; see also doc A37(b), pp 96–97

139. Document A37, pp 182–184; Sissons, Hongi, and Hohepa, Ngā Pūriri o Taiamai, p 87

140. Document B10, pp 32–33; see also doc B13(a), pp 13–14; doc A30(c), p 87

141. Transcript 4.1.1, pp 106, 112


143. Transcript 4.1.1, p 106; see also doc A37(b), p 57

144. Transcript 4.1.1, pp 106, 112, as adapted by the Tribunal

145. Document A37, p 158

146. Ibid, p 14. Other explanations, given by Hohepa in his evidence to the Ngāwhā Tribunal, were that ‘Ngapuhi . . . will never be captured because there are so many escape holes’ and that ‘each Ngapuhi belongs to a multiplicity of hapū’: doc A37(b), pp 71, 77; see also doc A37, pp 158–159.


153. Earl of Morton, ‘Hints offered to the consideration of Captain Cooke’, in The Journals of Captain James Cook on His Voyages of Discovery, vol 1, p 514


157. Ibid, p.233

158. Ibid, pp.231–236; Belich, Making Peoples, pp.213–214


166. Merriman, A History of Modern Europe, pp.367–368


172. Darwin, After Tamerlane, pp.30–31

173. Ibid, p.32

174. Ibid, p.154


176. Ibid


178. Pagden, Europe: Conceptualizing a Continent’, pp.35–49

179. Ibid, p.37

180. Ibid, p.40


182. Peter N Stearns, Western Civilisation in World History (New York: Routledge, 2003), pp.69–70

183. Greene, ‘Empire and Identity’, pp.208–210; Colley, Forging the Nation, pp.18–29


187. Joseph, Constitutional and Administrative Law in New Zealand, pp.168, 211, 641; in New Zealand this Act remains in force, only slightly modified, as the Act of Settlement 1700.


189. Ibid, pp.144–145; Joseph, Constitutional and Administrative Law in New Zealand, p.727

190. de Smith, Constitutional and Administrative Law, pp.44, 99; Joseph, Constitutional and Administrative Law in New Zealand, p.37

191. Joseph, Constitutional and Administrative Law in New Zealand, p.612; de Smith, Constitutional and Administrative Law, p.119

192. Joseph, Constitutional and Administrative Law in New Zealand, p.612; de Smith, Constitutional and Administrative Law, pp.113, 123


198. Greene, ‘Empire and Identity’, p.208

199. Ibid, p.229


201. Anne Salmond, Aphrodite’s Island: The European Discovery of Tahiti (North Shore: Viking, 2009), p.21
202. Salmon, Two Worlds, pp 52–60; Merriman, History of Modern Europe, pp 325–348
203. Drayton, ‘Knowledge and Empire’, p 234; Darwin, After Tamerlane, pp 206–207
204. Colley, Forging the Nation, pp 40–42
207. Greene, ‘Empire and Identity’, pp 218–220
210. Ibid, p 7
212. de Smith, Administrative and Constitutional Law, p 114; Joseph, Constitutional and Administrative Law, p 643
213. Document A21, p 5
214. Steele, ‘The Anointed, the Appointed, and the Elected’, p 105
215. Ibid, pp 110, 121
217. Steele, ‘The Anointed, the Appointed, and the Elected’, pp 107, 110
221. McHugh, Aboriginal Societies, pp 43–44, 71–73, 94–95
223. McHugh, Aboriginal Societies, pp 108, 120
225. Ibid, p 107
226. Ibid, especially pp 66–68, 70–87, 102–103
228. Pagden, ‘The Struggle for Legitimacy’, pp 37, 40
229. McHugh, Aboriginal Societies, p 111
230. Ibid, pp 110–111
231. Ibid, p 110
236. The First Charter of Virginia, April 10, 1606, http://avalon. law.yale.edu/17th_century/va01.asp#1, accessed 19 September 2014; Banner, How the Indians Lost Their Land, p 15
237. McHugh, Aboriginal Societies, pp 44, 103
240. Weaver, The Great Land Rush, pp 136–137
241. Banner, How the Indians Lost Their Land, pp 19–20; Banner, Possessing the Pacific, pp 10–12
242. Banner, How the Indians Lost Their Land, pp 39–43
244. Canny, ‘England’s New World and the Old’, p 154
245. Banner, How the Indians Lost Their Land, p 26
248. Richter, ‘Native Peoples of North America’, p 364; McHugh, Aboriginal Societies, p 104
249. Banner, How the Indians Lost Their Land, p 92
250. McHugh, Aboriginal Societies, p 108; Weaver, The Great Land Rush, p 154
251. Banner, How the Indians Lost Their Land, pp 104–105
252. McHugh, Aboriginal Societies, p 104
256. McHugh, Aboriginal Societies, p 108
CHAPTER 3

FROM ENCOUNTER TO ALLIANCE?

3.1 Introduction
In this chapter, we trace the series of engagements which took place from 1769 to 1834 between British people and Māori of northern New Zealand, particularly the Bay of Islands and Hokianga. These engagements at first occurred only within New Zealand, but in time extended to the newly established British settlement in New South Wales and further afield to England itself. The nature of the engagements changed too: from brief encounters characterised by mutual discovery and cross-cultural misunderstanding to more sustained interaction, following extended visits of travellers and the arrival of missionaries and early settlers, in which both Māori and British began to bridge some of the cultural divides between them. Neither side was homogeneous. The Europeans whom Māori met and interacted with were not just British, and ranged from relatively benevolent governors to exploitative and ruthless ships’ captains. Māori, for their part, were motivated in these interactions by their own varied interests and those of their hapū. The potential for misunderstanding always held grave consequences: those occasions where Europeans deployed their superior firepower demonstrated why it was always likely that Māori would suffer most should relationships turn sour.

Nevertheless, Europeans and Māori of the Bay of Islands and Hokianga began to adapt their behaviour through sustained interaction with each other. In chapter 5, we discuss the extent of Māori cultural adaptation and change during the pre-treaty period. The events described in this chapter begin to show how the change that did occur was by no means a one-way process. As historians like Richard White have suggested, in his important 1991 work, The Middle Ground, accommodation happened in the space between the two sides in which neither was dominant:

On the middle ground diverse peoples adjust their differences through what amounts to a process of creative, and often expedient, misunderstandings. People try to persuade others who are different from themselves by appealing to what they perceive to be the values and practices of those others. They often misinterpret and distort both the values and the practices of those they deal with, but from these misunderstandings arise new meanings and through them new practices – the shared meanings and practices of the middle ground.¹

In the course of the interaction between Europeans and Māori in the decades after 1769, both sides learnt to modify their own behaviour during trading and other exchanges.
Māori increasingly overlooked European transgressions of tapu, for example, for the sake of harmonious relations; while some Europeans learnt more about how to avoid giving such offence in the first place. Māori and British authorities in particular soon discovered that there were many incentives for both sides to build mutual understandings by developing firmer relationships.

Interaction between leading rangatira and representatives of the British Crown commenced some three decades after Cook's first voyage and increased steadily thereafter. The initial impetus was the establishment of a penal colony at Botany Bay in 1788, which created new and ultimately significant commercial interests for Britain in the Pacific. At first, rangatira were focused on establishing relationships with the Governors of New South Wales; but two rangatira even met the British monarch himself. They brought with them two key concerns: cementing the beneficial economic relations that were being established both at home and abroad, and securing assistance to control the behaviour of British subjects in New Zealand, such as whalers and escaped convicts, who threatened the peace and the interests of all concerned. The issue of regulating the conduct of those British who were seen as disorderly in the eyes of British authorities became a constant subject of debate, particularly after missionaries had become established in New Zealand. It is this ongoing discussion that frames the central questions we examine in this chapter. How were Māori to respond to European contact and settlement? What role could and should the British Crown play? Understanding how these questions were answered during these decades provides an essential background to the events that are the focus of our report: he Whakaputanga o te Rangatiratanga o Nu Tireni and te Tiriti o Waitangi.

The British Government eventually responded to the questions rangatira posed by appointing a diplomatic representative to New Zealand in 1832. This action was prompted by a request from the Governor of New South Wales, a predecessor of whom had taken matters into his own hands both by issuing a proclamation warning British subjects against committing certain criminal acts in New Zealand and by appointing missionaries as Justices of the Peace. The British Government had recognised the need to take some some form of action, even though it exercised no legal authority in New Zealand. Imperial legislation was passed providing greater powers to authorities in New South Wales to punish British offenders, but only were they to return or be returned to New South Wales for trial: New Zealand remained an independent country. But the British Government also came to see the cultivation of closer relations with Māori as both necessary to deal with the growing range of British interests in New Zealand as beneficial to its wider interests in the Pacific.

Apart from the significant addition of the Australian penal colonies, Britain’s interests in the Pacific had remained largely unchanged following its victory over France in the Seven Years War in 1763, which had left it the pre-eminent imperial power. Despite the loss of its American colonies it had maintained this position, and with its final victory in the Napoleonic Wars in 1815, swept aside all its imperial rivals. But as the Australian colonies began to assume a position of economic importance in their own right, and became a significant destination for British migration, the French re-emerged in the Pacific as a threat. Although New Zealand remained a peripheral concern to the authorities in Britain, the country and its resources were of sufficient interest for the British not to lose their foothold there to a foreign power. For these reasons, the British authorities – and not just those in New South Wales – came to use the term ‘alliance’ to describe the relationship that had formed between Britain and northern Māori groups when explaining why a diplomatic representative – the British Resident – had been sent to the Bay of Islands.

These developments saw New Zealand come increasingly within Britain’s sphere of influence, yet it remained outside the formal part of the British Empire. It became part of the ‘extraordinary range of constitutional, diplomatic, political, commercial and cultural relationships’ that could exist within empires, as described by the British
historian Dr John Darwin. Over the course of its existence, Darwin has explained, the British Empire came to include:

colonies of rule (including the huge ‘sub-empire’ of India), settlement colonies (mostly self-governing by the late nineteenth century), protectorates, condominiums (like the Sudan), mandates (after 1920), naval and military fortresses (like Gibraltar and Malta), ‘occupations’ (like Egypt and Cyprus), treaty-ports and ‘concessions’ (Shanghai was the most famous), ‘informal colonies’ of commercial pre-eminence (like Argentina), ‘spheres of interference’ . . . like Iran, Afghanistan and the Persian Gulf, and (not least) a rebellious province at home.2

Although these and many more possibilities were either in formation or had yet to eventuate in the period we consider in this chapter, they are indicative of the range of relationships the British established and maintained. Such relationships were also subject to change, depending on British priorities across the empire and whether Britain had the capacity to defend its control against challengers. During this period, however, Britain preferred the lower cost of an informal empire to the expense of formally annexing foreign lands. This was no less the case in the South Pacific, where, in the decades before 1840, Britain pursued a policy of ‘minimum intervention’. John Ward’s 1948 assessment of the situation has remained widely accepted by historians. As he put it, ‘For the greater part, the official attitude favoured keeping out of the islands as far as the growth of British trade and settlement and British missionary activity would permit.’3 By 1834, New Zealand remained part of Britain’s informal empire: a zone of primarily British commercial activity within a British sphere of influence. Proposals for establishing a colony of settlement were only just emerging on the horizon. Yet, the story of the six and a half decades after Cook’s ‘discovery’ of New Zealand in 1769 is largely one of intermittent adjustment of the degree of British influence, mediated particularly from the new centre of British power established in New South Wales, whose leaders had increasing interests to protect.

The story of these decades for Māori of the Bay of Islands and Hokianga was one of intermittent adjustment of a different kind. The extent of interaction with the British – beginning in particular with Hongi Hika’s meeting with King George IV and culminating in the appointment of the British Resident – encouraged leading rangatira to believe they had established an alliance with the British monarch, one from which they would secure the assurances they were seeking. Māori society and attitudes were also evolving after European contact. As we noted in chapter 2, new hapū alliances were emerging, and the meaning of ‘Ngāpuhi’ itself may have begun to shift. Although political authority remained with hapū the situation was dynamic, especially with the arrival of Europeans. We return in chapter 5 to assess in more detail the extent of these changes and the factors that influenced them. Here we ask how – from the point of encounter, and through subsequent engagement – did Māori of the Bay of Islands and Hokianga come to understand their relationship with the British? How far, too, was their understanding shared by the British? Did an ‘alliance’ develop?

3.2 Early European Explorers, 1769–72
We begin the narrative with the first engagements between northern Māori and Europeans: the visits of three expeditions in 1769 and 1772. Only one was British, while the other two were French.

3.2.1 Cook at the Bay of Islands, 1769
Two days after Nicholas Young sighted Te Kuri-a-Paoa from the masthead of the HMS Endeavour on 7 October 1769, Captain James Cook and members of his crew stepped ashore on the beach at Tūranganui-a-Kiwa, or present-day Gisborne.4 Their arrival had profound effects on Māori. Of course, Abel Tasman had already encountered Māori both at Taitapu (Golden Bay) in December 1642 and again at Manawatāwhi (the Three Kings Islands)
in January 1643. But these brief encounters had left what historians agree was ‘no substantial impression’. Cook’s circumnavigation of New Zealand, by contrast, took six months, and led to close and personal engagements with numerous Māori coastal communities. The effects of these interactions rippled out well beyond the specific communities which he and his crew encountered. Cook’s arrival made Māori realise that there were people in this world who were not like them. They were left with the awareness that this strange people had very odd customs, extraordinary materials, and formidable technology, including ships, muskets, and cannons. Yet, for all their strangeness, Māori found that they could deal with these new people. These realisations shaped future interactions between Māori and Europeans.

As we noted in chapter 2, Cook had been given two sets of instructions by the Admiralty before his departure. In the first set, he was required to proceed to a suitable location in the southern hemisphere where members of the Royal Society could observe the transit of Venus. The second set of instructions, which he was to open once at sea, required him then to search for the mythical southern continent Terra Australis Incognita. If he failed to find it, he was to proceed to New Zealand. According to these instructions, Cook was, with the consent of the natives, to take possession in the name of the King of Great Britain, of convenient situations in such countries as you may discover, that have not already been discovered or visited by any other European Power . . . but if you find the countries so discovered are uninhabited, you are to take possession of them for His Majesty by setting up proper marks and inscriptions as first discoverers and possessors.

The head of the Royal Society, the Earl of Morton, had advised Cook to ‘exercise the utmost patience and forbearance’ with native peoples. He was at all times to avoid bloodshed, remembering that the natives were ‘the natural, and in the strictest sense of the word, the legal possessors of the several Regions they inhabit’. Moreover,

No European Nation has a right to occupy any part of their country, or settle among them without their voluntary consent. Conquest over such people can give no just title; because they could never be the Aggressors.

They may naturally and justly attempt to repel intruders, whom they may apprehend are come to disturb them in the quiet possession of their country, whether that apprehension be well or ill founded.

Therefore should they in a hostile manner oppose a landing, and kill some men in the attempt, even this would hardly justify firing among them, ‘till every other gentle method had been tried.

Despite stated good intentions, cultural misunderstanding and violence were common in Cook’s early meetings with Māori. Within barely two days of the arrival of the Endeavour at Tūranga, up to nine local men had been killed by Cook’s guns in several different incidents – in some cases because their likely ritual challenges were perceived as aggression. Overall, Dr (later Professor Dame) Anne Salmond suspected, Tūranga Māori watched the Endeavour sail away on 11 October with some relief.

During the next seven weeks, Cook had further encounters with Māori in what became known to Europeans as Hawke’s Bay, the East Coast, the Bay of Plenty, and the Coromandel Peninsula, and he and his party traded harmoniously with the local people in several of these locations. On 14 November at Te Whanganui-o-Hei (Mercury Bay), Cook recorded that he ‘took formal possession of the place in the name of His Majesty’, an act he repeated at Queen Charlotte Sound on 30 January 1770. Professor Paul McHugh dismissed the significance of these pronouncements:

Being unilateral and in contravention of his instructions, in that Maori consent had not been obtained, and receiving no subsequent adoption and approval by the Crown, Cook’s
actions were precipitate and ineffective as against other nations even were symbolic annexation (and unconfirmed) regarded at that time as sufficient of itself to establish the Crown’s sovereignty.

Nevertheless, the actions taken by Cook at this time did much to create the impression that New Zealand had come within Britain’s sphere of influence, if not formal authority.

By 24 November 1769, Cook had reached what he called Bream Bay, near the mouth of Whāngārei Harbour. It was to the north of here that serious difficulties in exchanging gifts with Māori emerged. On 25 November, seven large canoe-loads of people paddled out to the ship and began to trade. Trading proceeded as Cook’s crew would have expected, until some Māori began to refuse to reciprocate the Europeans’ handing-over of goods, despite the crew making it clear (no doubt assisted by Tupaia, the ship’s Tahitian interpreter) what they wanted in return. The same thing happened the next morning, and the Europeans reacted to this ‘cheating’ and ‘dishonesty’ with gunfire.

It was almost certainly more complicated than that. When a group of Māori were presented with gifts by another, there was no expectation of an immediate return. Rather, the return – which was generally of at least equal value – would be made in due course, at a time chosen by the recipient. Thus, what the Europeans perceived as unfairness or trickery was probably in Māori eyes its opposite. And Māori themselves could not comprehend why these strange visitors gave them presents and then immediately attacked them. As Kathleen Shawcross observed in her 1967 thesis (still regarded as a leading authority on this period), ‘there was plenty of room for misunderstandings.’

The Endeavour then pushed northwards, and Cook would possibly not have entered the Bay of Islands at all had it not been for the weather. By 27 November 1769 he had in fact passed well beyond Cape Wiwiti, the northern headland of the Bay, only to be driven south that
afternoon and into the next day by strong winds. On the morning of 29 November, the *Endeavour* entered what the naturalist Joseph Banks called ‘a most sp solitary and well sheltered harbour, or rather collection of harbours almost innumerable formd by Islands’, and anchored off the side of Motuarohia Island.17

The ship was soon surrounded by a flotilla of nearly 40 canoes of varying sizes and carrying around 300 to 400 people (probably members of Ngare Raumati or Ngāti Wai18). Some tried to take the ship’s anchor buoy but were driven back by a blast of small shot and cannon fire over their heads. Shawcross speculated that the buoy sat over a tapu shellfish bed, and the attempt to remove it was because ‘its continued presence there would be considered a greater threat to Maori welfare than would be the risks inherent in its removal’.19 At around three in the afternoon, Cook took the ship’s pinnace and yawl with a party of armed marines and landed on the island. Again he was quickly surrounded and confronted, this time by an even larger crowd, some of whom attempted to seize the landing craft. The locals were perhaps still seeking an opportunity to extract utu for the violence on 25 November and for whatever offence had been caused by the buoy. They were, however, again driven back by gunfire and overhead blasts from the ship’s cannons.20

The remainder of the *Endeavour*’s interaction with Bay of Islands Māori was relatively peaceful, despite a further transgression by three members of Cook’s crew who that very night entered a tapu garden on Motuarohia and stole growing kūmara.21 According to Shawcross, the locals, having experienced the Europeans’ firepower, fell back on ‘thoroughgoing friendliness and conciliation’.22 Whether this friendliness was genuine or designed to restrain the destructive instincts of their powerful visitors is difficult now to say. Shawcross, for one, thought local Māori ‘were making a perfectly logical adjustment to what they had discovered about the explorers by the end of the second day of the expedition’s sojourn in the area’.23 Cook’s crew also managed to obtain sexual services from local women. Dr Grant Phillipson described this as a properly negotiated and ‘Maori-controlled encounter’, although Shawcross again raised the possibility that the women ‘submitted to the pressing requests of their formidable visitors for expediency’s sake’.24

In any event, when the *Endeavour* left the Bay of Islands on 5 December 1769, it was pursued for a distance, according to one crew member, by ‘Several Large Canoes full of Indians who all Seemd very Sorry at our Departure from them’.25 Shawcross agreed that relations seemed friendly upon departure, although she suspected that venereal disease would have manifested itself a short time after.26 Dr Vincent O’Malley and John Hutton, however, echoed Salmond’s suggestion about Cook’s earlier departure from Tūranga:
A New Zealand Warrior in His Proper Dress, & Completely Armed, According to Their Manner. Sydney Parkinson, who was employed as a botanical artist on Cook’s first voyage, drew this man at Tūranga, where the crew of the Endeavour first came ashore in October 1769.
It was doubtless with considerable relief that Bay of Islands Māori bid farewell to Cook and his party on 5 December 1769. The first encounter between northern Māori and representatives of the British Crown had been far from a pleasant experience for the local tribes.27

We believe this description is indeed more fitting for Tūranga than the Bay of Islands. In belated accordance with his instructions, Cook had largely tempered his tendency to shoot people dead when they threatened his party. Both he and Banks felt considerable regret about the deaths at Tūranga.28 Māori, as well, had quickly learnt how Europeans preferred to conduct trade, and that their weapons were too formidable to overcome. After the initial confrontations at and on Motuarohia, the encounters seem to have been amicable, in what was perhaps an early case of ‘middle ground’ accommodation. The trade in sexual services was new, but appears to have been carried out in a way that did not offend Māori sensitivities.29 In all this, the two sides were undoubtedly assisted by Tupaia’s ability to translate and effectively bridge the two world views. Tupaia had been absent during the confrontation on Motuarohia – a fact his biographer Joan Druett thought served as ‘a demonstration of what the circumnavigation of New Zealand would have been like’ without him.30

3.2.2 De Surville at Tokerau, 1769
A French East Indian Company (Compagnie des Indes Orientales) vessel called the St Jean Baptiste, under the command of Jean-François-Marie de Surville, also arrived in northern New Zealand waters in December 1769. In fact, the two ships crossed tracks in a gale near North Cape on 16 December, but they remained oblivious of each other’s existence. The French had turned to the opening frontier in the Pacific after their aforementioned defeat in the Seven Years War in 1763, which had resulted in their expulsion from North America and their main bases in India. But the French Government had been left in no position to carry out expeditions of the scale required, so it was left (for now) to private companies – particularly the French East Indian Company – to secure French interests.31 De Surville had been sent by that company on a trading expedition in search of a land (not New Zealand) recently rumoured to have been discovered by the British. His ship – in contrast to the Endeavour – was poorly provisioned, and he arrived off the coast of Tokerau (Doubtless Bay) on 17 December 1769 with a crew half-starved and sick with scurvy. The local Te Paatū hapū had probably heard from other Māori about the weapons at Cook’s disposal and his willingness to use them, and treated de Surville and his crew most hospitably.32

But cultural misunderstandings inevitably occurred during the ship’s two-week stay. Most particularly, on 31 December local Māori dragged away the ship’s yawl that had beached after coming loose during a storm. Under Māori custom it was entirely their right to do so, but de Surville arrived on shore determined to reclaim the boat from this ‘theft’. He became enraged when a chief who had provided food and offered shelter to de Surville’s crew at a time of great need some time earlier would not show its whereabouts. He had the man ‘arrested’, burned a canoe and took another, and razed many dwellings to the ground. He then retreated to his ship with his prisoner, a man named Ranginui, and immediately set sail for Peru. Ranginui thus became the first Māori to leave New Zealand with European sailors. He was treated well enough on board but died from scurvy on 24 March 1770 off the coast of South America. Shawcross thought de Surville’s final ‘savagery’ towards the Māori of Tokerau exceeded anything Cook had yet perpetrated, although it is worth noting that de Surville’s party never once fired on the local people.33 Indeed, their fate might have been much worse, as was demonstrated by the next French visitor.

3.2.3 Marion du Fresne at the Bay of Islands, 1772
Marc-Joseph Marion du Fresne was, like de Surville, a longstanding officer in the Compagnie des Indes Orientales. In October 1771, he set sail from Mauritius in two ships, the Mascarin and the Marquis de Castries, on an expedition to return a Tahitian man to his homeland and to find Terra Australis Incognita. Marion du Fresne funded the voyage himself, albeit with the French King providing one of the two vessels. Not long into the journey, the
Tahitian succumbed to smallpox, but Marion du Fresne carried on in anticipation of the trading opportunities that awaited. By late March 1772, the two ships had reached the coast of Taranaki. From there they sailed northward, briefly encountering Māori in Muriwhenua the following month. By 1 May, they had reached rākaumangamanga (Cape Brett), the south-east entrance to the Bay of Islands. After some initial hesitation, which historians ascribe to a fear of suffering the same fate as ranginui in 1769, a few Māori began cautiously to approach the ships and go on board. They were relieved to find the Europeans friendly and welcoming, and on 3 May hundreds boarded the Marquis de Castries and the Mascarin.34

On 4 May 1772, the French ships ventured inside the Bay of Islands and anchored to the north of Motuarohia. The following day, 100 canoes came out to trade and people poured on to both ships. Bay of Islands Māori had a great desire for iron, having grown to appreciate its qualities in the three years since Cook had gifted them iron goods, but cloth – and particularly red cloth – was also highly esteemed. The French offered trade in both. In due course they moved their ships to the lee of Moturua, where they set up a hospital camp on shore for their sick men. They also established a second camp on the mainland at Manawaorua Bay, where they planned to fell large trees and build new masts to replace those recently damaged on the Marquis de Castries. Soon enough, sexual relations began between the Frenchmen and Māori women, with the Europeans showing appropriate respect to the married and betrothed. Throughout May 1772, relations between the two peoples appeared, to the French at least, to be very good. Marion du Fresne was familiar with Rousseau’s ideas of the noble savage, and Salmond observed that he ‘thought himself in paradise in the bay’.35

But all was not well, and nor could it have been given the Europeans’ limited understanding of local feuds and Māori customs. For a start, the French had sailed into a tense political environment, with Ngāpuhi hapū
challenging Ngāti Pou’s and Ngare Raumati’s rights in the south-eastern part of the Bay. According to Dr Angela Ballara, the mana over islands such as Moturua and Motuarohia lay with the rangatira Te Kauri of the Ngāpuhi hapū Te Hikutū, and Ngāti Pou were in fact residing there with Te Kauri’s permission. Unwittingly, the French intruded and made local tensions worse. A French sailor shooting birds on Waewaetorea Island on 5 May stumbled across two groups of Māori preparing to fight each other. When one party saw him with their opponents, they fled, fearing his musket. His ensuing popularity with one side would have been undermined by the sense of grievance inevitably felt by the other. That the Europeans could potentially be played off by competing Māori factions in the Bay is shown by the many requests made of the French for help in attacking Te Kauri. Even the innocent trading of goods by the French would have led to jealousy and resentment from those who felt they had missed out on particularly coveted items.

Moreover, the French and Māori did not understand each other’s customs, and several French reprisals for Māori actions were particularly inflammatory. Some of the trouble was caused by the Māori theft of European property. Theft was rare in Māori society because it was punished so severely (by death or muru), but Māori may have been emboldened to steal from Europeans because of a sense that the same rules did not apply. In early June, the French caught a man attempting to steal a cutlass on board the Mascarin. To make an example of him, they held him in irons, a humiliating experience that reduced him to the status of a slave. After his release he swore his intention to exact utu. Soon after this, the shore camp near the remasting site was hit by night-time thefts. The French, in retaliation, burned a nearby village they found abandoned, reasoning that the occupants’ absence signalled some kind of guilt. Not only that, but they tied up an elderly chief in a failed attempt to extract a confession. As Salmond explained,

The fish of the bay had been touched by the tapu of death, and had perhaps themselves nibbled on the bodies of the drowned men. To catch these fish was bad enough, but to eat them was tantamount to cannibalism, an attack on the tapu of the corpses and that of their tribe, and on the mana of their tribal gods.

Te Kauri was now effectively obliged to avenge this desecration, for failure to do so would see him haunted by his relations’ spirits and condemned by the atua.

It is a moot point as to whether Marion du Fresne knew the seriousness of what had occurred. While O’Malley and
Hutton cited an early nineteenth-century account based on Māori sources that spoke of repeated warnings given to Marion du Fresne, Salmond considered that the offence ‘was almost certainly committed without the French ever realising what they had done’. In any event, matters proceeded swiftly. The very next morning, Marion du Fresne was invited to a ceremony on a hill high above Te Kauri’s village. There he was presented with gifts and honoured by having a crown of feathers placed around his head. Shawcross thought this was in recognition of Marion du Fresne's importance, but Salmond felt it ‘sealed his death warrant’, and characterised it as more of a set-up: that is, it was either Te Kauri’s enemies provoking him further after Marion du Fresne’s violation of tapu, or Te Kauri was party to it and the ceremony served as ‘a ritual prelude to the events that were to follow’.

On 12 June, Te Kauri personally came to the Mascarin to take Marion du Fresne fishing. Marion du Fresne went willingly with 15 of his men, even leaving behind the armed guard that usually accompanied him. A local on board the ship at that time warned Marion du Fresne that Te Kauri would kill him, but the Frenchman was convinced that a people who so ‘loved’ him, and to whom he had done no harm, could not possibly want to hurt him. Soon after, however, he and his crew met their fate at what the French named ‘Anse des assassinats’ (which today still carries the name ‘Assassination Cove’). Not only that, but all except one of a 12-strong party of wood-cutters from the Marquis de Castries were similarly dispatched the next morning. (One wounded man managed to swim back to the Mascarin and raise the alarm.) These were part of a coordinated series of attacks on the French: the hospital camp on Moturua was advanced on in the night by 500 armed warriors who were dissuaded from an assault only by the French quickly manning their guns, and a similar force had also surrounded the remasting camp.

Confirmation of Marion du Fresne’s fate came soon enough, when Māori at Te Kauri’s village were seen brandishing French cutlasses and pistols and wearing the clothes of Marion du Fresne and other slain officers. The French quickly regrouped and began their own reprisals. The party retreating from the remasting camp, for example, opened fire on a large group of pursuing Māori, leaving, in Salmond’s words, ‘a tangle of dead and wounded warriors on the beach’. On 14 June, they led an assault on Moturua Island’s fortified pā, taking it without any loss of life among their own, but with the deaths of some 250 to 300 Ngāti Pou, many of whom drowned in the water beneath the clifftop defences. They then burned the pā. A week or so later, the French killed another 25 or so Māori who had attempted to ambush them on Moturua. During the following weeks, the two sides largely kept their distance while the French carpenters hurried to make their ships seaworthy.

On 7 July, however, a well-armed French contingent landed at Te Kauri’s village to establish what exactly had happened to Marion du Fresne. The village was all but deserted, although Te Kauri himself, wearing Marion du Fresne’s cloak, was spotted on a nearby hill. The Frenchmen found evidence that their compatriots had been eaten – evidence confirmed by later tribal accounts. They burned this and another village, and by 13 July were ready to depart. Before they sailed away, they buried a
bottle on Moturua in which they left documents proclaiming New Zealand French territory, thereby ‘unconsciously echoing Cook’, as Salmond observed.\(^{46}\)

Claimant witnesses gave us their own accounts of what took place. Hori Parata explained that:

One of my tupuna, Te Kuri, was involved in the attack on Captain Marion du Fresne and his crews for his repeated failure to respect the customs and mana of the rangatira. There is no question that such violations and breaches were the sorts of things that caused our tupuna to apply utu and muru against Pakeha at that time. They lived their lives according to their own highly developed tikanga.

Prior to the attack Te Kuri had befriended Captain du Fresne, however this friendship could not protect du Fresne when he ignored warnings that he was transgressing tapu. Te Kuri and others killed 2 boat crews from du Fresne's ships as they came ashore, their bodies were gutted and hung for the hangi. Du Fresne's head was cut off and planted on a stake. The tree from which they were hung is still standing.\(^ {47}\)

Nuki Aldridge was also adamant that Marion du Fresne had knowingly breached tapu, and had thus suffered the consequences. He placed the deaths of the Frenchmen within the overall context of the three early visits of Cook, de Surville, and Marion du Fresne:

Du Fresne certainly knew he was breaching a law regarding the fishing place – it is said that some of the Maori tried to tell him about the tapu. He understood this, but he took liberties. He and his men breached the local laws.

What I believe is that Maori were grieving over what had happened so far in the early contact period. I believe you can't look at the response of Maori to Du Fresne in isolation. Having had guns used upon them, having had their villages burned and their people kidnapped, without the Europeans being punished by their own people, they applied the law of the land.\(^ {48}\)

The legacy of Marion du Fresne's encounter with Bay of Islands Māori was profound. While Ngāti Pou and Te Hikutū had united to attack the French, Ngāti Pou (alternatively in some accounts Ngare Raumati or Ngāti Wai) suffered greater loss of life (especially on Moturua) and were therefore seriously disadvantaged in their struggle with Ngāpuhi for supremacy in this part of the Bay. Moreover, their ‘guilt by association’ for their greater friendship with Marion du Fresne worked against them, and it was not long after 1772 that Ngāpuhi succeeded in pushing Ngāti Pou and Ngare Raumati out of the Bay. At times Ngāti Pou must have been in two minds about whether to appease Te Kauri by siding with him against the French or whether to seek French support to defeat their foe. The latter suggestion was made to the French repeatedly, including as late as the morning of 13 June by a group surrounding the remasting camp.\(^ {49}\)

No ships visited northern New Zealand for two decades after Marion du Fresne's ill-fated stay, and the regular appearance of European ships in northern waters did not begin until after 1800. As Phillipson observed, another consequence was a longstanding Māori animosity to the French, who were known thereafter as 'the tribe of Marion.'\(^ {50}\) Inevitably, there was a corresponding preference among Māori for the British. More immediately, the events of 1772 showed that, despite the accommodations that had occurred during Cook's visit to the Bay of Islands, Māori and Europeans were some way off grasping each other's cultures and values. Tupaia aside, there were still no real intermediaries who had lived in both cultures and could facilitate mutual understanding.

### 3.3 Kāwana Kingi: Forging Relationships

The establishment of a British penal colony in New South Wales in January 1788 was the single most significant development after Cook's arrival for bringing New Zealand within Britain's sphere of influence. Its location was at once remote – thus fulfilling the intention to dispatch criminals to a place beyond their immediate capability to return – but also full of economic and strategic potential for the expansion of trading routes to the east, which were then monopolised by the East India Company,
as well as exploiting new resources. Australian historians continue to debate the extent to which the imperial authorities intended the original colony, at the moment of its founding, to serve solely as a remote prison or as a strategic outlier of empire. Similarly, historians continue to debate why the British accepted the advice of Joseph Banks and acted on the premise that the land was sparsely inhabited with an uncivilised population, whose consent for the establishment of the colony would not be needed and who could be left largely to their own devices. We do not intend to traverse the reasons for and consequences of this decision, which continues to reverberate in Australia today. It is enough for us to say here that, no matter how the original decision is interpreted, the settlement – as well as that soon to be established in Van Diemen’s Land (later Tasmania) – quickly became the host for a range of commercial activities that extended into the wider Pacific, particularly New Zealand.

Governor Arthur Phillip’s commission, which repeated the terms of his instructions, defined New South Wales as including ‘all the islands, adjacent in the Pacific Ocean, within the latitude . . . of 10 degrees 37 minutes south and 43 degrees 39 minutes south.’ The entire area of New Zealand north of Banks Peninsula potentially lay within these specifications, depending on the definition of ‘adjacent’. Phillip was specifically instructed to take the uninhabited Norfolk Island, but not New Zealand. Nevertheless, a right to act in respect of New Zealand was assumed by a later governor, as we shall see.

The New South Wales frontier soon enough came to interact with New Zealand. Abundant flax and timber resources (essential for refitting ships), as well as its people, made New Zealand the focus of initial political interest. The expansion of whaling and sealing operations from the turn of the century intensified this interest, and further exposed Māori to the outside world. Missionaries from the London Missionary Society (a non-denominational body founded in 1795) also took a more active interest in New Zealand, having established bases in Port Jackson (Sydney) and other locations of the Pacific. With ever increasing engagement with New Zealand taking place, the early governors of New South Wales took action to establish relationships with Māori from the Bay of Islands and Hokianga, where potential for trading opportunities seemed greatest. The rangatira who came to engage with these governors wanted to secure their people’s primacy in the new economic ventures and learn more about the new site of British authority. It was fortunate that these key early engagements involved forward-looking rangatira, such as Tuki Tahua and Te Pahi, and a relatively benevolent officer like Philip Gidley King – at first the Lieutenant-Governor of Norfolk island and later the Governor of New South Wales, and known to Māori as Kāwana Kingi. These leaders created expectations on both sides about future conduct. They also established
a precedent of high-level access for Māori visitors to the offices of power at Port Jackson.

**3.3.1 Tuki and Huru at Norfolk Island, 1793**

As the First Fleet set sail for Botany Bay, Governor Phillip was aware that the abundance of flax and timber in New Zealand might well meet the needs of the British Navy in India for sails and masts and that the flax could also be a source of clothing for his convicts. But he also knew from Cook’s reports that Norfolk Island offered the same resources, and only five days after arriving in New South Wales he dispatched Lieutenant-Governor King to the island to establish a convict outpost. King, however, soon despaired of successfully working the Norfolk Island flax into fibre and suggested that some of his convicts be sent to New Zealand to observe Māori techniques. When this proposal was rejected, King turned to the idea that Māori expertise might be brought to Norfolk Island. In January 1791, while on a return visit to England, he wrote that, if only ‘a native of New Zealand’ could be obtained, there was ‘no doubt but Norfolk Island would soon clothe the inhabitants of New South Wales’. In April the same year, he upped the suggestion to the need for ‘two or three New Zealanders’. He later repeated this request to naval captain George Vancouver, whom King encountered at the Cape of Good Hope in July.

Eventually, the authorities agreed. Vancouver was sent instructions in August 1791 to have his supply ship, sailing between North America and Port Jackson, divert to New Zealand. There its commander was to ‘use his best endeavours to take with him one or two flax-dressers’. After various delays, these instructions reached Vancouver a year later. Vancouver duly passed the task to Lieutenant James Hanson of the Daedalus, whom he instructed in December 1792 to make for Doubtless Bay or an adjacent port in the north of New Zealand, and

Unaware of these developments, King had meantime continued to request support in ‘procuring’ Māori assistants (as he had put it to Vancouver). In November 1791, he had even asked the skipper of an American whaler, the William and Ann, ‘to endeavour by fair means to obtain Two of the Natives from about the Bay of Islands, & Mercury Bay’, offering a £100 reward as an inducement. King later learnt that the ship visited Doubtless Bay but no Māori could be persuaded to return with it.

Hanson arrived in the Daedalus off the Cavalli Islands in April 1793. His official version of what then took place was merely that he ‘obtained two Natives’ and proceeded to Sydney, but further details emerged from a dinner conversation Hanson had some months later. Apparently, he ‘did not think it prudent to stop to make a strict scrutiny into the abilities of any particular people, particularly because there was much sickness among his crew, so he therefore by presents inveigled two young men out of a Canoe, and taking them below, under pretence of giving them something more, he instantly made all sail.

When the pair eventually came out on deck, they were shocked to find they were now far from land. These two young men were Tuki Tahua, from Doubtless Bay, and his friend Hurukokoti (or Ngahuruhuru), from the Bay of Islands. According to their own account, later told to King, they and several companions had gone to the ship out of curiosity. Tuki and Huru had then been lured on board by the iron tools and other items Hanson showed them, and been generally ‘blinded by the Curious things they saw’. When they realised the ship was moving away from the waiting canoes they became frantic, but were restrained and could do little more than call to the others in their group to paddle away lest they too be taken.
Shawcross noted the lack of any official condemnation of Hanson’s ‘decidedly unfair methods’, although Salmond thought him at least wise not to attempt to land, given the likelihood of the locals remembering the events of 1769 and 1772.63

Hanson arrived in Sydney on 20 April 1793. Tuki and Huru saw little more than the port and were soon transferred to another ship, the Shaw Hormuzear, which sailed for Norfolk Island on 24 April. Soon after their arrival, King pressed them for what they knew about dressing flax, but – after such a long wait for this very moment – he was quickly disappointed. As King put it,

Every information that could be got from them, respecting their mode of manufacturing the Flax plant, was obtained in One day . . . and which turned out to be very little, as this operation is the peculiar Occupation of the Women . . .

But while King’s primary object in bringing Māori to Norfolk Island had failed, there were unexpected benefits. Tuki and Huru lived with King and his family for the next six months. As Salmond noted, their status in such a brutal place was ‘paradoxical’, for they were at once captives and honoured guests. King became fond of them, and both sides learnt a little of the other’s language and customs. Tuki and Huru quickly undermined British stereotypes of Māori as bloodthirsty savages,64 while King’s friendship must have dispelled some of their own notions of what Europeans were like.

This new-found bond was strengthened by the circumstances of Tuki’s and Huru’s return to New Zealand. At last, in November 1793, a ship arrived that King felt he could divert to New Zealand for several days to fulfil his promise to return his friends safely. The Britannia, with King and the two Māori on board, sailed from Norfolk Island on 9 November 1793 and sighted North Cape three days later. Near Murimotu Island, canoes came out to it and, when some of their occupants recognised Tuki, they climbed on board and embraced him with joy. King intended to sail on to the Bay of Islands the next day, but the ship was becalmed. Anxious about the time he was taking away from his command, King asked Tuki if he would prefer to leave the ship here or return to Norfolk Island. Tuki himself was concerned first to establish whether there were good relations between the Muriwhenua people and his own at Doubtless Bay, but once the chief Tokoki came on board and gave his reassurance, Tuki and Huru were happy to disembark. King wondered if Tokoki could be trusted, but Tuki assured him that a high chief ‘never deceives’.65

King accepted this, but took Tokoki aside and said he would return in three months’ time to check whether Tuki and Huru were safely home. If they were, he would give Tokoki ‘some very considerable presents’. Tokoki then embraced King in a long and clearly symbolic hongi, which both repeated with Tuki and Huru. Tuki explained to King that Tokoki had ‘now become their Father’. Salmond felt the whole ceremony had been designed ‘to establish an honorary kinship relation’ among the four men. At Tokoki’s request (relayed by Tuki and Huru), King then had his soldiers fire their muskets and the ship’s cannons while the 150 assembled Māori watched from the deck.66 King was first careful to explain that it was our intention and wish to be good neighbours and friends . . . and . . . these weapons were never used, but when we were injured, which I hoped would never happen, and that no other consideration, than satisfying his curiosity, could induce me to show what these instruments were intended for.67

Tuki and Huru then departed, laden with gifts from King including 10 sows and two boars, garden seeds (for crops like the potato), and tools. The locals who had visited the ship also received presents. Tuki and Huru reminded King of his promise to visit again soon, at which point they themselves would return to Norfolk Island, this time with their families.68

King’s hosting of Tuki and Huru, and their happy return to New Zealand, had a number of important and lasting legacies. For a start, King was able to use the limited information provided by the two men to improve flax production. Northland Māori in turn experienced what Salmond called ‘a local agricultural revolution.’ The
introduction of pigs may have been unsuccessful, but the potato, recognised as one of King’s gifts, quickly became a valued crop, and its widespread redistribution throughout the north would have greatly enhanced his mana. Thirdly, as Dr Phillipson pointed out, ‘King’s visit made the world a much smaller place’. Having told the Muriwhenua people on the deck of the Britannia how close Norfolk Island was, Tuki rushed to the poop and fetched a fresh cabbage to show them, as if to emphasise his point. Moreover, King had established a warm and positive relationship with northern Māori. As Salmond put it,

Much of the content of the term ‘Kaawana’ (Governor) in Northland Māori in the late eighteenth and early nineteenth centuries derived from what people knew about Philip Gidley King. He was the Governor whom Māori people knew best, who had learned some of their language, had treated their kinsfolk with honour and had shown his chiefly prestige with generous hospitality and gifts. Shawcross argued that King would have been seen as one of those high chiefs who ‘never told an untruth or deceived’, and his assurances that the British would maintain friendly relations must have increased positive attitudes to Pākehā in the north. She added:

Certainly northern Maoris could not have been more helpful, and were never for decades less troublesome, to visiting Europeans than they were for up to fifteen years after King’s visit. In addition, the kind treatment and very desirable presents which Tuki and Huru had received from King and others, and the curious sights which these first two northern Māori travellers had seen abroad, were to influence several Maoris to travel to European countries in the early nineteenth century.

Phillipson sounded a note of caution about this kind of analysis, since he felt King’s original ‘hara’ of kidnapping Tuki and Huru had really only been repaid with their safe return with presents. King had also failed to fulfil his promise to return to New Zealand, and had warned that British guns would be employed upon any injury to Pākehā by Māori. Phillipson doubted that the ensuing view of kāwana among the chiefs could ‘have been entirely positive’. Indeed, in his brief of evidence, Aldridge criticised King for taking so long to return Tuki and Huru, and for failing to charge those who had kidnapped the pair in the first place. However, O’Malley and Hutton suggested – correctly, we think – that the fact King was so warmly remembered in the north decades later was ‘a telling point’. Reverend Samuel Marsden, the senior Anglican clergyman in New South Wales, observed this 44 years after King’s return of Tuki and Huru, and later still, in 1844, a visitor to Kaitaia reported that
Governor King is . . . remembered by the natives with great affection. Two New Zealand youths were taken by him from Doubtless Bay to Norfolk Island, (Hura & Tuke) and treated by him with great friendship.76

3.3.2 Te Pahi in Sydney, 1805–06

Regular ship visits to northern New Zealand waters did not commence until after 1800, with the rise of the whaling trade. By 1801, six British ships were hunting whales off northern New Zealand, and in the following years there were even more, including an American vessel.77 It seems that no ships entered the Bay of Islands itself after Marion du Fresne’s departure until after 1800.78 Soon enough, however, the Bay, with its sheltered coves and availability of produce like potatoes, was receiving regular visits. In 1803, a teenaged local named Teina went on board the Alexander, under Captain Robert Rhodes, and accompanied the ship back to Port Jackson. There, he stayed from June to September 1803 with the Governor, who since 1800 had been Philip Gidley King himself. After another spell at sea whaling, Teina returned with Rhodes to the Bay of Islands, where he disembarked with pigs gifted by King. Salmond suggested these were probably the first introduced at the Bay.79

In February 1805, the Alexander left Sydney for England with a cargo of whale oil and sealskins, as well as a plan for more fishing off northern New Zealand en route. Rhodes picked up Teina again at the Bay of Islands but the crew became involved in a serious scrap with local Māori, during which the ships’ cannons were used to inflict ‘terrible execution’, as the first mate Jorgen Jorgensen described it. Rhodes promptly made sail with both Teina and another young man named Maki now unwillingly on board. After considerable delays at Tahiti, where two Tahitians joined the ship, and at Brazil and St Helena, the Alexander finally arrived in England in June 1806. But its cargo was ruined and the crew were left with nothing. Teina soon died, as did the Tahitians some months later, despite the care of the London Missionary Society. Only Maki remained, but he himself was kidnapped (again) and sold to the master of another ship, and his eventual fate is unknown.80 The experiences of Teina and Maki show that, while the advent of whaling brought new opportunities for northern Māori, the old dangers of kidnapping and coastal bombardment remained ever-present.

When Rhodes had returned to Port Jackson from one of his whaling expeditions in May 1804, King opened an inquiry into his conduct, charging him with ‘firing on the Natives of New Zealand, and flogging them on board the ship’. It may in fact have been this earlier behaviour that sparked the confrontation with Bay of Islands Māori in 1805. Rhodes was apparently not disciplined, but this inquiry and Teina’s visit to Port Jackson may have served to ‘reawaken’ King’s interest in New Zealand, as Salmond put it.81 In April 1805, King reported that the seeds he had given Tuki and Huru in 1793 had ‘turned to a very beneficial account, not only for their own advantage, but also in supplying the Whaling Ships very liberally with potatoes and other productions’. Overall, he thought, Māori interaction with whaling crews had been ‘very advantageous’, with ships putting into the Bay of Islands and other harbours without ever having ‘any altercation with the natives, but have received every kind officer and assistance in procuring their Wood and Water, &c, at a very cheap Rate in Barter’. In the same month, King instructed the commandant on Norfolk Island, Captain John Piper, to commission a reliable whaling captain to take breeding pigs to ‘the most powerful Chief or person in the place they may touch at’ in the north-east of New Zealand.82

That rangatira would almost certainly have been Te Pahi of Te Hikutū, who had his base at Te Puna on the Purera Peninsula near the northern entrance to the Bay of Islands. Te Pahi had gained a reputation for hospitality to visiting whaling ships, and in December 1804 had already sent his son, Maatara, on a whaling ship to Sydney ‘in order that he might see the English at their settlement’.83 After six months at sea, Maatara arrived in Port Jackson on 9 June 1805. King recognised the importance of the visitor, and hosted him at Government House. At the end of July, King ensured Maatara was returned safely to the Bay of Islands on the sealing ship Venus, which journeyed via Norfolk Island. There King had its skipper, William Stewart, collect two sows and two goats to be gifted to Te Pahi. This was the first of three deliveries of pigs made from Norfolk
island to Te Pahi over the next couple of months, total-
ning 26 sows and four boars.84 Shawcross concluded that
these animals were the ‘decisive factor in the spread of
pigs throughout northern New Zealand.’85

Before the third delivery arrived in October 1805,
however, Te Pahi had taken four of his sons86 to Norfolk
Island on board the Venus with a view to thanking King
personally in Sydney. Captain Piper, though, had to res-
cue the youngest son from Stewart, who seems to have
intended him to be the payment for Te Pahi’s passage.
Piper then had Te Pahi and his sons transported safely to
Port Jackson on HMS Buffalo, via a week in Hobart where
Te Pahi ‘met with much civility’ from the local officials.87
When he arrived at Government House in Sydney on 27
November 1805, Te Pahi greeted King with a hongi and
explained the reasons for his visit:

he gave me to understand that he had long designed the visit
he had now accomplished, to which he had been encouraged
by the reports of my two visitors at Norfolk Island in 1794
[1793], the request of his father, and the prospect of his coun-
try being benefited by his visit, as it had been for the great
blessing bestowed on it by the introduction of potatoes at
Toukee and Woodoo’s return from Norfolk Island. He also
added that leaving New Zealand was much against the wishes
of his dependants, but that objection was much outweighed
by the probable advantages they would derive from his visit,
and concluded by saying that he considered himself under my
protection.88

Te Pahi was the first rangatira of real significance to visit
New South Wales.89 As Salmond remarked, he was on ‘no
idle journey’. Rather, he ‘had come to see King, but also to
investigate Governor King’s society’.90 Moreover, thought
O’Malley and Hutton, Te Pahi also had an ‘expectation of
establishing an ongoing relationship with the Governor
for the benefit of his people’.91

Te Pahi and his sons stayed with King in Sydney for
three months, until late February 1806. Like Tuki before
him, Te Pahi greatly impressed King, who wrote: ‘To say
that he was nearly civilized falls far short of his charac-
ter.’ Te Pahi observed weaving, gardening, farming, and
carpentry, collected seeds and seedlings, and made a very
favourable impression on Samuel Marsden. He watched
the trial of three men accused of stealing pork, and
became most angry with the sentence of death handed
down upon one of them. He could understand a man
being put to death for stealing something of lasting value
like a piece of iron, he explained, but not for taking a mere
‘wherewithal to eat’.92 He found other European customs
and social habits equally odd. The author and traveller
John Lidiard Nicholas wrote in 1817 that Te Pahi’s remarks were well remembered in Sydney, which showed both the solidity of his understanding and the justness of his conceptions. On our remonstrating with him on the absurdity and inconvenience of his customs, he immediately censured some of our own as far more ridiculous, and many of his arguments were both rational and convincing.

Another subject of Te Pahi’s disdain – which clearly pleased his hosts – was indigenous Australians. According to King, he deplored ‘their going naked, and their want of ingenuity or inclination to procure food and make themselves comfortable’. He was also contemptuous of the ritualised combat in the Aboriginal mortuary ceremony he witnessed, proclaiming that a shield was ‘an unnecessary appendage’ with which to face a barrage of hurled spears. The Sydney Gazette suggested Te Pahi had little time for ‘the natives’ because he himself had such a ‘high relish for civilization’; by contrast, the Aboriginals were ‘a naked race, who have for so many years disregarded its advantages’. At the same time Te Pahi clearly did not regard Europeans as in any way superior to himself. As we have seen, he viewed some of their behaviour as decidedly uncivilised. In King and other officials, however, he recognised members of his own social class, or fellow rangatira, with whom he felt he could work.

During his stay with King, Te Pahi had occasion to complain that a Māori had been flogged by a whaling captain. King promised to ‘impress on those who might visit him the necessity of their conducting themselves and people in a peaceable manner’. King might also have explained to Te Pahi that, in May of that year, he had already published an order in the Sydney Gazette requiring ships’ masters leaving New South Wales to seek permission before taking Māori and other Polynesians aboard their ships and to treat the seafarers well. This notice was as follows:

WHEREAS a number of Otaheitans and Sandwich Islanders have been brought from Otaheite by the Harrington Letter of Marque and two Spanish Vessels she took out of the Ports of Coquimbo and Caldera, for the purpose of manning them; and several New Zealanders being brought here and left here by South Sea Whalers from the East Coast of that Island; and it being intended by the Persons who have hitherto been allowed to frequent the Islands in Bass's Straits to send some of these credulous people to that place, where their Treatment and Return are very suspicious and doubtful; and it being of the utmost consequence to the interest and safety of Europeans frequenting those Seas, and more particularly the South Sea Whalers, that these people should suffer no ill Treatment, but on the contrary, experience every kindness until they can return to their native country: IT is therefore hereby strictly forbid sending any Otaheitan, Sandwich Islander or New Zealander from this Settlement to any Island or other part of this Coast, on any Sealing or other Voyage; or to any place to the Eastward of Cape Horn.

All Masters of Ships, Foreign as well as English, are hereby forbid taking away any such Otaheitan, Sandwich Islander or New Zealander from hence without the GOVERNOR’s permission in writing; which will not be given unless with a certainty of the Masters taking them to the Islands they belong to.

During their stay here, those whose service they are employed in are not to beat or ill use them; but if their Employers, or those who brought them to this Colony are not able to maintain and employ them, they are to report it to the Governor, who will take measures for their employment and maintenance until they can be sent home.

And it is to be clearly understood, that all such Otaheitans, &c. are protected in their properties, claims for wages, and the same redress as any of His Majesty’s Subjects.

Government House, Sydney,
26 May, 1805.

We do not think this went as far as extending to Māori and other Polynesians ‘some of the civil rights of British subjects, long before the signing of the Treaty of Waitangi’, as Salmond put it. In fact, this apparent early concern for the well-being of Māori and other Polynesians was at least equally motivated by a concern to protect the whalers and, more generally, the pursuit of British commerce. While King did not go as far – unlike one of his successors as governor – to assert any formal jurisdiction over
acts committed by British subjects in New Zealand itself, his proclamation was still difficult to enforce and largely ineffective.

Te Pahi came back to New Zealand with his mana enhanced. He was laden with gifts from King, including the framework and bricks for a house which was erected for him at Te Puna. O’Malley and Hutton felt his stay with King ‘could hardly be judged anything other than a huge success’, for he had returned with not only useful material goods but also with knowledge and a positive relationship with Kāwana Kingi. For the claimants, Te Pahi’s sojourn in Sydney may not quite have marked the beginnings of an alliance or formal relationship between Māori and the British Crown, but it certainly belonged on the same continuum. As Hugh Te Kiri Rihari put it, te Tiriti in 1840 ‘was intended to ensure the continuation of the direct relationships begun by our tupuna, Te Pahi and Kawana Kingi, Hongi Hika and the King.’

Government House in Sydney, circa 1807. It was here that Governor King hosted Teina in 1803 and Te Pahi and his sons in 1805 and 1806, and Te Pahi stayed here again while Governor Bligh was under house arrest in 1808. The site is now the location of the Museum of Sydney in Bridge Street.
3.4 Voyages to England

3.4.1 Te Mahanga and Maatara

In their growing discovery of European society, Bay of Islands Māori were by now beginning to look further afield than Sydney. The first Māori appears to have reached London in April 1806 (that is, slightly ahead of the unwilling Teina and Maki). The previous September, the whaling ship *Ferret* (the same vessel that had brought Maatara to Sydney in 1804) had called at Te Puna en route to England with a cargo of whale oil. One of its passengers was John Savage, a military surgeon in New South Wales, who used the month or two he spent in the Bay of Islands as the basis for his book, *Some Account of New Zealand*, published in 1807. While at Te Puna, Savage fielded several requests from Māori to accompany him back to England, and in the end he chose a young man named Te Mahanga to go with him.

During his month-long stay in London, Te Mahanga was amazed by what he saw, such as the tall buildings, the coaches, and the items for sale. He was introduced to Savage’s patron, the wealthy aristocrat Earl Fitzwilliam, who gave him an array of tools to take home with him. Te Mahanga sailed again on 13 June 1806 on the *Ferret*, which eventually returned him to the Bay of Islands around March 1807.

While Te Mahanga appears to have been a man of reasonable status at the Bay, we think O’Malley and Hutton were right to describe him as ‘no Te Pahi’, and to characterise his trip as ‘more in the nature of a private adventure than diplomatic mission’.\(^{107}\) In later years, Te Mahanga claimed to have met King George and Queen Charlotte, but this seems most unlikely, since Savage did not record any such encounter in his book.\(^{108}\) Ormond Wilson noted that Te Mahanga ‘enjoyed boasting’, and reasoned that it was Earl Fitzwilliam’s ‘imposing presence and the furnishings of his house (including a bust of the noble lord himself) which became transmuted in [his] mind from nobility to royalty’.\(^{109}\)

But if Te Mahanga’s journey was ‘little more than a sideshow in the broader story of Northland cultural contacts,\(^{110}\) that could not be said of the experience of other Māori who left New Zealand for England around the same time. In the middle of 1806, Maatara again set off from the Bay of Islands at Te Pahi’s behest, this time bound for London on the whaler *Richard and Mary*. The ship arrived in Port Jackson on 16 July 1806 and left again on 8 September, reaching Gravesend on 17 April 1807.\(^{111}\) In London, Maatara met Sir Joseph Banks, who wrote that Maatara had come to ‘see the King and obtain from his Majesty and the English nation axes, iron and musquets in order that they may be enabled to build houses and live as English men do.’\(^{112}\) According to the merchant Alexander Berry, who – after Maatara’s return to New South Wales from England in late 1808 – brought him back to the Bay of Islands on the *City of Edinburgh*, Maatara had ‘been treated in England with every attention, and even introduced to the Royal family’.\(^{113}\) If this is correct and we discount Te Mahanga’s claim, then Maatara was the first Māori to meet British royalty. It seems he did return with presents, although Marsden reported that these had all been stolen from him by the time he arrived home.\(^{114}\)

3.4.2 Ruatara

Another young Māori who developed ambitions to meet British royalty was Ruatara. Samuel Marsden described him as a nephew of both Te Pahi and Hongi Hika from Te Puna, although there is some doubt about his whakapapa.\(^{115}\) In September 1805, he and two Māori companions at the Bay of Islands joined the whaling ship *Argo*, which had brought livestock for Te Pahi from Norfolk Island. The ship spent six months at sea before returning briefly to the Bay, after which it spent another six months cruising off the coast of Australia. In September 1806, Ruatara and his companions were discharged without pay in Sydney. There they were looked after by Marsden, who used his influence to see Ruatara secure a working passage back to the Bay of Islands on board another whaler, the *Albion*, a month later. After a further six months at sea, Ruatara was landed safely back in the Bay of Islands, this time with pay (in the form of European goods).\(^{116}\)

It is not clear why Ruatara and his two companions joined the *Argo*. Wilson wrote:
Whether the trio were seduced by promises of rich rewards or were incited by accounts they had heard of the wonders seen by Te Pahi and his sons in Sydney, or whether they were simply impelled by an inherited Polynesian instinct to sail across the seas, there is no way of telling. The remarkable fact is that despite frequent hardships, non-payment of wages and abandonment at Sydney, so many of them, as well as Ruatara himself, afterwards set forth again.\(^{117}\)

Indeed, Ruatara was obviously determined to get back to sea, for in 1807 he joined the crew of a sealing ship, the *Santa Anna*, which had called at the Bay of Islands en route to the Bounty Islands to the south-east of the South Island. Unfortunately for him, the hardships he endured on this expedition exceeded even his poor treatment by the captain of the *Argo*. Ruatara and a gang of 13 others, including another Māori, two Tahitians, and 10 Europeans, were left on the islands to gather sealskins while the ship sailed away to obtain potatoes at New Zealand and pork at Norfolk Island. Their existence must have been miserable, because the Bounty group is little more than a cluster of barren rocks in the open ocean, devoid of vegetation and a water supply. The gang, poorly provisioned in the first place, were reduced to drinking rainwater and eating seals and seabirds to survive in the eight months\(^{118}\) it took for the *Santa Anna* to return for them; indeed, three men died during the wait.\(^{119}\)

When at last the survivors reboarded the ship in October 1808, Ruatara nonetheless requested to join the crew for the voyage to England with its cargo of sealskins. As Marsden explained, Ruatara had ‘long entertained an ardent desire to see King George’, and ‘embarked on board as a common sailor with the hope of gratifying his wish.’\(^{120}\)

Some historians have suggested that it was Ruatara’s ambition to see the King that prompted him to join a whaling ship in the first place, in 1805, and that the trip to the Bounty Islands was a further stage in an incredible odyssey to achieve that.\(^{121}\) But this seems to be reading too much into Marsden’s mention of Ruatara’s long-held desire. There is no reason to conclude Ruatara had somehow thought that sealing and whaling expeditions in the South Pacific were stepping stones to London. When the opportunity to go there presented itself in 1808, however, he took it, although in reality he appears not to have had any choice but to go on board.\(^{122}\)

When Ruatara finally reached London, in July 1809, his hopes were dashed. He asked the ship’s captain how he might visit the King but was told either that the King’s house was too hard to find or that the King did not receive visitors. According to Marsden, this news ‘distressed him exceedingly’. Moreover, Ruatara was only infrequently allowed on shore as the ship was unloaded, and after two weeks he was told that he would be put on the *Ann*, a convict transport leaving shortly for New South Wales from Gravesend. Ruatara asked for payment in wages and clothing but was given nothing other than the vague promise of two muskets in Port Jackson. At this point he also fell dangerously ill. Thus ‘friendless, poor, and sick’, in Marsden’s words, he was brought to the *Ann*, although he was so ‘naked and miserable’ that the master would not receive him until he was at least clothed.\(^{123}\)

By an unusual stroke of good fortune for Ruatara, travelling on the same ship was Marsden himself. Marsden had been in England seeking Anglican Church Missionary Society (CMS) workers for the mission that he had been planning in New Zealand since his encounter with Te Pahi in 1805. He was returning to New South Wales with his first recruits. He had had no inkling of Ruatara’s arrival in London, and indeed no idea of Ruatara’s presence on the *Ann* until one day, well into the voyage, he ‘observed him on the forecastle’. Ruatara was ‘wrapped up in an old greatcoat’ and coughing blood. He explained to Marsden that he had been beaten by the sailors on the *Santa Anna* and not only defrauded of his wages by its captain but also denied an opportunity to meet the King.\(^ {124}\) He despaired that ‘his countrymen [would] find great fault with him for coming back without attaining the object of his voyage.’\(^{125}\)

With the help of the ship’s master and surgeon, Marsden nursed him back to good health before the ship reached Rio de Janeiro.\(^ {126}\) Ruatara left the *Ann* with Marsden at Port Jackson in late February 1810.\(^ {127}\) As one door had closed for him, therefore, another had opened.
3.5 Te Pahi’s Troubles with Whalers

3.5.1 Te Pahi, Atahoe, and George Bruce

Before proceeding further with Ruatara, we return to the story of Te Pahi, who had meantime remained central to so much of the interaction between Māori and Europeans at the Bay of Islands. When we last mentioned Te Pahi, it was April 1806, and he and his sons had just returned to Te Puna from their successful stay with Kāwana Kingi. On that voyage, on the armed tender Lady Nelson, Te Pahi had fallen sick and been looked after by a sailor, George Bruce. Bruce was a former child convict and policeman who had at one time fled the New South Wales authorities and turned to bushranging to avoid the sentence of a severe lashing. Just before the vessel arrived at the northern tip of New Zealand, the captain flogged him for ‘theft, disobedience and embezzlement’. Just before the vessel headed south to the Bay of Islands, Bruce jumped ship and, after the Lady Nelson had left the Bay on 7 May 1806, took up residence at Te Puna under the protection of Te Pahi.

In time Bruce had married Te Pahi’s daughter, Atahoe, been tattooed, and was working for Te Pahi as an interpreter and adviser in the rangatira’s dealings with visiting whaling ships. Some European visitors to the Bay were far from welcome. The renegade crew of the Venus, for example, which had sailed from Port Dalrymple in northern Van Diemen’s Land to the Bay of Islands in June 1806, abducted three high-born Ngāpuhi women and traded them with tribal enemies in Hauraki, the Bay of Plenty, and East Cape, who killed and ate them. This created the take for Ngāpuhi reprisal raids in 1818 and 1820, thus demonstrating again how European provocations could as easily exacerbate intertribal violence as lead to revenge attacks on Europeans themselves.

The ongoing reports of violent and cruel behaviour by whalers and sealers in New Zealand prompted King’s replacement as Governor, William Bligh, to issue an order in April 1807 similar to the one King had published in 1805. Unlike King’s proclamation, however, which required ships’ captains to receive written consent before taking any Māori or other Polynesians from New South Wales, Bligh’s proclamation announced an absolute ban against taking any of these people to Britain. It also imposed a penalty should any be brought to New South Wales and not maintained before being returned to their own lands. The wording of this notice was as follows:

All Masters of Ships or Vessels are hereby forbid embarking from this Colony any Natives of the South Sea for Great Britain.

And in case any Ship arrives at this Colony and its Dependencies from the South Seas, and shall bring any Natives of the Islands therein, then the said Master or Owners shall be answerable for the Maintenance of such Natives until an opportunity offers of sending them back from whence they came, which they are hereby bound to perform, under a penalty of 20 £ for each person, besides the maintenance of those who may be kept here contrary to this Regulation.

By Command of His Excellency.
E Griffin, Sec.
Govt House, Sydney, April 5, 1807.

As with King’s proclamation, however, Bligh’s order proved impractical and was routinely ignored.

In October 1807, a trading ship, the General Wellesley, arrived in the Bay of Islands under Captain David Dalrymple, ‘a drunkard given to casual violence’. The ship’s pilot claimed to have felled Te Pahi and taken the chief’s club during a dispute. When another ship came from Sydney with a warrant for George Bruce’s arrest ‘dead or alive’, Bruce was able to hide out on the General Wellesley. In gratitude, he promised to show the crew a gold mine at North Cape, where the ship then sailed after taking on Atahoe and three young Māori sailors at Whangaroa. It is not clear whether any land search for the supposed mine was undertaken, but in any case no gold was discovered and a storm gathered that blew the General Wellesley 100 miles offshore. Apparently, Bruce was offered the opportunity to get back to land in a small boat but declined. Dalrymple had no wish to spend time taking his ship back to New Zealand, and so sailed off into the Pacific with Bruce and Atahoe his unwilling passengers.
Some historians have described this as a kidnapping, but it was certainly not – or at least not at this point. O’Malley and Hutton were more accurate, we think, in referring to Bruce and Atahoe as ‘kidnapped for all local Maori knew’. Te Pahi himself, according to one account, was angrier with Bruce than with Dalrymple, believing that Bruce had organised the abduction of his daughter. As it transpired, Dalrymple thought he could use Bruce as an intermediary in his negotiations for sandalwood in Fiji, but when Bruce failed in this regard the captain began to treat him and Atahoe harshly. After a series of adventures in the Pacific the ship reached Malacca, where Dalrymple set sail while Bruce was still onshore. Dalrymple then sold Atahoe into slavery in Penang.

With the help of the local British authorities, Bruce was able to rescue Atahoe and secure a passage for them first to Bengal (where their plight was recorded in the Calcutta Gazette in May 1809) and then back to New Zealand. On this homeward leg, Atahoe gave birth to a daughter. Instead of being taken all the way back to New Zealand, Bruce, Atahoe and their baby were then dropped at the Derwent (Hobart), and from there made their way to Port Jackson. Atahoe died of dysentery a few weeks later, on 27 February 1810. Bruce, fearing arrest for his earlier desertion, fled to England, leaving his daughter in the female orphanage. He lived out his days in London, always hopeful of a return to New Zealand.

After the disappearance of Bruce and Atahoe, Te Pahi’s goodwill towards traders and whalers must have been decidedly strained. This can only have been exacerbated when, in around March 1808, Captain Alexander Bodie of the Elizabeth tied Te Pahi to the ship’s rigging for hours in a dispute over a trade of potatoes. During their stay at Whangaroa, however, Ceroni dropped his watch, which the Whangaroa people regarded as some kind of atua, into the water. This was a calamitous incident, for, as Wilson put it, it would have been seen as ‘an act as serious as breaching a tapu’. Moreover, after the ship departed, Whangaroa Māori were afflicted by the outbreak of an epidemic which claimed many lives. In local minds, the two events were connected.

Te Pahi himself fell ill again on the voyage to Port Jackson (via Norfolk Island), and arrived in New South Wales on 10 July 1808 seriously unwell. He was taken to Government House with orders that he be well cared for during his recovery. But this was to be no repeat of Te Pahi’s stay with Kāwana Kingi in late 1805 and early 1806. The government of New South Wales was in turmoil after a mutiny against Governor Bligh, led in January 1808 by Major George Johnston of the New South Wales Corps. Bligh was under house arrest and, though Salmond felt that Te Pahi must have at least seen him, there is no record of them conversing. After Te Pahi recovered, he was asked to leave Government House and had to sleep rough; without King or Marsden in town, he lacked a benefactor. While Te Pahi was in Sydney, Joseph Foveaux arrived and
assumed the position of Acting Governor, but Salmond doubted Foveaux would have shown Te Pahi any sympathy. As she put it, ‘Te Pahi’s faith in the mana of governors must have been shaken’ by his experiences. He and his sons sailed home with Ceroni in the Commerce on 26 September 1808.143

3.5.2 The attack on the Boyd and the death of Te Pahi
Not long after this, on 15 November 1808, Maatara himself arrived back in the colony from England, and also stayed at Government House, where Bligh remained confined. As we have noted, he returned to New Zealand on the trading vessel City of Edinburgh, owned by Alexander Berry and captained by Simeon Pattison. Travelling with them as a passenger on the voyage was Ceroni, who initially suggested that the ship take on supplies at Whangaroa but then became distinctly uneasy at the prospect as they approached. Instead, Pattison took the boat on to the Bay of Islands, arriving on 1 March. This was in fact the first of three occasions when the City of Edinburgh nearly put into Whangaroa. The second was when Te Pahi likewise suggested to Berry that he resupply his ship there, since Te Pahi now considered Whangaroa under his own mana following the death of the leading chief in the epidemic. But Berry instead chose to anchor off Kororāreka in the territory of Te Pahi’s Ngāti Manu rivals, the brothers Tara and Tupi.144

Here we note that the hapū living around the northern shores of the Bay of Islands – such as Ngāti Rēhia, Te Hikutū, Ngāti Tautahi, and Ngāi Tawake at Te Puna, Kerikeri, and Waimate – formed an alliance in opposition to the southern hapū at Kororāreka, Kawakawa, Taiāmai, and Pāroa, like Ngāti Manu, Ngāti Hine, and Ngāti Rangi. As we indicated in chapter 2, among Māori living at the Bay, only the northern alliance were known as ‘Ngāpuhi’. Among other tribes whom the Bay of Islands people united against in warfare, ‘Ngāpuhi’ was used to refer to both northern and southern alliances – as well as related kin groups in Hokianga – from about 1815 at the earliest.145

The City of Edinburgh remained at the Bay of Islands for three months undergoing repairs before sailing off in late May 1809 on a trading expedition to the Pacific. At least half a dozen Māori now served on the crew. During their time at the Bay, Berry and his party had been attacked by Waraki, Te Pahi’s ally at Waitangi. However, Berry’s men responded with firepower and drove Waraki’s warriors off, killing many in the process. Such attacks were clearly the consequence of the decision to do business with one alliance at the Bay rather than another. After a number of months at sea, the City of Edinburgh returned to New Zealand in late October to complete its cargo. Berry was determined to call at Whangaroa on this (third) occasion, but the Māori crew members begged him to steer clear of the place. They explained that, as revenge for the deaths caused by Ceroni’s accident with the watch, the Whangaroa people had sworn to kill all the sailors of the next European ship to visit. Berry put this down to petty jealousy and ignored them, but as fate would have it strong winds prevented the City of Edinburgh from entering Whangaroa, and the ship sailed on to Bay of Islands instead.146

A ship that soon did put into Whangaroa Harbour, however, was the transport Boyd, which had departed from Sydney on 9 November 1809. It may well have called at Whangaroa because it had several Māori crew members from there, including a man called Te Āra, also known as George, who was the son of the local Ngāti Uru chief Pipikoitareke.147 Te Āra was in fact related to Te Pahi by the latter’s marriage to Ngara, the daughter of Te Āra’s brother Te Puhi. Te Āra had been ill and unable to work on the Boyd’s voyage from Port Jackson, and as a result he had been insulted, tied up, and flogged by the ship’s master, John Thompson, despite the protests of the other Māori sailors. These others were also apparently mistreated. To add to this humiliation, Te Āra had his possessions, including his clothes, taken from him, so that when the Boyd arrived at Whangaroa ‘he was received by his countrymen almost in a state of perfect nudity’. When Te Āra’s people learnt what had happened to him and the others, they decided to take utu by seizing the ship and killing the Pākehā crew.148

There are numerous accounts of what took place,149 but it seems that Thompson and most of the crew were lured into the bush to cut spars, and were there confronted
about the indignities suffered by Te Āra. They turned to walk away, but were massacred and later eaten. Their attackers donned the dead sailors' clothes and rowed out to the Boyd that night, boarding the ship and killing all the remaining crew except those who escaped high into the rigging. Those men, too, were eventually captured and killed. Wilson calculated the death toll at between 40 and 70 Europeans. The number who died in this episode rose still further when Pipikoitareke discharged a musket on board the ship and ignited gunpowder, killing himself and around 14 fellow Māori, and burning the ship to the waterline. Several Europeans were spared, however: a woman and three children, including the cabin boy. Apparently the second mate also survived, initially at least, but he was also dispatched when it was found he was not up to the task of manufacturing iron fish-hooks.

Why exactly was the Boyd’s crew attacked? Some historians seem to regard the attack as the inevitable
consequence of Ceroni dropping his watch and the subsequent epidemic. Wilson, for example, wrote that these events ‘obliged’ Whangaroa Māori ‘to inflict retribution on the next vessel to appear a year later: the Boyd’. Others, however, ascribed the killings more to Te Āra’s treatment on the Boyd itself. O’Malley and Hutton considered that the decision to attack came only after Te Āra had ‘recounted the cruelties inflicted upon him by the Europeans to his tribe once on shore’. But all seem agreed that the incident with the watch and the subsequent deaths were – as Wilson put it elsewhere – ‘pre-disposing factors in an event triggered off by the lack of respect shown by Captain Thompson towards the chief’s son’.

A claimant perspective on the attack on the Boyd was provided by Aldridge. He explained the attack in similar terms to those he used in respect of the killing of Marion du Fresne – that is, as a reaction to the cumulative impact of a series of affronts:

If you think of all the things that had transpired, all I can see is that Whangaroa Māori implemented a law. They thought, you’ve done this thing to our people, and we’ve sat in judgment and this is what we’ll do. It goes back to utu, which i have talked about already  . Utu is not revenge; it is about what a father does when his son is treated in this way. it is about effecting a law and restoring balance . If the various Pakeha had done these things in England, they would have been punished – which is also effecting a law. . . . Because of the cumulative effect of all of the incidents I have mentioned, it probably would not have mattered which ship had arrived. Te Ara’s treatment may have triggered the incident, but overall Ngapuhi were trying to enforce their own laws in their own country. De Surville, Du Fresne, Ceroni, the epidemic, the kidnapping of Huru and Tuki, and the treatment of Ranginui – those events and many others made the Boyd incident ‘happen’.

It seems that Te Pahi reached Whangaroa after the attack and was dismayed by what he encountered. Wilson speculated that he in fact went to Whangaroa to warn the crew of the Boyd of the dangers they faced given Ceroni’s accident with the watch. According to later accounts, Te Pahi arrived while some surviving crew remained high in the rigging. He encouraged them down and promised to protect them, but then was forcibly restrained while these men too were killed. It is impossible to know if this is true. What seems clear, however, is that Te Pahi accepted an invitation to share in the loot, and took away three boat-loads of plundered goods. He may have felt justified in doing so because of the ill-treatment he had received in recent times – not just from the pilot of the General Wellesley and Captain Bodie of the Elizabeth but also from Captain Hingston of the Speke (the vessel that had brought Maatara home from England), who had flogged him over a missing axe. Alternatively, as Shawcross suggested, he may have been bribed to cease his defence of the surviving sailors. In any event, his share of the spoils and indeed his very presence at the scene allowed his rivals to frame him as the principal instigator of the whole affair.

The first Europeans to reach Whangaroa after news of the burning of the Boyd filtered back to the Bay of Islands were a party led by Berry. At Whangaroa, he first met two Ngāti Uru chiefs, whom Salmond thought were ‘very likely’ Te Āra and his brother Te Puhi, who freely admitted the fact of the killings. Berry held the pair captive at gunpoint until he had retrieved the survivors and the ship’s papers. He then took the two men back to the Bay of Islands and performed a mock execution of them, finally allowing them their freedom on the condition that they became slaves of Matengaro, a Bay of Islands chief associated with Tara whom Berry was close to. It was probably Matengaro – a likely enemy of Te Pahi – who convinced Berry that Te Pahi was entirely to blame for the killings. Before leaving the Bay, Berry, Pattison, and the City of Edinburgh’s mate, James Russel, wrote a notice warning other ships’ captains about what had happened. This statement, which was reproduced in the Sydney Gazette on 21 April 1810, claimed that Te Pahi – ‘that old rascal . . . who has been so much, and so undeservedly caressed at Port Jackson’ – had ambushed the Boyd’s crew and killed all but a few of them.
The blowing up of the Boyd in Whangaroa Harbour in 1809. An iconic and rather fantastic depiction, this image was painted 80 years after the event. Between 40 and 70 European members of the ship’s crew were killed and eaten by Ngāti Uru after one of their relations had been mistreated while working as a sailor during a voyage from Sydney. The Boyd’s gunpowder then exploded accidentally, killing 14 Māori. This infamous episode reinforced stereotypes of Māori as ‘bloodthirsty savages’.

as a treacherous murderer until contrary accounts began to make their way into print several months later. Not only that, but in late March 1810 a revenge party of sailors from half a dozen whaling ships that were anchored at the Bay of Islands descended upon Te Pahi’s island home off Te Puna, burned his village, and killed some 60 people. Te Pahi himself was lucky to escape: he was wounded by musket shot and had to swim for his life to the mainland. But his luck ran out when he was killed a short time later in a fight with a Whangaroa rival that had most likely been precipitated by the Boyd affair. From staying with Kāwana Kingi as an honoured guest in late 1805 and early 1806, and sending his son Maatara to England where he met royalty in 1807, Te Pahi’s world had within a few years disintegrated. He had been subjected to repeated mistreatment by the masters of European ships; his daughter Atahoe and son-in-law had vanished on the General Wellesley; and his son Maatara had died of some bronchial condition not long after his return to the Bay with Berry. Now Te Pahi himself was dead, a victim, as Salmond put...
it, of a ‘lethal combination of inter-tribal animosity and European antagonism’.

Wilson saw Te Pahi’s demise in much broader terms. He argued that King’s lavish attention to Te Pahi had caused resentment and jealousy among the whalers, who ‘were interested only in favourable terms of trade and cheap labour’ and had ‘little sympathy with policies directed towards the well-being of the people’ (policies, no doubt, such as King’s and Bligh’s orders of 1805 and 1807 respectively). He noted that this foreshadowed the later divergence between the settlers on the ground in New Zealand and the Colonial Office. Te Pahi, Wilson suggested, was ‘the first to be caught between these opposing European points of view’ and ultimately ‘paid dearly for King’s favours’.

Now Te Pahi and King were both dead, and it fell to the next set of leaders to repair the relationship between Ngāpuhi and the British.

3.6 Ruatara, Marsden, and the Establishment of the Rangihoua Mission

3.6.1 Ruatara’s return and further mistreatment

The successors to Te Pahi and King in furthering the relationship between Bay of Islands and Hokianga Māori and the British were clearly Ruatara and Marsden. But the Boyd killings put paid to Marsden’s plans to found his mission in New Zealand, for the time being at least. As he wrote,

“This most awful calamity extinguished at once all hopes of introducing the Gospel into that country. Every voice was naturally raised against the natives, and against all who were in any way attached to their interest.”

There were several other consequences as well. The attack on Te Pahi’s settlement was another reminder to Māori of the potency of firearms, and may well have contributed to the growing drive for Māori to arm themselves. It was also a reminder to Europeans that Māori were cannibals, causing some to claim that Māori had worse characters than Aboriginal people in Australia – a reversal of the prevailing stereotypes. Marsden was one who worked indefatigably to counter this negativity.

Despite the fall-out, there remained positive signs for the future. Ballara felt that the good impression Te Pahi had made still gave British officials ‘confidence in the possibility of mutually advantageous relations with Māori’. Māori, for their part, remained generally willing to overlook misbehaviour by Europeans in order to maintain trading relationships, thus recognising the benefits of finding middle ground. And Marsden argued repeatedly that events such as the Boyd killings were essentially the fault of Europeans. ‘The New Zealanders will not be insulted with impunity’, he told Governor Lachlan Macquarie. Marsden sought to pressure the Governor to establish a more formal British presence in New Zealand, for the express purpose of controlling the behaviour of British subjects, rather than allowing unfettered European expansion. This included obtaining official support for missions. Macquarie, for his part, had first and foremost economic interests to consider. He had supported influential Sydney merchant Simeon Lord’s request for a flax monopoly in New Zealand in 1810, and saw such resources as increasingly important.

Macquarie also offered Thomas Kent appointment as a Justice of the Peace in New Zealand in 1810, in conjunction with Kent’s interest in Lord’s venture there, but nothing came of either the business or the appointment. Marsden considered that commerce and civilisation were essential pre-requisites to Christian conversion. Here, the interests of the missionaries and the authorities in New South Wales in establishing some form of British presence in New Zealand were likely to align, even though there was no specific authorisation from Britain to do so.

We shall return, then, to the story of Ruatara and Marsden. At last mention, they had disembarked from the Ann at Sydney in February 1810. Marsden had in mind that Ruatara would proceed directly to the Bay of Islands with his first two mission recruits, carpenter William Hall and ropemaker John King. Marsden had recorded his confidence that Māori ‘would soon become a great nation, if the Arts could be introduced among them, without the
ruinous vices and prevalent diseases of Civilized Society'. As noted, the Boyd killings put paid to that. General antagonism towards Māori now prevailed at Port Jackson, and Hall and King became nervous at the prospect of crossing the Tasman. Hall concluded it was providence that had saved them from 'a very hostile savage kind of people'. For Ruatara, the postponement of Marsden's mission project had a positive side. He spent 18 months labouring for Marsden at his Parramatta farm and learning the art of agriculture, particularly the cultivation of cereal crops.\textsuperscript{175}

In late 1811, Ruatara expressed a desire to return to the Bay of Islands, and Marsden arranged for him and three other Māori staying at Parramatta – one of whom appears to have been a son of Te Pahi – to work their passage home on the whaling ship Frederick under Captain Alexander Bodie.\textsuperscript{176} Marsden sought an assurance from Bodie that he would treat Ruatara and his companions well and, when this was forthcoming, allowed them to embark on the ship. Marsden privately expressed some suspicion of Bodie, however.\textsuperscript{177} He may not have known that Bodie had tied Te Pahi to the rigging of the Elizabeth at the Bay of Islands in early 1808 (when Marsden was absent from New South Wales in England).\textsuperscript{178} As it transpired, his doubts were justified. After six months' whaling – and despite Ruatara having used his connections to help provision the ship at North Cape with pork and potatoes – Bodie refused to drop Ruatara and his companions off in the Bay of Islands. Instead he made for Norfolk Island, where he abandoned Ruatara and two of the other Māori crew, forcibly taking Te Pahi's son with him on the ship's voyage to England.\textsuperscript{179}

Once again, Ruatara had been left unpaid, destitute, and practically naked in a foreign port by an unscrupulous ship's captain. He had also lost the seeds and tools that Marsden had given him, and which he so desired to make use of at his settlement at Rangihoua, near Te Puna. Coincidentally, on this occasion too his salvation came in the form of a ship named Ann, this time a New Bedford whaler under the command of Captain Gwynn, who clothed and fed Ruatara, and brought him safely back to Port Jackson in August 1812. Fittingly, perhaps, when Marsden again arranged Ruatara's working passage home to the Bay of Islands in late 1812 it was on another a ship named Ann, this time a British whaler,\textsuperscript{180} from which Ruatara disembarked at the Bay in early 1813. As Wilson noted, he had spent almost his entire time abroad since 1805.\textsuperscript{181} At last, he could plant fields of wheat on his home soil. Marsden wrote that Ruatara was anxious that his country should reap the advantages of which he knew it was capable, by the cultivation of the soil on waste lands, and was fully convinced that the wealth and happiness of a country depended greatly on the produce of its soil . . .\textsuperscript{182}
Just after Ruatara had left Port Jackson on the Frederick, in late 1811, Marsden received a visit from two more Māori. These were Kawiti, who would go on to become a powerful leader of Ngāti Hine, and another of Te Pahi’s sons. Kawiti explained that his matua (senior relation) Tara had sent him ‘to Port Jackson to see if he could learn any thing, or obtain any useful Articles’. Instead, Kawiti had endured possibly a worse experience while sealing on Macquarie Island than Ruatara’s Bounty Islands ordeal, receiving scant reward for 10 months of relentless hardship. When he got home, and Tara asked him what he had learnt and brought back with him, Kawiti said he would ‘tell him I brought nothing, I learn nothing’. He also passed on the news that Tara had recently loaded a ship with spars at the Bay of Islands that had then sailed off without making payment, and claimed that ‘the English treated the New Zealanders very bad’. ‘I was a King in New Zealand’, Kawiti explained, ‘but now I am a Cook at Port Jackson.’

Marsden was by now also receiving regular reports from visiting Māori and European sailors that the Boyd killings had been provoked and that Te Pahi had been innocent of blame. He must have felt vindicated, after the initial reports suggested he had naively placed his trust in a bloodthirsty killer. He began to compile evidence about the mistreatment of Māori and other Pacific peoples by European ships’ captains, and in 1813 presented Governor Macquarie with ‘a sheaf of sworn affadavits’ detailing ‘outrages’ going back as far as 1801.

As a result of this lobbying, Macquarie issued a proclamation on 1 December 1813 that went further than the earlier orders of King and Bligh. It noted that ‘just’ complaints had been made against ship captains and their crews by Māori and other islanders, and that crew members had also ‘fallen a Sacrifice to the indiscriminate Revenge of the Natives of the said Islands, exasperated by such Conduct’. In order to protect lives, property, and trade, the Governor required the owners and masters of British-registered ships to sign a £1000 bond of good behaviour before leaving port. In this they would undertake to treat islanders and their property well, and not to remove any male islander from his home without his and his people’s consent, or indeed any female islander without the Governor’s consent. Male islanders were to be paid in full and returned by the ship’s captain ‘wheresoever he shall be requested’ by the islanders to do so. Thus, by imposing this good behaviour bond, Macquarie’s proclamation went much further than those issued previously. It attempted to impose pre-emptive measures to control the actions of British subjects in distant places.

The proclamation also noted that ‘the Natives of all the said Islands are under the Protection of His Majesty, and entitled to the good Offices of his Subjects’. Any sailors or masters charged and convicted of offences ‘against the Law of Nature and of Nations’ would ‘be further punished with the utmost rigour of the Law’. The Governor’s extension of His Majesty’s ‘Protection’ reflected the necessity the governors felt to act on the reports they were receiving. As Ward put it:

> It was convicts under their charge who were escaping to the islands. It was often traders from New South Wales who carried bloodshed and crime to the islands. It was in New South Wales that the loudest complaints were voiced by missionaries and traders against the unregulated condition of the islands.

The fact was, however, that crimes (as defined in Britain) committed by British subjects in New Zealand, as well as other islands of the ‘South Seas’, were beyond New South Wales’ formal jurisdiction. Macquarie’s ‘unilateral action’ in his 1813 proclamation, McHugh noted, was ‘unauthorised by the Crown and received no subsequent approval’. The British Government clarified the situation in 1817, as we shall see below.

### 3.6.2 Kendall and Hall visit Rangihoua

Marsden’s plans for the mission in New Zealand were proceeding well. He had been joined in October 1813 by Thomas Kendall, who was to be the mission’s school teacher. While Kendall was eager to leave for New Zealand, Hall remained reluctant, though he was soon enough persuaded by the threat of dismissal from the CMS and the loss of his tools if he did not. Furthermore, Marsden had set up a philanthropic organisation to
support (and of course convert) islanders brought to Port Jackson, for which Macquarie agreed to act as patron. Its full title was the ‘New South Wales Society, for Affording Protection to the Natives of the South Sea Islands, and Promoting their Civilization’. Marsden then purchased the brig *Active* to serve as the mission’s own vessel, signing on Peter Dillon as its first master. While Macquarie would not let Marsden leave Port Jackson, because he held an official post as chaplain in New South Wales, Kendall and Hall were free to go, and they sailed in the *Active* in March 1814 with a crew that included a young Ngare Raumati man called Tui (who had been staying at Parramatta), two Tahitians, a Hawaiian, and an Aboriginal.

In the meantime, Ruatara had returned to a very different Rangihoua from the one he had left. Te Pahi had of course died, and his most likely successors were also either dead or judged not fit for the task. It was thus Ruatara who succeeded to Te Pahi’s mana, probably because of his knowledge of Europeans. But he was still young – perhaps about 25 or 26 – and his leadership was not settled. Indeed, he was ridiculed by some of his people for the stories he told of incredible sights in other lands. He distributed seeds and predicted that his community would soon have bread and biscuit to eat. But his relations pulled their ripened wheat plants out of the ground, expecting to find grains at the roots. Now disbelieving Ruatara’s claims, they burned their remaining crops. Though Ruatara maintained his own wheat crop, matters were made worse by his lack of a proper mill to grind his grains into flour. Altogether, his mana was diminished by this failure to deliver edible proof of his advocacy for planting wheat, and he sent an urgent request to Marsden for a hand mill.

After first calling at Van Diemen’s Land, the *Active* arrived at Rangihoua in June 1814. Kendall and Hall’s main object was to ascertain the likely safety of the proposed mission in New Zealand, and in that regard they were well satisfied. Both men were warmly welcomed and Kendall wrote that ‘the true character of the New Zealanders is not so despicable as Europeans are apt to imagine. . . . It has been truly said of these People, that they are a Noble Race.’ From Ruatara’s perspective, perhaps the most important item of the *Active’s* cargo was a mill sent by Marsden. He put it to use immediately, grinding wheat and making a cake in a pan. At last Ruatara’s doubters were won over: Marsden wrote that the chief’s relations ‘shouted for joy’ at beholding such an achievement.

Marsden also sent Ruatara a letter of friendship:

*Duaterra King*

I have sent the Brig *Active* to the Bay of Islands to see what you are doing; and Mr Hall and Mr Kendall from England. Mr Kendall will teach the Boys and Girls to read and write. I told you when you was at Parramatta I would send you a gentleman to teach your Tamoneeke’s [tamariki] and Cocteedoes [kootiro] to read. You will be very good to Mr Hall and Mr Kendall. They will come to live in New Zealand if you will not hurt them; and teach you how to grow corn Wheat and make Houses. Charles has sent you a cock and Mrs Marsden has sent you a shirt and jacket. I have sent you some wheat for seeds, and you must put it into the ground as soon as you can. I have sent you a mill to grind your corn. If you will come in the *Active* to Parramatta, I will send you back again. Send me a man or two to learn how to make an axe and everything. You will send the *Active* full of mocca [muka – dressed flax], potatoes, lines, mats, fish and nets. I have sent a jacket for Kowheetee [Kawiti]. Tell him to assist you and Terra [Tara] to lade the ship. You will be very good to all my men and not hurt them, and I will be good to you. Anne, Elizabeth, Mary, Jane, Charles, Martha, Nanny and Mrs Bishop, Mrs Marsden are all well, and wish to know how you are. If you do not come to see me send me word by Mr Kendall and Mr Hall what you want, and I will send it to you. – I am,

Your friend,

Samuel Marsden

Professor Alison Jones and Dr Kuni Jenkins referred to this letter as ‘the first treaty’, in that it responded to Ruatara’s request for a teacher to come to live at his settlement with a ‘simple proposal: “You will be good to me and I will be good to you”’. In this way, they argued, the letter laid the basis for Pākehā settlement in New Zealand.
We are not aware of any other description of Marsden’s arrangement with Ruatara as a ‘treaty’, although we agree that the letter proposes a set of reciprocal obligations to make the new mission settlement work.

Hall and Kendall stayed six weeks. Despite the enmity between those on the southern and northern shores of the Bay of Islands, Marsden had sent a very similar letter to Tara at Kororareka, and when Hall and Kendall visited him they were well received. They also spent a pleasant time with Pōmare at Matauwhi. In Salmond’s view, these meetings with southern alliance leaders made the northerners nervous, and when Ruatara introduced Hall and Kendall to his uncle, Hongi Hika, he stressed the great number of fighting men at Hongi’s disposal. Hongi possessed 10 muskets and knew how to fire them, but he nevertheless struck Kendall as having ‘a very mild disposition’. As it happened, when the *Active* was ready to leave the Bay of Islands in late July, Hongi came on board as a passenger with his eight-year-old son Rapiro. As Ruatara’s senior relation, Hongi insisted that Ruatara come too and act as interpreter. Various other Bay Māori joined or rejoined the vessel, including Tui and his brother Korokoro. According to Dr (later Professor) James Belich, Korokoro accompanied them to ‘keep an eye on’ Hongi and Ruatara.

3.6.3 Hongi and Ruatara in Sydney and the mission’s departure for New Zealand

The *Active* arrived at Port Jackson on 22 August 1814. Kendall and Hall reported on the Bay of Islands’ wonderful climate, scenery, and soil. Marsden now had 12 Māori visitors at Parramatta, who were shown all kinds of trades and skills: spinning, weaving, carpentry, smithing, brickmaking, gardening, mechanics, and various types of farming. They observed the church-going of the Sabbath and Marsden dispensing justice as a magistrate. Marsden wrote:

> They tell me when they return, they shall sit up whole nights, telling their People what they have seen, and that their men will stop their Ears with their Fingers – We have heard enough, they will say, of your incredible Accounts, and we will hear no more – they are impossible to be true.\textsuperscript{199}

The visitors also met Governor Macquarie, who made them gifts of clothing and promised them livestock when they went home. Ruatara noted the current scarcity of wheat in New South Wales, and hatched plans to export wheat to Sydney – as Salmond put it, ‘the first Maori scheme for an export venture’.\textsuperscript{200}

Marsden pushed on with his plans for the establishment of his New Zealand mission, full of anticipation for his evangelical work. He wrote:

> I consider New Zealand as the Great Emporium of the South Sea Islands, inhabited by a numerous race of very intelligent men. I hope to erect the Standard of Christ’s Kingdom there.\textsuperscript{201}

In early November 1814, Macquarie gave Marsden permission to go, on the condition that he would ascertain the potential for New Zealand as the site of an official British settlement. Macquarie issued a new proclamation which granted Marsden formal leave for a period of four months to establish a mission in New Zealand; Kendall was also appointed as one of his Majesty’s Justices of the Peace in the Bay of Islands, in New Zealand, and throughout the Islands of New Zealand, and those immediately contiguous thereto.

Kendall, the proclamation stated, was to be ‘respected and obeyed as such throughout the said Islands and Places’.\textsuperscript{202}

In a separate proclamation issued three days earlier, Macquarie had also declared that ships’ masters and crew had been ‘offering great Insult and Injury’ to Māori of the Bay of Islands and other parts of New Zealand, and that this was causing ‘great Prejudice to the fair Intercourses of Trade which might be otherwise productive of mutual Advantages’. The Governor was
equally solicitous to protect the Natives of New Zealand and the Bay of Islands, in all their just Rights and Privileges, as those of every other Dependency of the Territory of New South Wales . . .

This was the first of such proclamations targeted specifically at New Zealand, and the first time a New South Wales Governor had described New Zealand as a ‘Dependency’: a territory over which the full legal powers of another territory would apply. As we have seen, New South Wales did not possess these powers over New Zealand, but Macquarie’s proclamation suggested further means by which certain powers would be exercised. Māori could not be removed from their districts without the permission of their families or chiefs; Kendall (who was described as Resident Magistrate in this proclamation) would have to certify any such permission as having been granted. The proclamation further disallowed the landing or discharge of any sailors in New Zealand without similar approval. In order to carry this into effect, Ruatara, Hongi, and Korokoro were invested with Power and Authority . . . and are to receive due Obedience from all Persons to whom these Orders have Reference, so far as they relate to their obtaining Permission to remove or carry away any of the Natives of New Zealand, or the adjacent Isles, or to land or discharge any Sailors or other Persons thereon.

As had been the case with his 1813 proclamation, Macquarie was again asserting a form of jurisdiction over New Zealand, despite the full range of his actions – from Kendall’s appointment to the vesting of authority in rangatira – lacking specific authorisation. This 1814 proclamation, however, was an important development, for it marked the first operative designation of identified individuals (one British and three Māori) in New Zealand as purportedly having official powers. The proclamation was additionally important, as McHugh noted, as ‘one of the earliest signs of what was to become a consistent feature of British practice in New Zealand’, in that it ‘recognised the power and authority of the Chiefs and through them purported to establish some British authority over its own seafaring subjects.’

In any event, the Active sailed from Sydney on 28 November 1814. The large party included Marsden; J L Nicholas; the missionaries Hall, Kendall, and King and their families; a new captain (Thomas Hansen) and his wife; the crew (including five Māori and a Tahitian); Ruatara; Hongi and his son; Korokoro; Tui; and a number of others. Aside from their officers’ uniforms, Macquarie gave the three rangatira a cow each. Before the boat left Port Jackson it sat for several days in Watson’s Bay waiting for the winds to change. Marsden and Nicholas noticed that Ruatara and the other chiefs appeared ‘gloomy, sullen, and reserved’, and wondered if there had been some ill-feeling caused by the distribution of gifts. As Nicholas later wrote in his book, Narrative of a Voyage to New Zealand,
years, the whole race of that once happy people would be entirely extinct. This diabolical reasoning succeeded but too well in awakening all the fears and suspicions of Duaterra, who communicated his apprehensions to the other chiefs.[206]

Marsden considered that the idea of being overrun by Europeans had ‘darted into [Ruatara’s] mind like a poisoned arrow’. Ruatara now also feared the anger of his own people ‘if he should be the author of their country being taken and given to the English’. Marsden offered to turn the ship back and ‘never more think of holding any intercourse with his country’ – a position O’Malley and Hutton described as a ‘resort to brinkmanship’. Ruatara relented upon receiving Marsden’s assurance that the missionaries would make their settlement at Rangihoua, ‘where he and his tribe could easily protect it’. With this arranged, wrote Marsden, Ruatara ‘resumed all his usual good humour’.208

It is not clear exactly who was pressuring whom here. Dr (later Dame Professor) Judith Binney described Ruatara as ‘torn between his fears and his desire to introduce the techniques of agriculture’ and as offering his agreement only ‘reluctantly’.209 Belich, by contrast, thought it little wonder Ruatara’s mood had improved, for he ‘had just secured a monopoly over the first permanent European settlement in New Zealand, a goose that would reliably lay eggs of iron, if not gold’.210 Wilson summed up the exchange between the two men like this:

Marsden, it seems, outwitted Ruatara but it is possible that Ruatara had outwitted Marsden. We can be certain that Marsden had no intention of abandoning his missionary voyage, nor of going elsewhere than to the Bay of Islands. But if his offer, or threat, was no more than bluff, one may almost suspect Ruatara of having put on a show with the sole object of getting the mission more firmly under his control.211

3.6.4 The mission is established
The Active reached the coast of New Zealand on 16 December 1814. It anchored first at North Cape and then again further south at the Cavalli Islands. Ruatara and Hongi took the opportunity to make peace with Te Āra and Te Pahi, who were passing through Matauri Bay with 150 Ngāti Uru warriors after attending a tangi. Marsden quizzed Te Āra about the Boyd killings, and gained further confirmation that they had been provoked by European cruelty and that Te Pahi was innocent of blame. The Active reached Rangihoua on 22 December 1814. The locals were astonished by the livestock unloaded, particularly when a cow ran amok, and when Marsden mounted and rode his horse along the beach. For Ruatara, whose stories about the Europeans’ animals had been greeted with such scepticism by his people, this was another moment of vindication.212 He told Marsden triumphantly,

I have now introduced the cultivation of wheat in New Zealand. It will become a great country, for in two years more I shall be able to export wheat to Port Jackson in exchange for hoes, axes, spades, and tea and sugar.213

On 24 December, a spectacular welcome for the European settlers took place. Korokoro and a large body of his warriors brought Marsden and Nicholas to the shore in a fleet of canoes, and then held what Nicholas described as a ‘sham fight’ with an equivalent party of Ruatara’s people. Jones and Jenkins were critical of historians’ lack of emphasis on – or even mention of – this ‘amazing and electrifying event’.214 As they put it,

The grand choreography of the event ensured that the arrival of Marsden was to be understood by local iwi as particularly auspicious. The pōwhiri at Rangihoua was spectacular: it took up a large amount of space – the whole beach and foreshore, as well as the valley leading to the body of the pā. Significantly, during the wero the tangata whenua came charging into the midst of the manuhiri (represented here by Korokoro’s men) – a massive display of confidence, defiance, and challenge towards the arriving Europeans. An intensely emotional mingling of both sides occurred early in the event.215

From the Māori perspective, they argued,

a commitment to a relationship was made at that event; a relationship that was to be characterised by wehi and ihi and
▲ Rangihoua Pā and the Oihi missionary settlement, circa 1830. This image does nothing to convey the steep and enclosed nature of the site on which the mission settlement was located. The location of the pā, while also steep, was in reality not quite so vertical as depicted here.

▲ Samuel Marsden landing at Rangihoua, December 1814. This is a rather fanciful reconstruction, complete with a snow-covered peak in the background. In reality, in Marsden’s formal welcome on 24 December, a dramatic ‘sham fight’ was staged between hundreds of warriors, signifying the great importance of the occasion.
manaakitanga and which would be productive for both its partners. In more dramatic terms, because of the relationship between Ruatara and Marsden, and the successful powhiri on the beach that engaged the people, Māori in the north-eastern Bay of Islands now became locked into a highly significant shared project that would change their lives and the history of their country for ever.

On Christmas Day, Ruatara flew the Union Jack at Rangihoua. Marsden, who saw it when he awoke on the Active, wrote:

I considered it the signal for the dawn of Civilization, liberty and Religion in that dark and benighted land. I never viewed the British Colors with more gratification, and flattered myself they would never be removed till the Natives of that Island enjoyed all the happiness of British Subjects.

Marsden went on shore in his surplice to deliver his first sermon, while Hongi, Ruatara, and Korokoro wore their officers’ uniforms, including their swords. A large number of Korokoro’s people remained present; together with the Rangihoua locals, there would have been several hundred people in attendance. At the conclusion of the service, Ruatara translated Marsden’s sermon for them. That evening Marsden rejoiced that ‘the time was at hand when the Glory of the Lord would be revealed to these poor benighted Heathens’.

Just what Ruatara said on this occasion is an intriguing question. We can be relatively certain that he did not translate Marsden’s words too closely or literally. Jones and Jenkins wrote:

The sermon, with all the settlers present, was Ruatara’s opportunity for publicly demonstrating his ‘control’ of the Europeans, as well as for reinforcing through his kōrero the possibility of positive social and economic change for his region. . . . Ruatara was not merely Marsden’s interpreter, quite the contrary. Marsden, on this day, had become the assistant in Ruatara’s – and his more powerful and ambitious uncle Hongi’s – plans. All this is not to suggest that Marsden was merely a bit-player in Ruatara’s independent scheme. Marsden appears to have had a big influence on Ruatara’s thinking about the possibilities for his people, and Marsden had his own ambitious plans for expansion of his control. The occasion of the Pākeha tohunga’s public performance brought the crowd together, but it was Ruatara who made the important speech, and to whom the people responded with a rousing haka.

Despite the ceremony that attended the first days of the mission, Ruatara remained obviously ambivalent about it. Kendall complained that Ruatara ‘had prepared the way for our entrance, but seemed to be almost unwilling to aid us any further,’ while King wrote that ‘There has been a great deal said about Duaterra and a great deal expected from him, by some . . . but his mind was much prejudiced against us.’ Ruatara would have valued the mana and trade that accrued to him through the presence of the missionaries, but – aside from his fear of being overrun – was probably not much interested in religious moralising and talk of civilisation. He kept the mission under his watchful eye and resisted any notion of its relocation (a genuine concern given that at least one rival chief had tried to tempt Marsden into settling elsewhere). Ruatara even controlled the mission’s stores and once took charge of the missionaries’ entire stock of iron in order, as Belich put it, ‘to remind them who was boss.’

What compounded everything was the mission settlement’s location, on the steeply sloping, south-facing hillside named Oihi above Rangihoua Bay. The site has been described as a ‘barren, claustrophobic cove,’ and its utter unsuitability for agriculture left the missionaries with no hope of establishing any kind of independence from their Māori hosts. They were left at Ruatara’s mercy, which was undoubtedly his intention. This may have been Marsden’s preference too, for making the mission equally reliant on his dispatch of supplies from Sydney.
was a means of him maintaining his own form of control. Then, just before Marsden was due to return to New South Wales, Ruatara fell seriously ill. Despite the condition of his mission’s protector, Marsden sailed away, leaving the three families and some unmarried men in a temporary, draughty, leaky home divided into partitions. Ruatara died on 3 March 1815, only a week after Marsden’s departure.

The day he left, Marsden was able to execute what he saw as a deed of purchase for the Oihi mission site, which was estimated to cover 200 acres. The wording of the deed, which had been drawn up on parchment before he left Sydney and was the first such document to be used in New Zealand, was as follows:

> Know all men to whom these presents shall come, That I, Ahoodee o Gunna [Te Uri o Kanae, a nephew of Te Pahi’s], King of Rangee Hoo, in the Island of New Zealand, have, in consideration of Twelve Axes to me in hand now paid and delivered by the Rev Samuel Marsden, of Parramatta, in the territory of New South Wales, given, granted, bargained and sold; and by this present instrument do give, grant, bargain, and sell unto the Committee of the Church Missionary Society for Africa and the East, instituted in London, in the
kingdom of Great Britain, and to their heirs and successors, all that piece and parcel of land situate in the district of Hoshee, in the Island of New Zealand, bounded on the south side by the bay of Tippona and the town of Ranghee Hoo, on the north side by a creek of fresh water, and on the west by a public road into the interior; together with all the rights, members, privileges, and appurtenances thereunto belong- 
ing; To have and to hold, to the aforesaid Committee of the
Church Missionary Society for Africa and the East, instituted
in London, in the kingdom of Great Britain, their heirs, suc-
cessors, and assigns, for ever, clear and freed from all taxes,
charges, impositions, and contributions whatsoever, as and
for their own absolute and proper estate for ever:

In testimony whereof, I have, to these presents thus done
and given, set my land, at Hoshee, in the Island of New
Zealand, this twenty-fourth day of February, in the year of
Christ one thousand eight hundred and fifteen.

THOS KENDALL
JL Nicholas

Hongi drew Te Uri o Kanae’s moko on the deed to signify the latter’s consent to the settlement, and Kanae declared the land tapu to all but the Europeans.

3.7 The Significance of Hongi’s England Trip
In this section we relate Hongi’s 1820 visit to England, which the claimants regarded as a momentous event in their history. In doing so we consider what motivated him to make this trip. Before that we first traverse a matter of growing concern at the Bay of Islands at the time: the question of how the behaviour of disorderly Europeans could be controlled and their transgressions punished.

3.7.1 The question of British authority at the Bay
With Ruatara’s death, Hongi assumed his role as mission patron (although Ruatara’s successor more locally at Rangihoua was Wharepoaka). The missionaries remained more or less stuck – William Hall left to live at Waitangi in September 1815, but was back at Rangihoua by January 1816 after his house was plundered, and both he and his wife were assaulted by visiting Māori. Hall, Kendall, and King were also stuck with each other, and the years following the mission’s establishment were characterised by much squabbling – and the occasional physical fight. Part of the problem was that they needed to trade to survive but, starting with Hall, began to do so individually, thus ruining any chance of a sense of community. They were also subjected to regular bullying by their Māori protectors, who regarded them (unlike Marsden) as having little status. As Shawcross observed, Rangihoua (and presumably other) Māori ‘were clearly quick to appreciate that such aggressive behaviour, if stopped short of physical violence, was not bad enough to drive off Europeans who had urgent reasons for coming to the Bay.”

Aside from the missionaries’ singular failure to win any converts, the powers granted to Kendall proved ineffective, despite his various attempts to enforce them. Nicholas later claimed in London that Macquarie’s proclamations had been ‘laughed at a good deal as an Assumption of Authority’. Marsden nevertheless increased his efforts to pressure both the New South Wales and British authorities to exert more formal powers in New Zealand.

The British authorities had instructed Macquarie to impose the first New South Wales import duties in 1813, after which New Zealand imports (specifically timber and probably flax) were taxed as being from a foreign country. But after an approach from Marsden, who was eager to see Māori enterprise develop, duties on timber from New Zealand entering New South Wales (but not Van Diemen’s Land) were lowered in 1815.

Marsden was particularly unhappy with the apparent inability of authorities in New South Wales to take action against British subjects who had breached the terms of the proclamations. In April 1815 he had brought charges of fraud and cruelty against a captain who had committed offences against Māori at the North Cape and Bay of Islands, but was unable to take them further, as the judge declared that no court in New South Wales could try such a case. Marsden therefore requested that the CMS in London (which had been established by evangelical Anglicans in 1799) press the British Government
to introduce legislation that would allow such offences to be tried in the New South Wales courts. In December, Marsden tried again, bringing charges against another captain for seizing people of Santa Christiana, in the Marquesas, but the case was again dismissed on the grounds that the New South Wales courts held no jurisdiction. Marsden then persuaded the London Missionary Society to join the CMS in lobbying ministers for legislative action.²⁴¹

The British Parliament responded by passing the Murders Abroad Act 1817. It provided that the crew members of British vessels accused of murder or manslaughter in New Zealand, Tahiti, ‘and other Islands, Counties and Places not within His Majesty’s Dominions’ would be tried in British territory ‘in the same manner as if such Offence or Offences had been committed on the High Seas’.²⁴² It was both the first British Act of Parliament to mention New Zealand and also the first occasion where New Zealand was expressly described as being outside formal British control, ‘nor subject to any European state or power, nor within the territory of the United States of America’.

Through this legislation, McHugh said, Britain ‘expressly disavowed any sovereignty over New Zealand’.²⁴³ As such, the Act signalled the continuation of Britain’s policy of minimum intervention in the South Pacific.
Since Britain had only recently secured victory in the Napoleonic Wars, it was focused on consolidating its significant gains in key strategic locations of the empire, particularly along the main trading route to India. There was little appetite to exercise formal control over remote islands at this time (due in part to the associated expense), and little immediate competition from other powers. However, the Murders Abroad Act contained a crucial omission: although crimes (as defined in Britain) committed by British subjects could be tried, no provision was given for the enforcement of these measures by the New South Wales courts. This error remained uncorrected for six years (see section 3.8).

Despite the Act’s disavowal of British sovereignty, Macquarie continued to behave as if he had been granted authority to exercise some form of jurisdiction in New Zealand. In 1819, he appointed another missionary, John Butler, a Justice of the Peace at the Bay of Islands. Butler, the first ordained missionary to settle in the north, was commissioned to keep His Majesty’s peace and for the preservation thereof and the quiet rule of Government of His Majesty’s people within and throughout the British Settlements at New Zealand a dependency of the said Territory [New South Wales].

Marsden and Macquarie, however, had developed different plans for the extent of action to be taken in New Zealand. In 1816, after agreeing to lower the import duties on New Zealand timber, Macquarie had sought approval for an official commercial settlement for manufacturing hemp from flax in New Zealand; though this was declined, the British authorities gave approval for an unofficial commercial settlement, so long as consent was received from Māori. Marsden, for his part, opposed an official settlement, but supported an unofficial British settlement for the purposes of introducing the ‘arts of civilisation’ to New Zealand. These plans did not develop beyond the existing missionary settlements at this time, including the additional appointment of Butler, though trade in New Zealand was certainly on the increase.

We note that New South Wales’ lack of jurisdiction over New Zealand was emphasised by John Bigge, who had been commissioned by the British Government in 1819 to inquire into the state of the New South Wales colony. In 1823 he reported to the Secretary of State for War and the Colonies, Lord Bathurst, that

The jurisdiction conferred on the Governors of New South Wales extends to the islands adjacent to the eastern coast of that colony, an expression too vague to support the exercise of a criminal authority in New Zealand, which is situated one thousand miles from it. To remedy these doubts, therefore, it would be advisable to give an express authority to the Governor of New South Wales to appoint magistrates, as well as constables, in the Islands of New Zealand.[249]

This ‘express authority’ was never given. In 1825, Governor Sir Thomas Brisbane asked Lord Bathurst directly whether the reference in his commission to ‘the Islands adjacent’ included New Zealand. His recall to Britain meant a reply was never provided. However, as EJ Tapp pointed out in 1958, the instructions for his successor as Governor, Sir Ralph Darling, provided an answer of sorts. In altering the boundaries of New South Wales to accommodate the creation of Van Diemen’s Land as a separate colony, the southern boundary of New South Wales was placed on a line of latitude that ran through the middle of the North Island.

3.7.2 The pursuit of muskets
By the close of 1815, Bay of Islands Māori had become primarily interested in trading muskets. As Shawcross explained, on occasions during that year and with increasing frequency thereafter, Māori refused to trade with the missionaries unless guns were on offer. By 1818, ‘this method of squeezing muskets out of reluctant missionary hands’ had become standard, and by 1820 it was, wrote Shawcross, ‘virtually impossible’ for any Europeans at the Bay to obtain goods or services without payment in guns. Hongi was the prime accumulator, driven by the desire to avenge Ngāpuhi defeats in battle by Hauraki at Puketona in 1793 and Ngāti Whātua at Moremonui in 1807, as well as the deaths in 1806 of the three high-born...
women (including one of his relations) who had been abducted and traded with tribal enemies by the pirates of the *Venus.* In early 1818, he and southern alliance rangatira Te Morenga set off on separate taua to the Bay of Plenty and beyond to seek utu for the deaths of these women. The muskets they had brought them success, but Hongi clearly wanted many more.

In August 1819, Marsden arrived in the Bay of Islands on his second voyage to New Zealand, bringing with him three new missionaries: James Kemp, Francis Hall, and the new superintendent of the mission, the aforementioned Butler. To Korokoro’s intense disappointment, Marsden quickly selected Hongi’s own base at Kerikeri as the site for a second mission settlement – a decision no doubt hastened by Hongi’s repeated encouragement. In November, Marsden thus again concluded his stay with the signing of a heavily legalistic deed, this time with Hongi (who affixed his own moko) for 13,000 acres of Kerikeri land for the price of four dozen axes. As with the Oihi transaction, we refrain from passing comment on whether this arrangement could be described as a sale, which is a matter for our stage 2 inquiry. The key point is that Hongi had strengthened his monopoly on European trade at the Bay and gained further advantage over his southern alliance rivals. Marsden, for his part, had aligned himself even more closely to the most powerful chief at the Bay and could depart, he felt, confident in the security of his new settlement.

But it was the ongoing instability in the missionary community that precipitated a remarkable development in 1820, when Kendall sailed for London with Hongi. In short, Kendall felt a pressing need to return to England. His family life had become very difficult, and he was worn down by his disputes not just with King and (William) Hall but now also with Butler, whose authority he would not respect. He hoped to be ordained into the priesthood and to gain some recognition for his pioneering work on the vocabulary and grammar of the Māori language. In this regard he had been dismayed to learn that Marsden had sent Tui and another young Māori, Titere, to England in 1818 to help Professor Samuel Lee at Cambridge University produce a Māori dictionary. Kendall felt compelled to proceed to England and prove his own worth as a linguist. This ambition was matched by Hongi’s own. We discuss Hongi’s motives for travelling to England below, but note here that he had told a visiting British military officer in February 1820 that he ‘should die if he did not go – that if he once got to England, he was certain of getting twelve muskets, and a double-barrelled gun.’

As Binney put it, Kendall took Hongi with him – as well as the youthful Rangihoua rangatira Waikato, who was to act as Hongi’s assistant – to buy Hongi’s ongoing favour. Kendall had been supplying Hongi with arms secured in trade with visiting whaling ships and now was taking him to ‘the source of supplies’. After all, Kendall ‘no longer possessed the power of choice in this relationship’. But Hongi also presented Kendall with a convenient front for the achievement of his own aims. The two men’s purposes in embarking on the whaler *New Zealander* on 2 March 1820 were therefore interlinked. Indeed, when Marsden arrived at the Bay on the *Dromedary* on 27 February 1820, there was little he could do other than tell Kendall that he did not sanction the trip. Nor could the CMS, which was furious with Kendall, refuse hospitality, as it was well aware of Hongi’s importance to its New Zealand mission. As Dr Dorothy Cloher remarked, ‘Kendall had selected the right companion for his return home.’

### 3.7.3 Hongi’s meeting with George IV

Kendall and the two chiefs arrived in England on 8 August 1820. On 14 August, Kendall set out a list of what his companions wanted to achieve from the trip:

Shungee and Whykato are come with a view to see King George, the multitude of his people, what they are doing, and the goodness of the land. Their desire is to stay in England only one moon (*month*?); and they wish to take with them at least one hundred men as settlers. They are in want of a party of men to dig up the ground in search of iron. An additional number of Blacksmiths; an additional number of carpenters; and an additional number of preachers who will try to speak to them in the New Zealand tongue in order that they may
Binney felt that this read like a list of ‘demands’ and that it reflected Hongi’s and Waikato’s ‘certainty of control over the European intrusion’.  

Upon their arrival, Kendall, Hongi, and Waikato proceeded immediately to Cambridge University to begin further work on the Māori-language grammar and dictionary. In Cambridge, the rangatira met many members of high society, including aristocrats, academics, and senior clerics, as well as a young law student named Baron Charles Philippe Hippolyte de Thierry – ‘an opportunist of the first order’, whom they encouraged to purchase land in New Zealand. After two months, the chiefs returned to London as guests of a Cambridge acquaintance. On 21 October, they visited the House of Lords, where they made quite an impression, although of course such a brief experience was not sufficient to acquaint the pair with the intricacies of British law-making and the operation of government. Then, on 13 November, Hongi’s wish was fulfilled when he and Waikato were presented to George IV at Carlton House.  

It is generally accepted that this meeting was a great success. Phillipson regarded it as the ‘most important contact between Crown and Maori until the arrival of [British Resident James] Busby in 1833’, thus eclipsing earlier meetings between senior chiefs and New South Wales governors. According to one account, Hongi greeted the King with the words, ‘How do you do, Mr King George?’ to which the King replied, ‘How do you do, Mr King Shungee?’ The two men then had a friendly conversation in which they discussed the King’s divorce proceedings, Hongi apparently wondering why the King had such trouble with one wife when he managed comfortably with five. The King is said to have remarked upon Māori cannibalism, adding, as if to put his visitors at ease, that shipwrecked British sailors sometimes ate each other as well. The King then showed Hongi and Waikato his armoury, and presented both with presents: for Waikato, a gun and a helmet; for Hongi, a helmet, a coat of chain mail, and two guns. They were also conducted on a tour of the British Museum, the Tower of London, and the Menagerie in the Strand, where Hongi was startled by the elephant. At Woolwich arsenal, wrote Binney, ‘Hongi stood in ecstasy.’

From the claimants’ perspective, the two leaders met as equals. As Erima Henare wrote:

He aha te tikanga o ēnei kōrero mo Hongi Hika? Ko te mea nui ko tana tūtakitanga ki te Kīngi o Ingarangi. He orite ki te orite, he mana ki mana, he rangatira ki te rangatira, he ārika ki te ārika.

What is the underlying meaning of these stories about Hongi[?] Of great purport is his meeting with the King of England. Like with like, power with power, chief to chief, supreme authority to supreme authority.

At some stage also during their discussion, Hongi must have learned that the King was either unaware of or had forgotten about Marsden and his missionaries. According to Francis Hall, this considerably lessened the missionaries’ standing in Hongi’s eyes when he returned to the Bay of Islands:

Shungee’s Voyage to Europe has not benefited the Mission. He arrived from Port Jackson with Mr Kendall & Wycato on the 11 July [1821] and since that period we have been more insulted and our persons and property in more danger, I conceive, than at any period since the Mission was established in New Zealand. On his arrival at Keddee Keddee he remained sullenly at his hut about half a mile distant from the Settlement for several days, without coming to see us.
He represented among Tribe that we were only poor people (Cooks) that King George whom he had seen knew nothing at all about us nor Mr Marsden either. In consequence of this, we have had to bear with many hard speeches and cruel mockings not worth repeating.\(^\text{272}\)

Aside from this revelation, and the light-hearted banter about difficult wives and cannibal sailors, subsequent Māori accounts of the encounter between Hongi and King George suggest there was a more serious side to the discussions. In 1831, according to Marsden, a chief he named ‘Whare’ (most likely to have been Wharepoaka\(^\text{273}\)) told Governor Darling in New South Wales that Hongi and the King had exchanged solemn promises:

A chief named Waikato who married a sister of Whare accompanied the late chief Shunghee [Hongi] to England in the year 1821 [1820]. They were both introduced to his late Majesty King George the fourth, & to His late Royal Highness the Duke of York, both made them some valuable presents. His Majesty told them, they must not kill any of his subjects who visited New Zealand, & they promised to obey the King’s commands. At the same time the Europeans were not to kill the New Zealanders.\(^\text{274}\)

Further detail about their encounter came in a letter Hōne Heke wrote to Queen Victoria in 1849, which began:

Nui Tireni
Hurae i 1849
E Te Kuini o Ingarangi

Tena ra ko koe,

Homai te aroha o te kupu a Kingi Hori i homai ki a Hongi, i tana taenga atu ki Oropi ka ui mai a Kingi Hori ki a ia i haere mai koe ki te aha. Ka mea atu ia – e rua aku mea, i haere mai ai ahau, he pu, he hoia, kia toru te kaup. Ka puta mai te kupu a Kingi Hori ki aia ka mea, kahore ekore ahau e pai kia tukua atu nga hoia ki Nui Tireni kei riro to kainga. Waiho mo au tamariki mo tou iwi e kore to matou mahi e tika, ka totohe tonu to raua korero. Ka puta te kupu a Kingi Hori ki a Hongi ka mea engari nga Mihinare e tukua atu e ahau kia koe he hoa mou, he iwi pai ratou, ki te he whakahokia mai ratou – ki te tika to ratou mahi me atawhai ratou e koutou koia tenei kua atawhaitia ratou e matou. Kua ai mai ratou ekore koutou e pai ki e tahi wahi o koutou.\(^\text{275}\)

The official translation of this was as follows:

To the Queen of England, greeting, – show us the same affectionate regard that King George did in what he said to Hongi when he went to Europe. King George asked him, ‘what was your reason for coming here,’ he said ‘I had two objects in doing so – muskets and 60 soldiers.’ To which King George answered, ‘I will not consent to send soldiers to New Zealand lest you should be deprived of your country, which I wish should be left for your children and your people, for they would not act properly.’ They continued arguing on the subject for a long time, and then King George said to Hongi, ‘it is better that I should send some missionaries to you, as friends for you, for they are good people; should they act wrongly, send them back; but if they act properly, befriend them.’\(^\text{276}\)

It is impossible now to know the accuracy of these accounts, although perhaps Heke’s version is plausible enough. Regardless of the specific detail, Hongi clearly returned to New Zealand believing that he and the King had come to an agreement and had established a personal relationship. Dr (later Dame) Claudia Orange described the ensuing Ngāpuhi view of their relations with the British monarch as a ‘special bond’.\(^\text{277}\) However, as Phillipson noted, it would appear that the British did not hold a similar understanding in 1820.\(^\text{278}\)

### 3.7.4 Hongi’s acquisition of muskets and motive for trip
Kendall, Hongi, and Waikato sailed for New South Wales in the Speke, which was also transporting 158 convicts, on 22 December 1820. Before they left, the CMS made a bad miscalculation with the gifts it assembled for the departing rangatira. Hongi regarded them as insultingly inadequate, particularly when compared with those brought back to the Bay of Islands the previous year by two chiefs of much lesser standing and age, Tui and Titere. While
the Society hastily added to the presents, this put further strain on Hongi’s relationship with the missionaries.279

The Speke arrived in Sydney on 18 May 1821, leaving Kendall and the rangatira around six weeks until they sailed on to the Bay of Islands on the Westmoreland on 4 July.280 It would appear that during this time in Sydney, Hongi managed to acquire a large supply of muskets. The exact number is unknown, but estimates vary between 300 and 500,281 and the upshot was that Hongi was able to embark upon the field of battle later in the year with a force armed with up to 1000 guns.282 There is some disagreement among historians as to how exactly Hongi acquired such a large number of weapons. The orthodox position, perhaps, is that Hongi traded most of the gifts he
had received in England – a version of events that probably originates with Francis Hall’s observation to that effect in 1821. However, Cloher argued that this interpretation is ‘highly questionable’. For a start, she doubted the gifts Hongi had for trade could have yielded such a price (and we know in any event that Hongi kept his armour – see below). Rather, she thought the answer was to be found in research published on de Thierry in 1977 by JD Raeside.

On the basis of Raeside’s book, Cloher contended that, while in Cambridge, de Thierry had promised to supply Hongi with a large number of muskets as payment for an estate of land in New Zealand. She reasoned that de Thierry had ordered the weapons from the English gunsmiths Theophilus and William Richards, who then shipped them to Sydney, where they presumably sat in a warehouse awaiting the arrival of Kendall and Hongi. The key piece of evidence is de Thierry’s failure to pay the Richards brothers a debt of £857 – roughly the same amount as the value (between £800 and £900) of goods de Thierry claimed he had provided to Hongi and Kendall – which contributed to de Thierry’s imprisonment in 1824 for bankruptcy. Cloher suggested this debt would not have concerned Hongi. As she wrote of Hongi’s meeting with de Thierry in Cambridge:

"The Bay of Islands, circa 1827"
he must have been hard put to moderate his delight in discovering so early in the piece an opportunity to advance his primary aim – to contrive, one way or another, to obtain guns. If this ambition could be advanced by assuring this apparent idealist that he could have property in New Zealand to establish a settlement, then so be it, they would give him assurances aplenty.286

We agree that the idea Hongi could have traded his presents in Sydney and obtained such a substantial supply of arms is rather far-fetched. Raeside’s evidence,287 and Cloher’s interpretation of it, are more convincing, even if some vagaries exist around this ‘remarkable feat of procurement’.288

If that more or less explains how Hongi acquired his muskets, a related controversy concerns whether guns really were Hongi’s key motive for travelling to England. In his 2003 doctoral thesis, Manuka Henare argued that Kendall’s 14 August 1820 list of Hongi’s objectives was evidence that the acquisition of arms was not the major purpose of the visit. Henare contended that the many historians who had asserted that Hongi’s motivation was revenge on his enemies were wrong on two scores. As he put it:
Cowan, Shrimpton and Mulgan, Condliffe and Airey, Harrison, Binney, J Lee and others reached their conclusion to demonstrate that Hongi’s motivation was driven by utu, rendered as revenge, on his enemies. This explanation is simplistic, somewhat monist and constitutes a form of reductionism in arguing a one-reason case for motivation. However, the assertion does not make sense. If Hongi was motivated solely by utu, he did not need to go to England to purchase guns, ammunition and the necessary accessories. He had only to go direct to Sydney to do so[.]^{289}

To Manuka Henare’s list of (in his eyes) erring historians could be added the likes of Belich, Paul Moon, Ballara, Wilson, and Cloher (a descendant of Hongi’s brother^{390}), as well as Phillipson, whose evidence was produced for our own inquiry. Henare’s point was that Hongi was ‘on rangatira business for rangatira purposes’ in visiting England. He was motivated by ‘the well being of his people’ and one of his ‘principal objectives’ was to meet George IV. Hongi’s purchase of weapons in Sydney, by contrast, was an ‘after-thought; when an opportunity
arose . . . he made a decision to sell gifts and purchase guns. The impetus may, Henare suggested, have come from his encounter in Sydney with two Hauraki rangatira, Te Hinaki and Te Horeta, which reminded him of Ngāpuhi’s losses at Hauraki hands in the past.

Manuka Henare received some support for this position within our inquiry. O’Malley and Hutton, for example, felt that Henare was ‘right to caution against reliance on retrospective sources which attribute Hongi’s motives in travelling to England in the light of his subsequent actions.’ And Jones and Jenkins agreed with Henare that Hongi was on a chiefly mission to recruit the immigrants listed by Kendall. However, we are wary of reading too much into the absence of any reference to guns in Kendall’s statement of Hongi’s intentions. As Hongi’s regular agent in musket purchases – and even if he had not been so implicated – Kendall would hardly have arrived in London and reported to the CMS that Hongi had come to obtain arms. Cloher thought that Kendall’s list of Hongi’s objectives was designed to disguise his own ambitions for

Henry Williams’s mission house at Paihia. Williams arrived in Paihia in 1823 and lived in this house from 1830. Paihia was a particular contrast with Kororareka across the water, which at that time the missionaries referred to as ‘hell’. The sailors of Kororareka in turn likened Paihia to ‘heaven’.
the trip, and we do not doubt that it also obscured some of Hongi's. We note finally on this point that Manuka Henare, O'Malley and Hutton, and Jones and Jenkins did not consider Raeside's research in their own accounts.

The claimants, for their part, were in no doubt about Hongi's main purpose. As Erima Henare put it,

E ai ki nga kōrero, koe ia (a Hongi Hika) i tuhu i aha ki te Kingi o Ingarangi. Ko tana hiahia, he nui nga kōrero o te Karauna tae noa mai ki etahi iwi o ēnei rā ko te kupu partnership nei. Ehara tēra. Ko te whāinga a Hongi Hika he relationship kē, he whakahoatanga. He whakahoatanga orite. Koia na te haere o Hongi Hika ki Ingarangi.

It is said (Hongi Hika) would not bow down to the King of England. It was his desire, and there is extensive Crown discussion right up until the present day, about this word partnership. But that misses the point. Hongi was seeking a relationship, a friendship. A relationship of equals. That is the reason for Hongi Hika travelling to England.

3.7.5 Legacies of the trip: 'nation making' and warfare?

Regardless of Hongi's intentions, and the means by which he returned to the Bay of Islands so laden with muskets, he clearly felt that his meeting with the King had established a personal bond between the two rangatira. To claimants like Erima Henare, the meeting also established, more broadly, a relationship between Ngāpuhi and the monarch that was given further expression in later years with the signing of te Tiriti. He said it also began a 'conversation' between Ngāpuhi and the sovereign that lives on today.

Manuka Henare believed that the meeting had significance for other reasons. He referred to it as the first of a series of six key 'nation making' events between 1820 and 1840 through which Māori became increasingly conscious of themselves as people on a global stage and developed 'from tribes to nation' — a phrase that formed the subtitle of his thesis. Hongi, for example, returned from England and his meeting with George IV 'as a proto nationalist', particularly in terms of the assurances he had reputedly been given about Māori rights when visiting both Britain and New South Wales. We do not have a view on Henare's theory, because it clearly encompasses a broader collective of Māori than the hapū of the north. Moreover, our impression is that both hapū identity and authority remained strong in the north during this time.

In this regard, we note that some also contend that northern hapū moved closer together in outlook and purpose after Hongi's return, through the employment of his muskets against old foes. According to Erima Henare, when Hongi returned from England, he met with Kawiti and the two men discussed 'federating Ngāpuhi together'. Hongi's battles during the next few years were with this goal in mind: 'to attain a federation among Ngāpuhi, based around their martial strength.' Ballara argued that the many different descent groups in the Bay of Islands, Hokianga, and Whangaroa were inspired by Hongi and his 'quantum leap in exotic arms' to participate in taua against old enemies to the south. When they did so, all were known as 'Ngāpuhi', a name which created fear across the motu. The key point for us, however, is that this was an external perspective, and the kin groups maintained their rivalries and separate identities within the Bay itself. It is possible, as Henare suggested, that the taua assisted in the later creation of an overarching 'Ngāpuhi' identity, which became more explicit over time.

It is not necessary to traverse the details of the 'musket wars' in the years that followed. Suffice it to say that Hongi's reprisals against Ngāpuhi's enemies in Hauraki, Waikato, Te Arawa, and elsewhere — including, particularly, Ngāti Whātua, on whom Hongi was able to exact terrible revenge for the earlier defeat at Moremonui — were devastating. Francis Hall witnessed the return of canoes to Kerikeri on 19 December 1821 from the attacks on Ngāti Paoa and Ngāti Maru in Hauraki. The heads of enemies were paraded, and the widows of (the few) fallen Ngāpuhi warriors clubbed prisoners of war to death in frenzies of rage. In the fight with Ngāti Whātua in 1825, Hongi's muskets gave Ngāpuhi a decisive advantage. A later recorder of Māori history, George Graham, described a 'corpse strewn field of strife', with the Ngāti Whātua dead so reminiscent of a 'great array of fish laid out' that this description gave the battle its name, Te Ika-a-Ranganui. Hongi wore his royal gift of chain mail throughout, thus
‘proclaiming his alliance with the most powerful man in the world,’ as Phillipson put it.  

Ngāpuhi’s own self-image and fearsome reputation must have been considerably enhanced if not actually created during these years of warfare under Hongi’s leadership. As Erima Henare argued:

They were all powerful. They were all dominating at that time, and this is not being boastful, and I don’t want members of the Tribunal to take this wrong. The fact that Ngāpuhi were able to sustain an economy, the fact that Ngāpuhi were able to sustain almost everyone living in Port Jackson and Port Phillip at that time, it (Ngāpuhi) waged war against almost every iwi in this country, speaks of the mana of Ngāpuhi.  

It was not just Ngāpuhi’s tribal enemies who had reason to fear Hongi. As mentioned above, Hongi returned from England with a decidedly ungenerous attitude to the missionaries, having learnt that they were not known to the King and that the King had not, as they claimed, forbidden them to trade in muskets. Hongi remained the missionaries’ patron, but chiefs within his sphere of influence, such as Wharepoaka and Waikato at Rangihoua, routinely allowed the local missionaries to be bullied and stolen from, while Hongi himself sometimes turned a blind eye to his people plundering the mission station at Kerikeri. Shawcross sensed that Hongi’s attitude softened in around 1823, and attributed this in part to the arrival in August of that year of Henry Williams as head missionary. Williams
– a strong personality – refused to be intimidated and soon gained the respect of his Ngāpuhi hosts.  

However, when Hongi was shot in the chest at the start of 1827 in fighting with Ngāti Pou at Whangaroa, the missionaries – both the Anglicans at Kerikeri and the Wesleyans at Whangaroa – feared they would have to abandon New Zealand entirely if their protector succumbed to his wound. The CMS missionaries outside Hongi’s control at Paihia were similarly alarmed. After a lingering decline, Hongi died in March 1828. But the missionaries’ worst fears were unfounded – in fact, Hongi’s death was something of a boost to missionary endeavour in the north, opening up competition among rival rangatira for the status of mission patron and the trading benefits that flowed from it. Not only that, but the missionaries began winning conversions to Christianity – an objective that had not remotely appealed to Hongi. As taurekareka or pononga (slaves) were released by Ngāpuhi now fearful of retaliation by their foes, Hongi’s death effectively spread the Christian message to other iwi through the return home of many of the missionaries’ earliest converts.

We consider issues around conversion, the end of musket warfare, and other aspects of cultural change and adaptation more thoroughly in chapter 5. Suffice it to conclude here that Hongi’s status and achievements enhanced relations between Māori and the Crown and, in Ngāpuhi eyes, secured important assurances from the British monarch about there being no prospect of British military interference in New Zealand. In the claimants’ view, they also served as an important prerequisite for some of Ngāpuhi’s key initiatives of the 1830s. Hongi’s attempts at achieving unity were a repeated theme in the evidence of Erima Henare, who told us that such efforts continued until Hongi’s death:

Ana, whai muri atu i tēna i mua atu i te matenga o Hongi i haere atu a Kawiti ki te kite i a ia i Pinia. He maha ngā haere-nga o Kawiti ki Pinia ki ngā rangatira o Waiangaroa. I mua noa atu i te matenga o Hongi Hika i haere atu a Kawiti ki reira. Ka noho raua ka kōrero mo tetahi whakakotahitanga o ngā iwi o Te Taitokerau. A e mea nei te Pākehā e whetereihana. Kua timata noa atu raua ki te kōrero i tera kōrero.

After that, but before Hongi died, Kawiti went to visit him in Pinia. Kawiti made many visits to Pinia to see the rangatira of Whangaroa. Long before the death of Hongi Hika, Kawiti went there and they sat together and talked about unifying the people of the North. Pākehā would describe this as a confederation. They had already, some time ago, commenced these discussions of unification.

### 3.8 Ngāpuhi Appeals to British Authority, 1831

As we have noted earlier, because the Murders Abroad Act of 1817 had failed to make provision for British subjects to be tried in New South Wales for serious crimes committed in New Zealand, the British authorities eventually came to see the need to pass further legislation to address the omission. An Imperial Act of 1823 (the New South Wales Act, 4 Geo IV c 96) gave the New South Wales legal system jurisdiction to prosecute, try and punish British subjects who had committed offences in New Zealand. This Act was even translated into Māori so that Māori attention could be drawn to its provisions, which included an acknowledgement that New Zealand ‘was not subject to His Majesty’. A replacement enactment followed in 1828 (the Australian Courts Act, 9 Geo IV c 83). Given Britain’s lack of territorial jurisdiction in New Zealand, these measures were effective only if the perpetrators returned (or were brought back) to British territory, and (European) witnesses were available.

Even with legislation that allowed for the New South Wales authorities to try British subjects for murders and manslaughters committed in New Zealand, two incidents soon illustrated the limits to which imperial legislation could be used to regulate the New Zealand frontier. The British Parliament could only legislate (and had legislated in 1817) for criminal acts committed abroad that were also crimes at home. However, both of these incidents – which implicated ships’ captains in the initiation of intertribal warfare in separate parts of New Zealand in 1830 – involved British subjects committing acts that were not crimes, but were widely vilified by contemporaries. The perpetrators could not be prosecuted and punished in the New South Wales courts and, given the nature of
their acts, the British Parliament was not likely to criminalise those acts in Britain purely to allow the prosecution of persons committing them abroad. These circumstances prompted Britain to look at its position in New Zealand afresh, and contributed to the next step taken by rangatira of the Bay of Islands and Hokianga towards establishing an alliance with the Crown: a petition to King William IV in late 1831.

3.8.1 The Girls’ War, 1830

The first of the 1830 incidents was the so-called ‘Girls’ War’ of February and March 1830, although here the extent of European influence is debatable. The European in question was whaling captain William Brind, who was such a regular visitor to the Bay of Islands that when in port he stayed in his own house. For some time, Brind had been in relationships with Māori women, first with a daughter of the leading southern alliance chief Pōmare I (although this liaison appears to have ended not long after Pōmare’s death in 1826), and thereafter with Pehi and Moewaka, the daughters of the great northern chiefs Hongi and Rewa respectively.312 This switch of women – and effective switch of allegiance – may have sparked the initial conflict.

Brind arrived at Kororāreka on his ship, the Toward Castle, on 4 February 1830. Some time thereafter, Pehi and Moewaka got involved in a skirmish with local Ngāti Manu women in the water off the Kororāreka beach. More grievous than any physical assaults, however, was that the wife of the leading Ngāti Manu rangatira Kiwikiwi offered serious verbal insults to the northern chief Ururoa, a relation of the deceased Hongi. The matter quickly escalated, and drew in relations and allies from both sides. Brind may or may not have encouraged a fight – Marsden, who arrived from Sydney on 8 March, certainly thought so, although Brind left the Bay before any armed conflict erupted. As it happened, the two groups might have left their confrontation peaceful and largely ritualistic, except that one of Kiwikiwi’s men accidentally shot a woman on Ururoa’s side. After that, on 6 March 1830, a vicious two-hour battle ensued, described by European observers as ‘bloody’ and ‘a day of horror and distress’. According to the missionary William Williams, when the shooting stopped, some 30 lay dead on the Kororāreka beach and 70 had been wounded.313

Among the dead was a senior northern rangatira, Hengi. Perhaps prompted by threats from the leading northern rangatira Titore – or perhaps, as the missionaries suspected, because Ngāti Manu had had the better of the fight – Kiwikiwi and his people abandoned their settlement at Kororāreka as a pre-emptive act of appeasement and burned their own huts. Peace was made at a missionary-facilitated hui several days later when Kororāreka was ceded to the northern alliance. The benefactors were Rewa and Titore, who had ostensibly remained neutral during the fight. They quickly moved to occupy Kororāreka with 400 to 500 members of Ngāi Tawake and Ngāti Rēhia, including other leading rangatira such as Tārea, Wharerahi, and Moka. As Wilson observed, ‘it is difficult not to suppose that the Waimate chiefs had long felt jealous of Kororāreka’s lucrative trading position.’ In other words, tribal animosities and northern opportunism may have caused the fighting as much as any action of Brind’s. Nor did the matter quite end, for there was a reprise of the battle in 1837, a subject we return to in chapters 4 and 5.314

The important aspect of the Girls’ War, for our purposes, was that Brind was almost universally blamed – not just by the missionaries but by both sides in the conflict. Dr Phillipson thought this rather convenient for all concerned but also suggested that Brind had been ‘cavalier in terms of swapping alliances and casual treatment of his obligations’, and that his actions had indeed ultimately led to the southern alliance’s loss of Kororāreka.315

After returning to Parramatta, Marsden wrote to Governor Darling on 2 August 1830:

Your Excellency is aware that there is no legal authority – civil, military, or naval – to restrain the bad conduct of the masters and crews of those ships which put into the harbours of New Zealand, nor to notice their crimes, however great; and from the great quantity of arms, powder, and ammunition now in the possession of the natives, there is much reason to apprehend that they will at some period redress their own wrongs by force of arms if no remedy is provided to do them justice.316
Marsden suggested that an armed British naval vessel stationed in New Zealand would have the desired effect.\(^{317}\) The following April, Marsden told Dandeson Coates, the secretary of the CMS, that Brind ‘has been the cause of much bloodshed’. This was because, despite the tuku (transfer) of Kororāreka, Hengi’s sons had still required explicit utu for their father’s loss, and had sought it through raids to the Bay of Plenty shortly after the Girls’ War and into the start of 1831. As a result of this fighting, the dried heads of fallen warriors were being brought to Port Jackson for sale by Europeans. For this, as well, Marsden blamed Brind.\(^{318}\)

### 3.8.2 The Elizabeth affair

It was a second telling event of 1830 that motivated the British Government to take more decisive action. While it did not involve Ngāpuhi, it clearly concerned Ngāpuhi considerably more than Brind’s role in the Girls’ War had done. In October 1830, the Ngāti Toa leader Te Rauparaha came to an agreement with John Stewart, the master of the brig *Elizabeth*, to transport a party of Ngāti Toa warriors from Kapiti Island to Banks Peninsula to attack Ngāi Tahu. Te Rauparaha was particularly seeking utu for the deaths of three Ngāti Toa chiefs at Kaiapoi some months previously. The payment to Stewart was to be a cargo of flax. There are a number of different accounts of what took place, but it seems that, after arriving at Akaroa, Stewart lured the senior Ngāi Tahu rangatira Tamaiharanui and his wife and daughter on board to discuss trade. Tamaiharanui was locked in chains below deck, where Te Rauparaha appeared from hiding. The concealed Ngāti Toa party then attacked the leaderless village on shore. Although a Ngāi Tahu account claimed the attack was unsuccessful, according to a Ngāi Tahu source, they slaughtered some 300 men, women, and children in the pā. In any event, Tamaiharanui and his wife were taken back to Kapiti and tortured to death, a gruesome event witnessed by some Europeans. Their daughter was spared this fate after one of her own parents strangled her and pushed her body from the *Elizabeth* into the sea.\(^{319}\)

A Ngāi Tahu survivor called Ahu soon made it to the Bay of Islands, where he told a meeting of Ngāpuhi chiefs what had taken place. They were ‘greatly incensed’, according to Marsden, and in April 1831 sent a deputation of Ahu and the aforementioned ‘Whare’ (who, as noted, is likely to have been Wharepoaka) to Port Jackson to complain to Governor Darling.\(^{320}\) We have already related Whare’s account of the nature of the agreement in 1820 between Hongi and George IV, and it was this understanding that he now invoked, arguing that Stewart’s actions had breached the European duty of non-violence towards Māori. According to Marsden, Whare and his compatriots now looked ‘for redress and protection to the British Government according to His late Majesty’s promise, made to Shunghee [Hongi] & Waikato’. After introducing Whare to Darling, Marsden told the Governor that

*W[h]are is very desirous to obtain from Your Excellency some assurance that the Europeans shall not be allowed to kill his countrymen in the manner they have done at [Akaroa] . . . Before W[h]are left the Bay of Islands, the New Zealanders declared that if the Europeans united with any of their tribes in their mutual wars, and killed the natives as they had done the people at [Akaroa], they would kill the white people as a satisfaction for their friends who were murdered.*\(^{321}\)

In other words, as Phillipson pointed out, the Māori position remained one of strength, and Whare’s request for support was equally a warning.\(^{322}\)

What particularly concerned Ngāpuhi was that the *Elizabeth* affair marked a new departure in intertribal conflict. As we have seen, the kidnapping of Bay of Islands women of rank by the crew of the *Venus* had created the take for revenge attacks carried out some years later, but in that case the kidnappers were not working on commission for one Māori group or another. Ngāpuhi now feared that the Trojan Horse method could be employed against them by one of their enemies to the south as utu for the many attacks led by Hongi.\(^{323}\) As Phillipson put it, Te Rauparaha’s and Stewart’s actions ‘broke the delicate balance of Maori-shipping relations’.\(^{324}\)

Darling had already been briefed about the affray in February 1831. He had immediately had the *Elizabeth* and its master seized, and begun taking statements from
witnesses with a view to prosecuting Stewart under the Murders Abroad Act 1817. In reviewing the depositions, however, the Crown Solicitor at Sydney had ‘very great doubt (notwithstanding the atrocity of conduct of the parties concerned) whether any offence has been committed which is cognizable by the Common Law of England'.

To Darling’s great frustration, witnesses and alleged perpetrators were allowed to leave the colony. But while no prosecutions were ever pursued, this was not entirely the end of the matter. After Darling learnt further details at his meeting with Ahu and Whare on 13 April 1831 – and doubtless under pressure from Marsden – he reported to the Secretary of State for War and the Colonies in London that he intended to immediately appoint to New Zealand a person in the character of Resident, which appears in accordance with the wishes of the Natives, so as to assure them of the desire of His Majesty’s Government to afford them protection and to tranquillize the minds of the Settlers . . . [Emphasis in original.]

It is notable that the initiative to establish a formal British presence in New Zealand again came from a New South Wales governor, and not from London. Darling not only had received regular reports of violence but was also well aware of the growing commercial interest in New Zealand. Flax exports, for example, had boomed after Hongi’s death and by 1831 were worth £26,000. In 1830, nearly 30 ships averaging over 100 tons each voyaged from New South Wales to New Zealand. From 1826, there was also the commercial shipbuilding operation in the Hokianga of Raine, Ramsay, and Browne, which we discuss at section 3.9.3. Darling was thus simultaneously lobbied to take action by both mercantile and humanitarian interests. He went so far as to identify officers for appointment as Resident, although he pursued this no further when he received notice in September 1831 that he was to be recalled to England and replaced.

3.8.3 La Favorite and the petition to William IV

The immediate cause of the petition to William IV was the developing concern that France was increasing its interest in New Zealand. In September 1831, while Darling was identifying candidates for appointment as British Resident, the missionary William Yate and Rewa were in Sydney, probably visiting Marsden at Parramatta. While they were there, the French corvette *La Favorite* docked at Port Jackson. French interest in the Pacific had expanded from the primarily scientific and exploratory voyages of the past decade (including the expedition of Durmont D’Urville) to include significant commercial ventures, led by a series of trading vessels. *La Favorite* was dispatched to provide protection to French traders wherever possible.

Rewa spoke to *La Favorite*’s captain, Cyrille Laplace, during the vessel’s five-week stay in Sydney, throughout which its relations with the local authorities were entirely cordial. However, rumours had begun to swirl around Port Jackson that Laplace intended to sail to New Zealand and seize the country for France, though in fact he had not been instructed to do so. Rewa (and Yate) conveyed these rumours home to the Bay of Islands, where they arrived on the *Active* on 20 September. As Henry Williams recorded in his journal that day, ‘French man of war expected. Considerable doubts in the Colony as to her intention’.

Thereafter, anxiety over the potential arrival of *La Favorite* escalated. Whether by way of missionary or Māori initiative, a letter from the rangatira to the British monarch was planned. Williams noted on 28 September that several chiefs had come to discuss such a letter with him, and a hui at Kerikeri on 4 October settled on its wording. William Williams wrote in his journal on 27 September that the New South Wales Governor himself had suggested that the chiefs approach the King, although historians have dismissed this as implausible. In the meantime, on 3 October, *La Favorite* had come into view. Williams’s wife, Marianne, wrote that day:

David [Rāwiri] Taiwhanga came running in to tell me that the ship was now come, about which we had heard so much by our own vessel, and from Rewa, who had visited New South Wales, – that they were the enemies of King William, come to spy out the land, and had four hundred men on board; that as Mr Williams was at Kerikeri at the Committee,
I must give him the flag of our nation to hoist upon the flagstaff on the hill. I told him the line was broken, which was the reason no flag had been hoisted for several Sundays. Oh! He would send a boy up; would I not give him a rope? I should have it again in a few days. Did I not wish to shew the flag of my country? Then, if they tore it down, Mr Williams would write to the rulers of our land to fight for us.  

*La Favorite* anchored at 3 pm on 4 October, when it would have become quickly apparent to the missionaries that the French came with no hostile intentions. Some chiefs may have already signed the letter to the King before the ship’s arrival, although other signatures were clearly affixed on 5 October, the letter’s date. By 6 October, according to Dr Peter Adams, both Henry Williams and his brother William had acknowledged that the French had no designs on New Zealand at all, but still the missionaries made no attempt to withdraw or amend the petition. It is little wonder that Laplace was left with an unfavourable view of the missionaries:

French sailors and Māori on the beach at Kororāreka during the visit of *La Favorite*, 1831. The arrival of the corvette caused a panic among the missionaries, and Māori, – who recalled the vengeance of Marion Du Fresne’s crew in 1772 – signed a petition to King William IV seeking his protection from ‘te Iwi o Marion’.
I soon had gained the conviction that these Apostles of the Gospel, thinking our sojourn in the region to be for political ends, sought to overturn the good harmony that reigned between ourselves and the natives, by insinuating to them that I had come to take possession of the Bay of Islands and to avenge the death of Marion, assassinated by their ancestors towards the end of last century.\textsuperscript{340}

A similar French perspective was provided by the explorer Dumont D’Urville, who described the petition as ‘cette pièce ridicule’ and a missionary ‘ruse’ to determine the chiefs to seek British protection.\textsuperscript{341}

The petition was signed (through the drawing of moko) by 13 rangatira: Wharerahi, Rewa, Te Kekeao, Titore, Te Morenga, Ripi, Hara, Te Atua Haere, Patuone, Nene, Moetara, Matangi, and Te Taonui.\textsuperscript{342} The first eight were from the Bay of Islands and the last five were Hokianga based, thus demonstrating, in Phillipson’s view, ‘a wide base of support for the petition from the leadership of wider Nga Puhi’. Te Morenga, however, was the only southern alliance chief to sign, and others from the south may have been deterred by the proclaimed alliance with the King being so closely associated with Hongi – as indeed was the hui venue of Kerikeri. Notable omissions from the signatories, for unknown reasons, included Kawiti, Pōmare II, Wharepoaka, and Tāreha, the latter two being northern alliance chiefs.\textsuperscript{343}

The question remains as to who really drove the petition. Historians like Adams have taken the view that the missionaries were almost entirely responsible for it. He felt that Yate (or someone else sailing on the Active) had possibly ‘got it into his head that the French ship had designs on New Zealand and persuaded the missionaries to take urgent action’. Alternatively, he suspected, ‘the missionaries merely used the French ship as an excuse to put pressure on the British Government by getting the Maoris to ask for British protection’. He noted the fallacy of Yate’s claim that La Favorite had anchored the day after the petition was signed, citing evidence pointing to this occurring the day before.\textsuperscript{344} Phillipson – who seems to have taken Yate’s word on the timing of ship’s arrival – was more inclined to regard the petition as driven equally by Ngāpuhi and the missionaries. The signatories included so many powerful and independent-minded rangatira, he argued, the petition could not simply have been ‘a missionary jack-up’. Moreover, he believed it entirely possible that Ngāpuhi retained a deep-seated anxiety about French reprisal, given not only the lasting legacy of Marion du Fresne’s death – as evidenced by the ongoing references to the ‘tribe of Marion’ – but also the fact that seeking utu for distant events was entirely in keeping with Māori custom.\textsuperscript{345}

From a Māori perspective, Manuka Henare argued in his doctoral thesis that Yate was merely ‘the scribe for the rangatira, who therefore – implicitly – drove its wording.’\textsuperscript{346} Despite this, he rejected the idea that the chiefs were concerned about French retaliation, and seemed to suggest that the idea of a French threat and the reference to ‘te i wi o Marion’ ‘served a missionary agenda for a modicum of official British intervention’.\textsuperscript{347} In our view, Yate could not have been merely the scribe if he inserted matters that did not actually concern the chiefs. Henare also remarked upon the significance of the language in the Māori text of the petition as an example of the nation-making aspect of the document:

First, is the way that many rangatira began to speak to an outside world in written form. At the same time, through literacy they progressed the identification of themselves and their people as a people in a wider world. This is seen in the opening statement of the letter, when after addressing King Wiremu, they identify themselves and their country by writing, ‘Ko mātou ko ngā rangatira o Nu Tireni’ rendered as, we the leaders of Nu Tireni. This was to be a standard way of rangatira addressing others in the world.\textsuperscript{348}

But Aldridge contended that aspects of the original petition’s language were inauthentic and thus strongly suggested that the missionaries were responsible for its construction:

I can tell from the document . . . that, from the way it was written, it looks like it was engineered. The way it was written suggests someone was directing this. Even the format says
The 1831 Petition to William IV

The original text of the 1831 petition to King William IV read as follows:

Ki a Kingi Wiremu te Rangatira atawai o Ingarangi

E Kingi Wiremu. Ko matou ko nga Rangatira o Niu Tireni e huihuia nei ki tenei kainga ki te Kerikeri, e tuhituhi atu nei ki a koe; e rongo ana hoki matou ko koe te Rangatira nui o tarawahi, nou hoki nga kaipuke maha e u mai nei ki to matou wenua.

He hunga rawa kore matou he oi ana o matou taonga he rakau, he muka, he poaka, he kapana, he oi ka hokona enei mea ki ou tangata, ka kite matou i te taonga o te Pakeha. Ko tou kainga anake to atawai ana ki a matou nou ana hoki nga Mihaneri e ako nei i a matou ki te wakapono ko a Ihowa te Atua ki a Ihu Karaite ana hoki tana tamaiti.

Kua rongo matou ko te Iwi o Marion tenei me ake u mai kit e tango i to matou kainga, koia matou ka inoi ai kia meinga koe hei hoa mo matou nei kai tiaki i enei motu kei tata mai te wakatoi o nga tau iwi kei haere mai nga tangata ke ki te tango i to matou wenua. A ki te mea ka tutu e tahi o ou tangata ki a matou, ka noho nei hoki he hinu ki te wenua nei he mea oma mai i runga i te kaipuke mau ra pea ratou e riri kia rongo ai, kei ho noa te riri o te tangata maori.

No matou tenei pukapuka no nga Rangatira o te Iwi Maori o Niu Tireni.

Signed in the presence of the Committee of Missionaries at Kerikeri, Oct 5, 1831.

William Yate

The translation of the text into English by the secretary to the Church Missionary Society, William Yate, was as follows:

To King William, The Gracious Chief of England

King William. We, the chiefs of New Zealand assembled at this place, called the Kerikeri, write to thee, for we hear that thou art the great Chief of the other side of the water, since the many ships which come to our land are from thee.

We are a people without possessions. We have nothing but timber, flax, pork and potatoes. We sell these things, however, to your people, and then we see the property of Europeans. It is only thy land which is liberal towards us. From thee also come the Missionaries who teach us to believe on Jehovah God, and on Jesus Christ His Son.

We have heard that the tribe of Marion* is at hand coming to take away our land, therefore we pray thee to become our friend and guardian of these Islands, lest through the teazing of other tribes should come war to us, and lest strangers should come and take away our land.

And if any of thy people should be troublesome or vicious towards us (for some persons are living here who have run away from ships) we pray thee to be angry with them that they may be obedient, lest the anger of the people of this land fall upon them.

This letter is from us the chiefs of the natives of New Zealand.

The foregoing is a literal translation of the accompanying document.²

* The French Ship La Favorite anchored the day after the document was signed. The Natives call the French Marion from the name of the Captain who was cut off in June 1772.

Because of what he saw as the serious mistakes in the English translation, Nuki Aldridge provided us with his own translation of the original petition, as follows:

To King William the rangatira who has the wellbeing of England

Dear King William we collectively are the rangatira of New Zealand. We were brought together to this village at Kerikeri, we are writing (letter) to you, we are told without doubt that
you are the big chief across the way (sea), yours are the many ships that have come to our Country.

We are people without, the only resources we have are timber, flax fibre, pigs, potatoes. These we exchange with your people. We have seen the resource of the Pakeha. Your village alone has/is embrac(ing)ed us. Your own missionaries are teaching us to have faith in the god Jehovah and his only son Jesus Christ.

We have heard that this nation of Marion are coming upon us to take our village. That is why we ask (of you) that you be(come) a friend with us as guardians of these islands for those that provoke (incite) from strange tribes are near, which would bring foreigners to take away our land.

It will also mean some of your people will make mischief, and they will live off the fat of this land, they who have deserted from ships. Perhaps if you chastise them they will listen, or else the anger of tangata Maori will be upon them.

This letter is from us the (collective) rangatira of the Maori nation of New Zealand.³

Dr Patu Hohepa, a former Māori Language Commissioner and an expert in Ngāpuhi reo, also provided us with a translation ‘for the purpose of extracting some important words and issues from the Māori text without having them lost in translation’:

that to me. Maori never used ‘ko matou’ prior to contact. You weren’t allowed to speak collectively on behalf of people – this is what the old people used to tell me. To use ‘ko matou’ was in conflict with tikanga. . . . The letter was signed in the presence of the committee of Missionaries – I would suggest that while the missionaries were present they were directing the letter. If the missionaries were directing the letter they would have had an ulterior motive of keeping out the French Catholics. William Yate was a missionary. He also acted as a scribe for rangatira. Yate urged the chiefs to ask for protection. The rangatira say that they were called to a meeting. . . . They didn’t come together, they were asked to come together.

Huihuia is ‘made to meet.’ As I read it they were brought together at this village at Kerikeri. Again, an expression such as ‘hinu ki te whenua’ means ‘the fat of the land,’ which was not a Maori expression.³⁴⁹

Perhaps because he believed it was penned by Eruera Pare instead of Yate, Hohepa was much more complimentary about the language:

The sentences are complex, and close to 100% grammatically correct. The whole letter is in good formal Ngāpuhi idiolect with a Missionary Touch. The idioms peculiar to Ngāpuhi
such as heoi anō, he oi, e... ana, e... nei, te... ake, meinga, me ake mai, te iwi o Marian, are sprinkled through the text. The Māori text in fact hangs together much better than the English. 350

These contrasting and somewhat confusing views perhaps suggest the safer ground is indeed Phillipson's explanation of the petition as 'a joint missionary-Nga Puhi initiative'. On balance, he was probably right to suggest that the involvement of so many important chiefs, as well as the repetition of Whare's April 1831 appeal to Governor Darling over the need to control British subjects in New Zealand, meant 'it is almost impossible to view the petition as solely a missionary creation'. 351 Nor, though, should we be under any illusions about the longstanding missionary agenda of pushing Ngāpuhi into the arms of the British. Marsden had taken the occasion of the Girls' War to try to persuade Ngāpuhi leaders that they should save their strength for resisting foreign powers – by which he did not mean the British. As he wrote,

We told them that if they wished to enjoy their native land they must not kill one another; if they continued to do so they would have no men to protect their country from any foreign enemy who should at any future period wish to take it from them. 352

By contrast, Marsden used every opportunity to portray the British as benevolent and trustworthy, indulging in what Phillipson called 'constant pro-British and pro-government propaganda'. Phillipson summed up the 'recurring themes' from Marsden's journal as follows:

that the King wished to protect Maori from the illegal actions of his subjects; that the King wanted to secure their independence and freedom from foreign threats, such as from the tribe of Marion (France); that such foreign threats were a real danger; that the Governor of New South Wales would punish criminals, both Maori and European, if they visited the colony; that British law was superior and benign; and that Britain had no territorial ambitions in New Zealand. 353

Part of Marsden's object was of course to deflect the fear first expressed by Ruatara, and repeated thereafter by a number of others, that the missionaries were the thin end of a British wedge and would be followed soon enough by soldiers. 354 Even Hongi, who had asked George IV to send him soldiers, expressed this concern in 1823. In reply, Marsden told him that they had 'plenty of land at Port Jackson – more than [they] wanted', and he

took a chart and showed him what a little spot New Zealand was compared with New Holland, and that New Zealand was not an object to the English and therefore he need not be afraid of them . . . 355

In short, it cannot be doubted that it suited the missionaries for Ngāpuhi to hold fears about the French uppermost in their minds.

After more wild rumours about the French, the Acting Governor of New South Wales, Patrick Lindesay, sent the sloop Zebra to the Bay of Islands with a warning to any Frenchmen found claiming New Zealand that the country was under British protection 'according to the expressed wish of the inhabitants'. The Zebra returned with the news that all concerns about La Favorite had been completely without basis. It also brought back the petition, which was then dispatched to England. 356 The Sydney Gazette rejoiced 'to hear of the application of the Chiefs for British protection', adding that it would

greatly facilitate that formal occupancy on the part of our nation, which we have so frequently and so strongly urged, and on which the future peace and welfare of these colonies will so materially depend. 357

3.9 The Arrival of the British Resident

3.9.1 Early colonisation schemes

By the time of the appointment and arrival of the British Resident in New Zealand, various plans for organised British colonies in New Zealand – other than mission settlements – had appeared but had been rejected (or not
supported) by the Colonial Office. These dated back several decades and show the steadily building interest, often from New South Wales, in exploiting New Zealand’s natural resources. As early as 1792, a John Thomson put forward his ideas for establishing a settlement using convict labour in New Zealand, while in late 1793 Philip Gidley King suggested that a settlement ‘at the Bay of Islands or the River Thames’ would result in ‘much publick good . . . to the commerce of Great Britain and these colonies’.358

Later, in 1810, New South Wales Governor Lachlan Macquarie noted that ‘some time since’ various Sydney merchants had proposed to him ‘forming a settlement at their own expence on the northern island of New Zealand’ to cut flax for manufacture into rope and canvas.359 This was the venture planned by Simeon Lord and others including Thomas Kent, who, as we mentioned, was offered appointment by Macquarie as a Justice of the Peace. Upon his return to Sydney in 1810, George Bruce was enlisted by the scheme’s promoters, undoubtedly because of his connection to Te Pahi. News of the Boyd killings may have led to Bruce subsequently being omitted from the settlement plans, while the venture itself failed for other reasons.360 Similarly, as we also noted earlier, Macquarie’s proposal for an official commercial settlement was rejected in 1816.361

In 1821 a group of English entrepreneurs announced that a party would soon embark on a colonising expedition to New Zealand. In contrast to Macquarie’s endorsement of similar Sydney-based proposals, the Colonial Office offered no encouragement.362 A further English-based scheme was that of Edward Nicholls, in 1823. He proposed a colony of military settlers as a means of dissuading Māori from fighting each other, as well as of providing Britain with an abundance of flax, and offering an alternative destination to the United States for Irish and Scottish migrants. The scheme received the support of businessmen with interests in South Pacific whaling and trading, but the organisers still sought a government loan of £20,000. The Government was not interested.363

In 1825, the first New Zealand Company was set up by a group of London investors with the object of exploiting New Zealand’s resources of flax and timber. Within a year, the company had raised £100,000 of capital under the chairmanship of John Lambton and deputy chairmanship of Robert Torrens (the father of the later Governor of South Australia of the same name). It sought a 31-year trade monopoly over New Zealand from the British Government – which it felt could free the British Navy from any reliance on the Baltic for its supplies – warning that if this was not granted the door would be open for the French or Russians. The Government was sympathetic, but made it clear it would not provide a military force in support. Undeterred, the company’s two ships – complete with agricultural equipment and 50 workers – set forth in September 1825 under the command of Captain James Herd, picking up the (now) former missionary Thomas Kendall in Sydney to act as guide and interpreter. While the expedition did reach parts of New Zealand, including the Bay of Islands and Hokianga, the economics of the undertaking did not stack up, and both Herd and the company’s directors in London abandoned the venture.364

In 1826, the backers of Nicholls’ 1823 proposal were again pushing the idea of a military settlement in New Zealand to provide some security for Britain’s trading interests in light of the instability wrought by Māori warfare and the supposed threat of French colonial expansion. These British-based businessmen included the whaling firm Samuel Enderby & Son. Torrens, who was Nicholls’ uncle, wrote to the Colonial Office a short while later, offering to command the proposed military force. Again the Colonial Office showed no interest in a military outpost in New Zealand. Undeterred, Torrens proposed the following year that 500 British settlers be sent to New South Wales via New Zealand, where their gathering of flax or kauri spars en route would pay for their entire emigration once they arrived in Sydney. The Navy Board refused to become involved in such an impractical scheme, despite Torrens’s protest that the scheme would be ‘perfectly easy and certain’ were it focused solely on flax collection. Torrens’s response, Dr Patricia Burns emphasised, was in typical New Zealand Company fashion: ‘an unwarranted optimism, a fondness for the idea of
very large profits derived from New Zealand produce, and a refusal to heed the opinion of experienced officials. As Dr Donald Loveridge observed, these schemes had been motivated primarily by the desire to create a secure base for the exploitation of New Zealand’s resources. We discussed Edward Gibbon Wakefield and his theories of systematic colonisation in chapter 6. Suffice it to note here that the various plans to establish colonies of settlers in New Zealand seem to have had no bearing on the Colonial Office’s decision to appoint a British Resident in New Zealand.

3.9.2 Busby’s appointment and arrival
When Darling’s replacement as Governor, Sir Richard Bourke, arrived in Sydney in December 1831, he immediately revived the plan to appoint a British Resident. This may in part have been prompted by lobbying from Sydney traders with business interests in New Zealand. He wrote to the Colonial Office that he had found that ‘the Merchants of this place’ expressed ‘Considerable anxiety . . . that the intercourse with New Zealand should be placed upon a better footing’. However, the New South Wales Executive Council thought the Resident would achieve nothing without a contingent of soldiers (who, in Bourke’s words, would protect him and ‘give weight to his interference’), and that such a deployment would need to be sanctioned in London. Bourke duly wrote to the Colonial Office on 23 December 1831 to seek this approval. He attached the chiefs’ petition to the King at the same time.

As it happened, Lord Goderich, the Secretary of State for War and the Colonies, had already decided to act on Darling’s dispatch of 13 April 1831. He wrote to Bourke on 31 January 1832, confirming that the Residency would proceed, albeit without the assistance of any troops or the ongoing availability of a naval ship. He told Bourke that

After the Resident shall have conciliated the good will of the native Chiefs and in some measure restored that confidence between them and British Subjects, which the bad faith of the latter has so unhappily interrupted, you will be better able to judge in what manner it will be practicable to support

the authority of the Resident without exciting the jealousy or illwill of the Natives.

Loveridge, giving evidence for the Crown, felt that this vague advice sounded ‘suspiciously like a policy adopted in the absence of any real policy’, especially as Goderich went on to explain that any coercive measures the Resident might make against British subjects would not be ‘strictly legal’ and the Resident would need to be indemnified given ‘the risk of . . . litigation on such ground’. But notwithstanding these impediments, Goderich stressed

James Busby. Busby, a Scottish settler in New South Wales, sought out appointment as British Resident in New Zealand. He settled at Waitangi in 1833 under the protection of the rangatira Te Kēmara, erecting a house that had been shipped there for him from Sydney.
the moral underpinning for the Government’s support of ‘the punishment and prevention of these atrocities’:

The unfortunate natives of New Zealand, unless some decisive measures of prevention be adopted, will, I fear, be shortly added to the number of those barbarous tribes, who, in different parts of the Globe, have fallen a sacrifice to their intercourse with civilized men, who bear and disgrace the name of Christians . . . There can be no more sacred duty than that of using every possible method to rescue the natives of those extensive islands from the further evils which impend over them, and to deliver our own country from the disgrace and crime of having either occasioned or tolerated such enormities.\textsuperscript{372}

In 1831, James Busby, a Scottish settler in New South Wales, was temporarily back in Britain, seeking recompense for allegedly unfair dismissal from a previous job in the colony.\textsuperscript{373} It seems he heard that the Colonial Office was contemplating the appointment of a British Resident in New Zealand, and decided to signal his availability for the position. Despite not having set foot there himself, in June 1831 he wrote an essay entitled ‘A Brief Memoir Relative to the Islands of New Zealand’, which was published in 1832 in his book \textit{Authentic Information Relative to New South Wales and New Zealand}. In the essay on New Zealand, he wrote that if the Colonial Office sent

\begin{verbatim}
an authorized agent or resident . . . invested with the authority of a magistrate over his own countrymen, he would be able to enter into a separate treaty with each chief, or a general treaty with the whole, having for its basis the reciprocal security of British subjects and the natives of New Zealand in their commercial intercourse. And the delivering up, by the latter, of all runaway convicts and persons not having authority from the British Government, to trade in the Islands.\textsuperscript{374}
\end{verbatim}

Presumably to make the appointment of a Resident seem even more advantageous, Busby also claimed that:

\begin{verbatim}
Without assuming any authority over the natives beyond what might be voluntarily conceded to his [the Resident's] character, or attempting any interference in their internal government, except by persuasion and advice, it is beyond a doubt that the influence of the resident would be sufficient to induce the New Zealanders to abandon the worst practices to which they are at present addicted, and which, even now, a respect for the opinions of Europeans, leads them to conceal and deny: and that, joined to the exertions of the Missionaries in their education, and the humanizing influence of commerce, and the domestic industry it would produce, their respect for the British character would lead them at length to abandon the ferocious character of the savage and the cannibal, for the principles of a milder religion, and the habits of a more civilized people.\textsuperscript{375}
\end{verbatim}

It is as well to remember this early confidence when considering Busby’s later despondency about renewed tribal warfare.

Despite his lack of training in the law and absence of experience of either diplomacy or New Zealand, Busby was successful in being offered appointment as British Resident in March 1832. As Loveridge observed, he had been ‘able to pull the right political strings’, such as winning the support of the missionaries. He also had a patron in the form of Lord Haddington and experience as a (minor) colonial official.\textsuperscript{376} The Colonial Office’s preference for appointing a civilian over a military officer was a further benefit. But in certain regards Busby’s was a flawed appointment. In petty fashion he quibbled almost instantly over the date his salary would commence and the size of house that would be provided for him, and failed to develop a positive relationship with his superior, Bourke. As Adams put it,

\begin{verbatim}
Neither in looking for the most suitable candidate for such a difficult pioneering task, nor in the manner of his appointment, did the Colonial Office show much care. Consequently, the Resident appointment was compromised from the beginning.\textsuperscript{377}
\end{verbatim}

Busby sailed for New South Wales in the middle of the year, arriving in mid-October.\textsuperscript{378} He took with him both Goderich’s instructions about the Residency and the
King’s reply to the chiefs’ 1831 petition, which had also been written by Goderich. Both documents were dated 14 June 1832. Busby had suggested that he should carry the King’s reply and ventured that, if this was agreed, he should be presented to the King before his departure. As he put it:

With their simple ideas of Majesty it would detract not a little from the respect in which . . . [the chiefs] would hold me, if I had it not in my power to say that I had been in presence of the King . . .

Loveridge was unable to discover whether Busby did in fact achieve an audience with King William, but we assume not, as Busby would surely have made something of it. Eric Ramsden thought Busby had not been presented, and in fact had been ‘snubbed’ for making such an application.

Goderich’s instructions dwelt on legal matters. He reiterated to Bourke that the Resident would lack the authority to give proper effect to his role. For example, there was no lawful basis for him to apprehend individuals or force them back to Sydney to stand trial. Nor were acts such as provoking warfare between tribes or trading in dried heads covered by British criminal law. However, a Bill had been drawn up which Goderich hoped would shortly resolve these problems. Commonly known as the South Seas Bill, it was

A Bill . . . to make provision for the Prevention and Punishment of Crimes committed by His Majesty’s Subjects in Islands situate in the Southern or Pacific Ocean, and not being within His Majesty’s Dominion.

The Bill would enable the New South Wales legislature to pass

all such Laws and Ordinances as to them may seem meet for the prevention and punishment of Crimes and Offences committed by His Majesty’s Subjects within the said Islands of New Zealand, or any other Islands within the Southern or Pacific Ocean, not being within His Majesty’s Dominion; and . . . any such Laws or Ordinances . . . to make effectual provision for the seizure, detention, trial and punishment of any such Offenders, either within the said Colony of New South Wales, or within the Islands in which any such Offences may have been committed, or within any adjacent Islands . . .

Goderich was confident that the Bill’s passage would provide the New South Wales Legislative Council with ‘the power of rendering Mr Busby’s Mission effectual to the purposes with which it has been undertaken’. Even if it did not pass, he believed that Busby’s mission would still not be unattended with important advantages, and His Majesty’s Government will be acquitted of the reproach of an acquiescence in crime, which they will have done the utmost in their power to prevent . . .

Predictably, perhaps, the Bill did fail, with members of Parliament pointing out that the British Parliament could not legislate for a foreign country such as New Zealand.

Since Goderich was well aware of the obvious economic ramifications for New South Wales of the appointment, it fell to Governor Bourke to give Busby his more detailed and practical instructions (Goderich having observed that Bourke was ‘perfectly aware of the objects, which have led to this appointment in a commercial point of view’). Bourke’s instructions were dated 13 April 1833, which we note was two years to the day after Darling wrote to Goderich to express his intention to appoint a Resident. Bourke certainly laid emphasis on the importance of trade, telling Busby that ‘it will be your duty to assist, by every means in your power, the commercial relations of Great Britain and her colonies with New Zealand.’ Bourke further explained that the Elizabeth case made it at once apparent that it was no less a sacred duty than a measure of necessary policy to endeavour, by every possible method, to rescue the natives of those extensive islands from the evils to which their intercourse with Europeans had exposed them, and, at the same time, to avert from the well-disposed of His Majesty’s subjects, settled in New Zealand, the fatal effects which would sooner or later flow from the
continuance of such acts of unprincipled rapacity and sanguinary violence, by exciting the natives to revenge their injuries by an indiscriminate slaughter of every British subject within their reach.386

This concern that Māori should not be hurt lest innocent British lives or trade be affected was a common theme dating back to Governor King’s 1805 order. However, apart from deterring such incidents and facilitating trade, Bourke told Busby that his

principal and most important duty it will be to conciliate the good-will of the native chiefs, and establish upon a permanent basis that good understanding and confidence which it is important to the interests of Great Britain and of this colony to perpetuate.387

In this, Busby was to capitalise on the chiefs’ clear regard for the British monarch by reading the King’s reply to as large a gathering of rangatira as possible. Bourke also instructed Busby to forge a profitable alliance with the missionaries and take on a powerful chief as his patron.388

Bourke’s idea appears to have been that, since the British Government had little option short of the acquisition of sovereignty over New Zealand to control the activities of its subjects, Busby’s 1831 proposal that the chiefs might act collectively to impose law and order – and potentially deport Britons to New South Wales – was worth taking seriously.389 As he put it to Busby:

There is still another form in which the influence which it is hoped the British Resident may obtain over the New Zealand chiefs may be even more beneficially exhibited. . . . It is also possible, that at your suggestion, and by the aid of your counsels, some approach may be made by the natives towards a settled form of government, and that by the establishment of some system of jurisprudence among them, their courts may be made to claim the cognizance of all crimes committed within their territory; and thus may the offending subjects, of whatever state, be brought to justice . . . 390

Bourke believed that Busby could achieve this by the skilful use of those powers which educated men possesses over the wild or half-civilized savage, [through which] an influence may be gained by which the authority and strength of the New Zealand chiefs will be arrayed on the side of the Resident for the maintenance of tranquility throughout the islands.391

Phillipson argued that Bourke seemed to assume in these instructions that Europeans would always be in the wrong in clashes between Māori and ships’ crews, and that it would be a straightforward exercise to influence the chiefs to capture and hand over the offending parties. ‘It was all wildly unrealistic,’ he concluded, ‘and left the Resident with little chance of success.’ 392

One can see how it may have been hoped that the post of British Resident in New Zealand would function, to some extent, as similar postings had elsewhere. As McHugh explained, the concept of a Resident was by no means new. It had been a longstanding practice in India, where British Residents exercised an indirect control over British subjects through co-opting the local authorities into acting on their behalf. As McHugh put it, they ‘exercised an authority of suasion and influence derived less from Crown authorisation than as a delegation and integration into the legal system of the host court’. Their ability to act as ‘puppet master’ depended on their personal ability to ‘manoeuvre their position’.393 Whether Busby would be able to achieve this in New Zealand of course remained to be seen.

Bourke had delayed Busby’s departure from Sydney for New Zealand in the hope of hearing that the South Seas Bill had passed, but on 21 April 1833 eventually sent the Resident on his way to do what best he could with the limited legal powers available to him.394 Busby could, for example, send witnesses to Sydney to obtain arrest warrants, but Bourke conceded that this process,

which is at best a prolix and inconvenient operation, and may incur some considerable expense, will be totally useless unless you should have some well-founded expectation of securing the offender upon or after the arrival of the warrant [from Australia], and of being able to effect his conveyance
here for trial, and that you have provided the necessary evidence to ensure his conviction.\textsuperscript{395}

Busby himself recorded that Bourke had expressed the view that sending a Resident to New Zealand without the powers intended by the South Seas Bill would be ‘productive of little or no good’.\textsuperscript{396} Busby was clearly going to have to rely upon the support of the rangatira.

Busby sailed for New Zealand on HMS \textit{Imogene}, which entered the Bay of Islands on 5 May 1833. Bourke had instructed him to present his credentials to the signatories to the 1831 petition upon his arrival, as would a diplomatic representative. Bourke had added:

If your proposal to reside, in an accredited character, in New Zealand, shall be received by the chiefs with . . . satisfaction . . . you will then confer with them as to the most convenient place for establishing your residence, and will claim protection for the persons and property of yourself, family, and servants . . .\textsuperscript{397}

After inclement weather, Busby finally came onshore at the Paihia mission station on 7 May and met the missionaries, who busied themselves both with arranging the hui at which Busby would read the King’s letter and translating the letter into Māori.\textsuperscript{398}

The date for Busby to be received by the chiefs was set down for 17 May. That morning he left the \textit{Imogene} and was rowed ashore, the ship firing a seven-gun salute to mark his formal arrival. While we lack an account of this moment quite as vivid and full as Nicholas’s description of Marsden’s arrival at Rangihoua in 1814, we know enough to conclude that the local rangatira endeavoured to make a striking impression. After all, Busby’s arrival arguably marked the most significant new development in terms of the British presence at the Bay since the establishment of the first mission.

An account published in the \textit{Sydney Gazette} of 2 July 1833 described Busby’s moment of arrival:

The [official] party then proceeded to the Missionary village, a short distance from the beach, and when near to it were received by three white-headed chiefs, who, rising in succession, welcomed them in a short speech, delivered with so much gesticulation as to resemble a dance. The main body of the chiefs and warriors then advanced with great noise and clamour; they were then arranged in a dense but regular body, when they commenced the war dance of the country, wielding their muskets with great force, and going through various evolutions; the tendency of their movements being to create a feeling of their power and force, after which they quietly seated themselves, when six or eight of the chiefs delivered in succession a short speech of welcome. The latest speakers making a way, the party advanced through the troops preceded by one of TAHI TAPI’s [Tohitapu’s] wives in a kind of dance. As soon as the natives had passed, they commenced firing their muskets, and making a dreadful shouting.\textsuperscript{399}

Phillipson noted, however, that there was some apprehension: both Henry Williams and William Williams had recorded local concern about Busby’s role, and about whether the warship that had brought him would remain and might be about to disgorge soldiers.\textsuperscript{400}

Altogether some 600 Māori and 50 Pākehā (including, of course, a large contingent from the \textit{Imogene}) gathered at Paihia for the occasion. They arranged themselves around the front of the chapel, with the Europeans sitting on chairs. Busby placed the King’s letter on a table, ceremoniously breaking its seal (the translation having already been made from an open copy), and read it aloud, with Henry Williams providing the translation. Busby then read out his own address, which William Williams translated. This both repeated the King’s messages of friendly relations and control over British subjects’ behaviour and emphasised how honoured the chiefs should feel to have the King’s representative come to reside among them. As if preoccupied by his lack of military support and potentially vulnerable personal security, Busby also stressed the ‘sacred’ nature of his role.\textsuperscript{401}

One of the most noteworthy aspects of the letter is Goderich’s use of the word ‘alliance’ to describe the relationship that had formed between Māori and Great Britain. Adams suggested it was ‘no more than a vague expression of goodwill’, although he felt that ‘combined
King William IV’s Response to the Rangatira

The English text

Lord Viscount Goderich, one of the Principal Secretaries of State to His Majesty the King of Great Britain—

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 of New Zealand 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 people of both countries.

In order to afford better protection to all classes, both 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.

It will also 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 may have been banished, as likewise to apprehend such persons of this description as may be found at present at large.

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,

I am,

Your friend,

Goderich.

The Māori translation

Na te Rangatira nui, na Waikauta Koreriha, ko ia nei te tahi o nga tino kai tuhituhi a te Kingi o Ingarani—

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 Ingarani.

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 to koutou kainga e te iwi o Mareau), a e hiahia ana ia kia kaua e poa 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, kia tuhituhia mai nei e koutou. Penei
with the actual appointment of a Resident, it indicated a further step towards a more positive interpretation of New Zealand’s independent status and Māori rights. Adams also noted, however, that ‘Goderich’s high-flown humanitarian declarations were tempered by a consideration for the market place’. In other words, the British interest in trade – channelled primarily through New South Wales – remained a paramount consideration.

Unlike the chiefs’ letter to King William, the reply and its translation were not subject to linguistic analysis by the claimants, although Hohepa contended that the King’s reply was as much a part of the ‘historical and anthropological linguistic trail to Te Tiriti’ as ‘the words between Hongi Hika and King George [and] the 1831 letter of the chiefs to King William IV’. The description, for example, of Busby as a kaiwhakarite, or mediator between Māori and Pākehā, is an obvious link with 1840, as we shall see in chapter 7. We note also that Goderich’s senior role within the British Government was translated as ‘rangatira nui’ – that is, clearly senior to that of Busby the kaiwhakarite. Presumably Hohepa would regard Busby’s address as part of the same trail or whakapapa. We can see, for example, that the word ‘taonga’ was used five times in its translation to convey belongings, ‘riches’, ‘all good things’, and ‘all... things which you desire’. Orange also pointed to the use in the address of ‘whakarangatiratanga’ to convey the honour bestowed on the chiefs by the King sending them an envoy. As she put it, this literally meant ‘increasing their chiefly mana’.

When Busby had finished speaking and his address had been translated, some 10 to 15 chiefs responded. Frustratingly, we know little of their speeches and nothing of their identities other than that they came from Hokianga, Kororāreka, Kawakawa, and Waikare, among other places. The hui appears, then, to have brought together the major alliances at the Bay of Islands and beyond. Busby was pleased with the chiefs’ messages of welcome, although one told him that it would have been better if he had brought soldiers to protect him, for Māori were ‘very wicked’.

Another referred to the settlers’ warnings that the present proceeding is only preparatory to the enslavement of the New Zealanders; and that the Missionaries and myself [Busby] are to receive from the Government a certain number of dollars for each native who is converted, or who is brought into connection with the English, the intention being to send Ships of War to take them off for Slaves.
Busby’s Address and its Translation

The English text

JAMES BUSBY, Esquire, the British Resident—

To the Chiefs and People of New Zealand.

My Friends,

You will perceive by the letter which I have been honoured with the commands of the King of Great Britain to deliver to you, that it is His Majesty’s anxious wish that the most friendly feeling should subsist between his own subjects and yourselves: and how much He regrets that you should have had reason to complain of the conduct of any of His subjects.

To foster and maintain this friendly feeling – to prevent as much as possible the recurrence of those misunderstandings and quarrels which have unfortunately taken place – and to give a greater assurance of safety and just dealings both to His own subjects, and the people of New Zealand, in their commercial intercourse, with each other – these are the purposes for which His Majesty has sent me to reside amongst you.

And, I hope and trust, when any opportunities of doing a service to the people of this country shall arise, I shall be able to prove to you how much it is my own desire to be the friend of those among whom I am come to reside.

It is the custom of His Majesty, the King of Great Britain, to send one or more of His servants to reside as His Representatives in all those countries of Europe and America, with which He is on terms of friendship; and in sending one of His servants to reside among the Chiefs of New Zealand, they ought to be sensible not only of the advantages which will result to the people of New Zealand, by extending their commercial intercourse with the people of England, but of the honor the King of a great and powerful nation like Great Britain, has done their country in adopting it into the number of those countries with which He is in friendship and alliance.

I am, however, commanded to inform you that in every country to which His Majesty sends his servants to reside as His Representatives, their persons and families, and all that belongs to them are considered sacred. Their duty, is the cultivation of peace, and friendship, and goodwill; and not only the King of Great Britain, but the whole civilized world would resent any violence which his Representatives might suffer in any of those countries to which they are sent to reside in His name. I have heard that the Chiefs and people of New Zealand have proved the faithful friends of those who have come among them to do them good, and I therefore trust myself to their protection and friendship with confidence.

All good Englishmen are desirous that the New Zealanders should be a rich and happy people; and it is my wish, when I shall have erected my house, that all the Chiefs shall come and visit me, and be my friends. We shall then consult together by what means they can make their country a flourishing country, and their people a rich and a wise people, like the people of Great Britain.

At one time Great Britain differed very little from what New Zealand is now. The people had no large houses, nor good clothing, nor good food. They painted their bodies, and clothed themselves with the skins of wild beasts. Every Chief went to war with his neighbour, and the people perished in the wars of their Chiefs, even as the people of New Zealand do now. But after God had sent His Son into the world to teach mankind that all the tribes of the earth are brethren, and that they ought not to hate and destroy, but to love and do good to one another; and when the people of England learned His words of wisdom, they ceased to go to war with each other, and all the tribes became one people.

The peaceful inhabitants of the country began to build large houses, because there was no enemy to pull them down. They cultivated their land and had abundance of bread, because no hostile tribe entered into their fields to destroy the fruits of their labours. They increased the
numbers of their cattle because no one came to drive them away. They also became industrious and rich, and had all good things they desired.

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 it 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 land shall be tilled without fear, and its fruits shall be eaten in peace. When there is abundance of bread, men shall labour to preserve flax, and timber, and provisions for the ships that come to trade; and the ships which 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 fruits of their labour.

JAMES BUSBY.
Bay of Islands,
17th May 1833.

The Māori translation

Na te PUHIPI, te Tangata o TE KINGI o INGARANI—

Ki nga Rangatira me nga Tangata o Nu Tirani.

E HOA MA,

Kua rongo nei koutou ki te pukapuka o TE KINGI o INGARANI, i kawea mai nei e hau. E hiahia ana ia kia wakahoatia koutou ki a ia. Ko tana mea kino te mahi kino o te pakeha ki a koutou.

Ko a hau tenei kua tonoa mai e ia kia meinga ai koutou hei hoa pumau ki a ia. A kia kore ai e tutu nga tangata o TE KINGI o INGARANI ki a koutou. A kia tika ai te hokohoko a te pakeha ki te tangata maori, a te tangata maori ra nei ki te pakeha. Hei a muri nei ki te tutu e tahi tangata kia koutou, hei reira koutou kite ai, ko a hau te hoa mo te tangata maori.

No tua iho ano tenei ritenga o TE KINGI o INGARANI kia tonoa e tahi o ona tangata ki nga kainga tawiti o Uropi, o Amerika, o hea, o hea, nga kainga hoki e wakahoaatia ana ki a ia. A ka tonoa mai nei a hau e TE KINGI kia noho ki to koutou kainga. Kia mahara koutou, e nga Rangatira o te tangata maori, hei pai tenei mo koutou; ma konei hoki ka hono ai to koutou hokohoko ki a matou, ki nga tangata o Ingarani: kia mahara ano hoki koutou, he wakarangatira-tanga tenei na TE KINGI o te iwi nui o Ingarani, ta te mea hoki ka wakahoatia koutou ki a ia.

Tenei ake ano tenei korero; ka tonoa nga tangata o TE KINGI kia noho ki hea, kia noho, kia noho ai. E kore rawa e ahatia aua tangata, o ratou tamariki ra nei, o ratou taonga ra nei e te kainga e noho ai ratou. E noho ano hoki ratou hea hea nga tangata o Nu Tirani, nga pakeha he ahatia nga tangata o te KINGI, ka riri ia me nga pakeha katoa. Oti ra kua rongo a hau, he hunga pai nga rangatira me nga tangata o Nu Tirani, nga pakeha e noho ano kia a ratou mo te pai, koia hoki a hau te matakau ai kia noho, ko taku ko tahi anake ano ki to koutou kainga.

E mea ana nga tangata wakaro katoa o Ingarani, kia noho pai te tangata maori, kia wiwi ano ki nga taonga o te pakeha. A e mea ana a hau, ka oti te tahi ware moku te hanga, kia haere mai nga rangatira maori katoa kia kore pa, kia wakahoatia anu ai hau. A kia wakaro ano hoki koutou he pai mo to koutou kainga, kia wakarite ai koutou nga tangata e Ingarani.

Inamata riro ko te ritenga o Ingarani kei te ritenga o Nu Tirani. Kahore o ratou ware pai, kahore he kahu pai, kahore he kai pai. He mea pani o ratou hiako ki te ta, ko o ratou kahau he huruuru kararehe. A e wawai ana tenei kainga ki tera atu: a ngaro iho nga tangata i te parekura ma koutou ka ngaro nei. Oti ra ka tonoa e te ATUA tana TAMAITI ki te aorangi nei, he aki i te tangata, he teina, he tuakana nga tauiwai katoa ine te aorangi, a he mea he te wawai, te hae; ko te pai ia kei te aroha,
This chief told Busby, ‘You are welcome – even if you are the man who has come to sell us!’ (Emphasis in original.) Overall, however, Phillipson noted the European observers’ agreement ‘that the welcome for the resident was unanimous and that clearly the Bay and Hokianga Maori had decided to accept him, his letter, and his offer of friendship.’

Busby thought that 22 chiefs were present, but it seems that the missionaries advised him that 40 of those in attendance were rangatira who would need to be presented with gifts. Busby put away the 15 suits of clothes he had to distribute and instead borrowed blankets from the mission’s stores so that he had sufficient to present one to each of the 40 chiefs, along with a quantity of tobacco. The mission then provided a feast for the 600 Māori present, while the 50 Europeans had a meal at Henry and William Williams’s house. As Henry Williams recorded,

At three [pm], the Natives were served with their repast of beef, potatoes, and stir-about. As our [Māori mission] Boys have had some experience in this important duty, at our Annual Meetings, our Visitors [Busby and the naval officers] were a good deal surprised at the order and expedition with which this assemblage of New Zealand rank was supplied, as the feast consisted of about 800 dishes constructed of a plant similar to the flag. All passed off very agreeably.

The question subsequently arose as to where Busby should erect the bricks and frame of the house that he had had shipped from Sydney. After the Imogene sailed away on 19 May, he was accommodated by his missionary allies, and at first it seemed logical he should settle near them at Paihia, although the missionaries appear to have favoured a little distance and may have suggested Busby look slightly northward to Waitangi. Busby reported to Bourke on 18 June 1833 that

I have, therefore, fixed upon a place about a mile and a half from the Mission station, which was recommended to me by a majority of the chiefs, and it is, in my estimation, the most eligible site for my dwelling.

Busby may even have had settling at Waitangi in mind before he left New South Wales, as he wrote on 22 July 1833...
that the land had been ‘transferred’ to him by William Hall before his departure. In any event, Busby settled at Waitangi under the protection of Ngāti Rāhiri and their rangatira Te Kēmara. As early settlers in the north usually did, he later attempted to negotiate the formal ‘purchase’ of the land.

3.9.3 The selection of a national flag

In 1826, the Sydney shipbuilders Raine, Ramsay, and Browne entered into a transaction with local rangatira, including Te Taonui, for land at Te Hōreke in the Hokianga. They were soon producing spars, planks, and flax for export to Sydney, and by the following year some 50 British settlers were engaged at what had become a shipbuilding operation in its own right. Lee remarked upon ‘this startling irruption of European enterprise’, which he attributed to a concurrent boom time in Sydney. The first vessel built at the Hōreke shipyards was a schooner called Enterprise, and this was followed in 1828 by a brig, the New Zealander, and in 1830 by a 400-ton barque, the Sir George Murray.

The problem for these ships was that they were built outside territories ‘subject to His Majesty or to any European power or state’, as was required for them to obtain a British register and freely enter international ports. Raine had attempted to obtain a certificate of registry for the New Zealander when it first arrived in Sydney in December 1828, but was told that ‘no such registry could be granted’. He appears to have been permitted to sail the vessel ‘between this colony [New South Wales] and New Zealand exclusively’. When the Sir George Murray sailed into Port Jackson in November 1830, however, it was immediately seized by Customs. Patuone and Te Taonui were both on board the Sir George Murray at the time of its seizure, and the impounding was, as Orange put it, ‘an insult to their mana.’
Raine’s business was by now bankrupt, and Hokianga settler Thomas McDonnell shortly afterwards bought both the Sir George Murray and the entire shipbuilding enterprise at auction in Sydney.\textsuperscript{420} It seems that the matter of registration may have been resolved by the granting of a licence to the Sir George Murray to trade between Australia and New Zealand, as had occurred with the New Zealander,\textsuperscript{421} although in January 1833 the New Zealander too was seized by Customs in Sydney for lacking a British register. The press remarked that it was ‘somewhat surprising that this question has not been settled, petitions to the Home Government on the subject having been sent upwards of four years since.’\textsuperscript{422}

Before leaving for New Zealand, Busby was approached by the then owner of the New Zealander, Joseph Hickey Grose, who sought a register for the ship. Busby astutely recognised that the issue provided an opportunity for him to draw the chiefs – who would probably never have contemplated ‘confederating for any national purpose’ – into working in concert. After his arrival in New Zealand, therefore, and a few days even before he was presented to Bay of Islands Māori, he outlined his plans to the Secretary of State for War and the Colonies for the rangatira to come together and choose a national flag for New Zealand-built ships. He himself would undertake to certify the chiefs’ registration of the ships, but only if two-thirds of them agreed upon a flag design and petitioned King William to have it respected. Through this precedent he hoped the chiefs would ‘consent that they will henceforth act in a collective capacity in all future negotiations with me’, with the ensuing ‘confederation of chiefs’ providing the basis for ‘an established Government’\textsuperscript{423} Busby’s excessive optimism meant he looked forward the following month to building a ‘Parliament House’ and introducing a ‘passport’ system to enable the chiefs to expel escaped convicts.\textsuperscript{424}

In November 1833, Bourke sent Busby his approval, along with a flag with four horizontal blue bars on a white background and the Union Jack in the top left corner. This arrived in January 1834 but, as Busby explained, was rejected by the missionaries because of its ‘total absence of red, a color to which the New Zealanders are particularly partial and which they are accustomed to consider as a indicative of rank.’\textsuperscript{425} Henry Williams requested three more designs be made up, and these were delivered on HMS Alligator,\textsuperscript{426} which arrived at the Bay of Islands on 9 March 1834.\textsuperscript{427} One of these was the design of the mission’s own flag, which had been flown from the Active for some time. A hui was convened at Busby’s new Residency at Waitangi, with the sailors from the Alligator erecting a marquee for the occasion out of the ship’s sails.\textsuperscript{428} The three flags flew from short poles outside the tent.\textsuperscript{429}

The gathering to select a national flag took place on 20 March 1834. William Williams observed that 26 ‘principal chiefs’ were in attendance,\textsuperscript{430} while Busby counted 25 chiefs,\textsuperscript{431} and William Marshall, the Alligator’s surgeon, wrote that ‘about thirty Tangata Mauri, or heads of tribes’ were present.\textsuperscript{432} They included Kiwikiwi, Te Morenga, Moetara, Waikato, and Hōne Heke.\textsuperscript{433} Pōmare may or may not have been late for the formalities (see below). There were also hundreds of supporters.\textsuperscript{434} Marshall described how the tent was divided by a barricade, with the leading chiefs moving into the vacant side as their names were called, ‘to the no small discontent of the excluded’\textsuperscript{435} Another observer from the Alligator, the Austrian Baron Karl von Huegel, gave a more colourful account of this process:

A rope was then drawn dividing off part of the tent, and one of the New Zealanders belonging to the Waimati mission read out the name of the first chief of each horde in turn, whereupon the man in question responded and was required to creep under the rope and into the area partitioned off. It is not easy to imagine how ludicrous the effect was: the New Zealanders, many of them incongruously dressed, striding in all dignity up to the rope, and then prostrating themselves to crawl under it with embarrassing entanglement in their mats and blankets.\textsuperscript{436}

The point of separating the chiefs in this was, of course, so that Busby could ensure only his ‘parliament’ voted on the flag.\textsuperscript{437} Busby then addressed the hui, stressing repeatedly the personal interest of the British monarch, as well indeed as Busby’s own connection to him.
It would seem that Busby had by now become proficient enough in Māori to deliver the address himself. Marshall, for example, referred to Busby making a speech and remarked that he had ‘in vain attempted to procure a copy of Mr Busby’s address on this occasion, and cannot, therefore speak with any certainty as to its contents’. Hohepa noted several errors in Busby’s address but added that he thought the rangatira would have understood it.

Phillipson noted Busby’s emphasis on the King’s initiative, friendship, and – in due course – personal approval. Busby did not invite any responses to his speech but proceeded directly with the vote. He was assisted by Eruera Pare, who wrote down each rangatira’s selection. According to Busby, 12 chiefs chose the mission flag, 10 another, while three voted for the third option. The winning choice was then raised alongside the Union Jack on

### James Busby’s Address to the Chiefs on the Occasion of the Adoption of a Flag, 17 March 1834

#### The Māori address

E aku hoa, kua wakaae te Kingi o Ingarani ki a koutou hei hoa mona, na ka tonoa mai hoki hau, tana Retuirenete, kia noho ki Nu Tirani, a e hiahia ana hoki ia kia hohoko ona tangata ki a koutou, a kia mahi tika ratou; kia kaua e riri ki a koutou, me koutou ano hoki ki a ratou. – Otira kahore he kara mo nga kaipuke i hanga ki Nu Tirani, hei peke hohoko mea, a ko nga kaipuke kara kore e tangohia. – A he mea tika ma nga rangatira e wiriwiri tetahi kara mo Nu Tirani. – A ko nga kaipuke hoki e hanga ki konei ka tukaia kia hohoko nga turanga kaipuke o te Kingi o Ingarani – koia ra ko tenei, ko te mea i tuhitahi ai hau mo nga rangatira o Nu Tirani. A e te toro enei kara kua oti te kawe mai e te Rangatira o tetahi o nga kaipuke taua o Kingi Wiremu, – koia hoki ka wakaminea nei e hau nga Rangatira kia wiriwiri ai e koutou tetahi kara mo Nu Tirani – ma nga rangatira nuni anake, e wiriwiri te kara – no te mea ko etahi pea e hiahia ki tetahi kara, ko etahi e hiahia ki tetahi atu. Otira ma te Rangatira ano e mea ki a ia ano te kara e tino pai, a ko te kara e tangohia e te tokomaha o nga Rangatira ko to kara tera mo Nu Tirani a he io ano hoki te mea e tangohia – Ano ka wiriwiri te kara, ka kawea e te Rangatira o te puke taua a ka wakatakoria ki nga wae-wae o te Kingi – a ki te painga te kara e ia ko nga kaipuke e wakatare ana i taua kara e kore e tangohia, otira ka tukua ki nga turanga kaipuke o Kingi Wiremu, hohoko ai. – A kia wakaro nga Rangatira o Nu Tirani ki tenei ki te aroha nui o te Kingi o Ingarani ki a ratou, a kia atawhai ratou ki ona tangata.

#### The English translation

The King of England has graciously taken you the representatives of the Maori people to be his friends and has sent me his representative to reside here in New Zealand. He desires me to express to you his desire that you and I are to long continue to be friends and work together for the good of everybody. He hopes that you will live in peace with the new settlers. He realizes that the ships that have been built in New Zealand have no flags of their own and therefore desires you the chiefs to accept this flag as a pattern for the flags for such ships so that such ships sailing the seas in flying for trade would fly the flag of the King of England, and on your behalf I would like to write to the King of England to signify your acceptance of the flag. Three flags have been delivered to me by the Captain of one of the ships of his Majesty King William and I desire that you as chiefs choose one of these flags to be the flag for New Zealand. I want you to consult with chiefs of other parts of New Zealand so that your decision would be the decision of the majority, for I visualise that many would prefer one and others would prefer another. When you have made your decision the Captain of the ship will bear your choice to the King of England signifying that the particular flag is the one you have chosen as the flag for New Zealand and such a flag will then be flown on the ships of New Zealand serving under His Majesty King William. Please give this matter your due consideration. I send you the greetings of King William of England.
a larger flagstaff, and HMS *Alligator* fired 21 guns. This itself was a significant act; James Stephen, the Permanent Under-Secretary of the Colonial Office, later regarded it as a formal recognition of Māori independence (see chapter 6). Busby did not record any dissatisfaction with the selection process, claiming that the chiefs appeared ‘to have a perfect understanding of the nature of this proceeding’. However, Marshall’s version of events was somewhat different. He recorded 12 votes for the winning flag, 10 for the second, and six for the third, with abstentions from two rangatira ‘apparently apprehensive lest under this ceremony lay hid some sinister designs on our parts’. Overall, thought Marshall,

had anything like freedom of debate been encouraged, instead of suppressed, before proceeding with the election, I have little doubt but that the real sentiments of those present would have been elicited; and, assuredly, an opportunity might have been afforded of answering any objections as they arose, and, in that way, more completely satisfying the minds of the people as to the objects contemplated by our Government.

Von Huegel thought that the chiefs were baffled by the entire notion that King William was showing his friendship by letting them select a flag for their ships, which he would seize if they failed to fly it. ‘Most of them regarded the proposal as indicating anything but friendship’, wrote Von Huegel. He also described the vote as rather less straightforward than either Busby or Marshall had made it seem:

When it came to voting, each of the first three voters named a different flag; of the rest a majority said that they did not care which flag was chosen. One of the above-mentioned servants of the missionaries then took a sheet of paper and wrote down every voter’s name and his opinion; as for the majority who had affirmed indifference, he pressed each man in turn to name a preference, and adding up the votes he announced which flag was chosen.

After the formalities were over, Busby invited the 50 or so Europeans present into the Residency for a meal, while the Māori attendees were given ‘a thin paste made of flour and water’ outside. Busby had even deliberately under-catered for his Māori guests in the hope of dissuading the rangatira from bringing so many supporters next time. Marshall was scathing that Busby had not ‘provided seats for the chiefs at the same table with the Resident and his “pale-faced” guests.

Moreover, while the feasting (‘or rather fasting’, joked von Huegel) was taking place, many Māori gathered in the tent to hold a lively debate about the proceedings – arguably, the kōrero that had been denied them by Busby. We have only a very limited record of this discussion – which Marshall described as ‘warlike’ and ‘wordy’ – from von Huegel’s journal. Like Marshall, von Huegel could not understand what was being said and had to ask the missionaries now and then to translate. He did manage, however, to record some of what was said:

Kiwy Kiwy [Kiwikiwi] said:—How have we come into this situation of having to hoist a flag on our boats to ensure their safety? . . . It is through our own fault, it is through our own fault that we have to do it. If we had been more united among ourselves, if we had had no enmity of one horde against another, we would have been able to oppose their landing.

Temorina [Te Morenga]. I will tell you why we had to bow down before the will of the strangers. Would any of us really urge other New Zealanders to drive strangers away from the landing-place? . . . Our fault was not in allowing the strangers to land, it was in our setting upon them and murdering them. We should help a man in trouble and not harm him. Now the ships are afraid to approach our coasts, and yet what things we have received through the strangers! Whence came the blankets we wear, the tobacco we smoke, the pigs and potatoes? It all came from the strangers, they have done us good, and we should protect them.

Von Huegel noted that his guide from the previous day also spoke, and ‘made a powerful speech against the plundering of ships driven ashore’. It seems that the focus of at least some of the debate, therefore, was not on the seizure of New Zealand-built vessels in foreign ports but on attacks on the crews of ships that foundered on the

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northern New Zealand coast. Von Huegel noted that a ship from Van Diemen’s Land had recently been driven ashore in the Hokianga Harbour and the crew had been attacked by local Māori before being rescued by Moetara.

According to Marshall, during the speeches Pōmare – who was apparently aggrieved at not having been invited to the hui before the other chiefs – belatedly arrived with 60 warriors armed with muskets and waited at a short distance, probably in expectation of a formal welcome. William Williams endeavoured to persuade him...
to lay down his guns, but he initially refused, claiming that it was ‘New Zealand custom’ to carry weapons and pointing out that the officers of the Alligator still carried their swords. Eventually, his point made, Pōmare allowed himself to be won over by the missionaries’ ‘soothing’ talk. There is some doubt about whether Pōmare actually arrived late, however. Von Huegel wrote that the flag ceremony began when ‘the greater part of the leaders expected had arrived’, but without Pōmare, Kiwikiwi, and ‘the leader of Koraradica’, which may have been a reference to Titore. But later he wrote that Pōmare and Kiwikiwi had arrived before Busby made his opening address and well before the voting took place.

The winning selection was sent back to England for the King’s approval. Meantime, Busby issued interim certificates to shippers ‘without reference to the Chiefs’. Secretary of State for War and the Colonies Lord Aberdeen sent confirmation of the King’s approval in December 1834, and this was in turn sent on to Busby from Sydney in July 1835. At the same time, the Royal Navy was instructed to respect both the flag and Busby’s joint register with the chiefs. Busby later called the King’s approval an acknowledgement of ‘the Sovereignty of the Chiefs of New Zealand in their collective capacity’, although his hope that a unified Māori government would quickly follow the flag’s adoption was not fulfilled, as we shall see.

What, then, has been made of the selection of the flag? Busby himself told Bourke that

As this may be considered the first National Act of the New Zealand Chiefs it derives additional interest from that circumstance. I found it, as I had anticipated, a very happy occasion for treating with them in a collective capacity, and I trust it will prove the first step towards the formation of a permanent confederation of the Chiefs, which may prove the basis of civilized Institutions in this Country.

In keeping with this description, Manuka Henare placed the adoption of the flag as the fourth component in his series of nation-making events that began with Hongi’s meeting with George IV in 1820. He noted how the flag eventually became a symbol of Māori sovereignty.
In a similar vein, Orange argued that the flag’s long-term significance lay in

Maori understanding of the event: the belief that the mana of New Zealand, closely associated with the mana of chiefs, had been recognised by the British Crown. . . . The flag identified New Zealand as a separate country, yet associated it with Britain, known by Maori to be the world’s most powerful nation. Northern Maori absorbed the flag into their oral tradition, possibly regarding it as a special rahui or protection of their identity.

Phillipson speculated as to whether there was some significance in the selection by the rangatira of what was also the mission’s flag:

It may have been a coincidence that the majority of chiefs’ chose it or they may have been signalling their growing allegiance to the mission along with other things British.

By this logic, however, the vote could be seen equally as a rejection of the missionaries, since by neither Busby’s nor Marshall’s count did the 12 votes in favour constitute a majority of the votes cast. That the mission flag received the highest number of votes may also have stemmed principally from its familiarity. In any case, we agree with Phillipson that

the chiefs understood the significance and symbolism of flags, both as markers of national identity for the different ships, but also as used to convey all sorts of messages and ideas.

Phillipson noted the Māori use since the 1820s of white flags to signify a truce during battle, the display of the Union Jack at Paihia every Sunday since 1823 to announce the Sabbath, as well as Rāwiri Taiwhanga’s insistence that the British flag be flown when La Favorite appeared in 1831. He might have added Ruatara’s flying of the Union Jack at Rangihoua on Christmas Day in 1814.

We note that, in contrast to this level of attention, the flag’s adoption is either barely acknowledged or not mentioned at all in modern general histories of New Zealand.

And aside from obvious exceptions like Orange, such mention as it has received from New Zealand historians tends to treat it as a ‘farce’ or ‘pantomine.’

### 3.9.4 The attack on the residency and Busby’s crisis

Only weeks after the adoption of the flag, Busby’s hopes that the rangatira would act collectively to make laws and dispense justice were put to the test. On the night of 30 April 1834, barely 36 hours after his wife Agnes had given birth to their first child, the Residency came under attack. Busby’s servant William Moore woke him to report that unidentified Māori were breaking into the storeroom at the back of the house. Moore and Busby rushed out but were shot at and retreated indoors. Moore bravely crept out and retrieved Busby’s shot belt from the storeroom and Busby, now armed, stood in his back doorway, silhouetted by the light inside. Another shot was fired that narrowly missed his head but dislodged a splinter which struck him in the face. The attackers then moved to the other side of the building, where they climbed into Moore’s bedroom and took a range of possessions before withdrawing into the darkness.

Busby sent one of his workmen to alert Henry Williams at Paihia. According to Ramsden, the ‘news spread like wildfire’ and, in less than an hour, ships’ captains and armed sailors had arrived at the Residency. The following day, Māori gathered at Waitangi and at once expressed their concern and protested their innocence. Titore returned immediately from Whangaroa, where he had been supervising the provision of spars for the Buffalo, and convened a hui of leading rangatira to discuss the matter.

Busby was pleased, although he was disappointed by the chiefs’ failure to decide upon a plan of action. Overall, the Bay of Islands was plunged into tension, with suspicions aimed at one chief or another. Indignantly, Kāwiti led a taua muru on the Paihia mission, believing it to be the source of rumours that he was behind the attack. The southern alliance reinforced their fortifications and waited at Ōtuihu to be attacked by the north. Busby refrained from pressuring any rangatira to take action to find the culprit, lest that be regarded by other Māori as ‘a hostile movement.’ On 2 July, Busby reported that Bay of
Islands Māori remained 'in a high state of excitement and agitation – mutual accusations and recriminations having passed between the most powerful Tribes'.

While Busby was frustrated by the lack of action, he also had to temper the rashness displayed by his fellow Europeans. Without any proper basis, for example, Captain Sadler of the Buffalo thought Pōmare the guilty party and argued that his men should be hanged. A group of 10 traders (including Joel Polack, Gilbert Mair, and James Reddy Clendon) also wrote Busby a pointed letter on 6 May 1834, calling for him ‘to bring the natives of this country to a proper sense of the treatment to be observed to the representative of the British Government’, for Busby’s sake as well as their own. If he did not insist upon redress, they claimed, he would ‘cause us to doubt the intention of our government in appointing you, as stated in your address, for the protection of British subjects, as well as natives’. This letter was published in a Sydney newspaper on 1 July 1834, together with Busby’s reply. Busby called the traders’ letter ‘extraordinary’ and said it was ‘impossible for me to take any further notice of it’. But he did emphasise that the chiefs had shown no want of the proper sense of the treatment to be observed to the ‘representative of the British government’ domiciled in their country – but have hastened almost with one accord, to express to me their abhorrence of the late attack upon my house, and attempt upon my life – and to assure me that they would use every means to search out and bring to punishment the guilty parties.

According to Ramsden, the press sided with ‘the European rabble’.

The identity of the attackers remained a mystery, and despite sending dispatches to Bourke on the subject on 15 May, 7 June, and 2 July 1834, Busby received no reply. Around 20 October, however, the wife of Rete, a local Ngāti Tautahi chief and relation of Hōne Heke, found what turned out to be Moore’s missing rug in her home and accused her husband of the crime. Rete was brought before his fellow chiefs and urged to confess. Titore said he himself would go to Sydney ‘as a slave for satisfaction’ if Rete did not do so. Rete duly admitted his guilt, as well as that of two of his slaves who had accompanied him that night, and the question thereafter became one of how he should be punished. The return of the warship HMS Alligator on 25 October 1834 – fresh from its bombardment of a pā on the Taranaki coast where European survivors from the wrecked ship Harriet had been held captive – may have helped to expedite progress.

With the Alligator anchored offshore, Busby called a hui of chiefs and, while only 14 could attend, Busby was satisfied that they were ‘by far the most influential of the whole number’. From Busby we know that Titore was among them and Pōmare was not. According to an English visitor, Edward Markham, Tāreha was also in attendance.

The evening before, Henry Williams had advocated that Rete forfeit his land and be banished from the district, and Titore agreed to put this to his fellow chiefs. The other rangatira all concurred, and committed themselves to putting the punishment into effect. Busby was less sure, since he regarded the attack on himself as akin to an attack on the King, but he held his tongue. As he wrote on 30 October 1834,

It was my intention to inform the Chiefs that it was their part to bring the Criminal to justice: and if asked (as I had no doubt I would be) what satisfaction I required – to say that the satisfaction was due to the King; and not to me – that if the three men were put to death, the King would be satisfied; but could not say whether he would be satisfied with any other punishment – In deference to the wishes of the Missionaries however declined giving any opinion whatever.

The Alligator, which Busby had asked to remain present until the chiefs committed to punishing Rete, then left the Bay of Islands on the basis that the matter was resolved. In the meantime, Busby waited on approval from Bourke before asking the chiefs to take the next step. In the midst of this, he wrote again to Bourke, on 28 November 1834, noting despondently that Rete now appeared to deny his guilt. Busby had also grown pessimistic that the chiefs would go through with punishing Rete, since such a course so entirely contradicted Māori
custom. As he put it, 'It would shock a New Zealander’s idea of justice to be made instrumental in punishing a crime which did not injure himself or his connections.' Altogether, Busby claimed that given the difficulty of punishing 'a midnight attack' on the British Resident 'for the purposes of plunder followed up by a deliberate attempt at murder', the whole matter 'might be considered the crisis of British affairs at this place.' He asked Bourke to urge the British Government to grant him proper authority and support, without which, he suggested, he could 'hold out but little hope of being able to maintain order through the power of the native Chiefs.'

But Busby was careful not to take this line of argument too far or to make his own efforts seem ineffectual. He claimed that Māori stood on 'the very threshold of civilization', and he retained an absolute confidence in his ability to lead the chiefs to 'whatever changes in their social condition may best afford them the blessings of established Government.' Busby was perhaps having it both ways – or, as Samuel Carpenter put it (perhaps more kindly), he was wavering between 'proclaiming his faith in the efficacy of collective action by rangatira and the need for his superiors to grant him real legal authority and enforcement power'. Bourke, however, was not particularly sympathetic, though his delay in approving Rete’s punishment was because he had decided first to seek the sanction of the Executive Council, which was given on 27 January 1835. Busby received Bourke’s confirmation on 4 March 1835 and assembled a meeting of rangatira 10 days later.

Twenty ‘of the most influential Chiefs’ attended the hui. Busby was perhaps fortunate that another warship, HMS Hyacinth, had just sailed into the Bay, and he asked its captain to remain present until the meeting had taken place as a means of strengthening the chiefs’ resolve. According to Busby, the chiefs ‘were unanimous in deciding that the sentence should be carried into effect’. They nominated four of their number to preside over the confiscation of Rete’s land, reasoning that a larger party would appear provocative. Busby objected strongly to this and urged that the entire body of chiefs accompany him. The chiefs were reluctant, but the party’s numbers eventually expanded from four to 12 after news spread that he was distributing blankets to the participants. At Rete’s village of Puketona, some four miles inland from Busby’s house, the local people pointed to the boundaries of Rete’s land, which Busby estimated at 130 acres. At Busby’s request, Rete’s own relations burned down his huts ‘in order that the offender should have no place of residence upon the spot’. Rete had apparently seen the approaching party and only just left, and the chiefs shared his possessions out between them. Busby wrote that

I then took possession of the place as the King of England’s farm, and as they desired me to give it a name, I called it ‘Ingarani’ – the native name for England. . . Before the meeting broke up I had prepared an instrument confiscating the land in consequence of Rete’s crime, and vesting it in the King of England, to which I procured the signatures of all of the Chiefs present.

Unfortunately for Busby, that was not the end of the matter. In May, he reported to Bourke that ‘the Chiefs have not fulfilled their engagement’ to force Rete to leave the district, the latter having taken to using some fishing huts within a quarter-mile of the Residency. Busby explained that when he had ‘purchased’ the land he had allowed Māori to continue to use these huts when fishing, but that no formal reservation had been made. Irritated by Rete’s presence and what he saw as an abuse of his generosity in respect of the huts, he personally burned them down. Local Māori were indignant and some spoke of retaliation, and the missionaries thought them within their rights to seek compensation. But Busby was unrepentant, asserting that he would ‘not allow any person to have a hut upon my Land who continues to befriend him [Rete]’. He thought it ‘useless’ to reconvene the chiefs, given their attitude at the previous hui when they were ‘under the impression that a Ship of War was watching their proceedings’, but he let them know he felt they had broken their pledge.

It seems that the chiefs were not prepared to act lest Rete be provoked into escalating the dispute. Bourke suggested Busby place some of his Māori ‘supporters . . . upon it as [his] Bailiffs’, but Busby knew this was impracticable. As Samuel Carpenter concluded, ‘By mid-1835,
therefore, Busby’s attempts to encourage the growth of collective action by the chiefs to enable law enforcement had mixed results. Phillipson thought it a moot point whether the chiefs could have done more to punish Rete, but did note Busby had enjoyed one success: there were no more attacks made upon him.

3.10 Conclusion

By the mid-1830s, Māori of the Bay of Islands and Hokianga had experienced increasingly intensive interaction with Europeans over the course of some six and a half decades. From the early visits of British and French explorers, hundreds of Britons and people of other nationalities had come to live; others visited frequently on whaling and trading ships. Hundreds of Māori, in turn, had travelled overseas. These encounters had brought together people with very different ways of understanding and relating to the world, as reflected in their contrasting cosmologies, values and norms, religious beliefs, economic systems, and decision-making and dispute resolution processes. As contact had increased, compromises were made. Europeans learned that transgressions of tapu could lead to violence; Māori learned that engaging with Europeans could enhance access to goods and technology, and therefore bring higher material standards of living. In chapter 5, we explore the extent of change that had occurred among the hapū of the Bay of Islands and Hokianga as a result of contact with Europeans during this period. Here we note that the encounters related in this chapter show that Māori and Europeans came to accommodate each other to some extent, despite much potential for (and sometimes actual) conflict.

The first encounters between rangatira and representatives of the British Crown after Cook’s visit followed the establishment of the penal colony in New South Wales. Successive governors sought to develop good relations with rangatira in order to protect burgeoning commercial interests in New Zealand. Rangatira, for their part, sought to understand Britain’s economic and military power, and the ideas and institutions on which it was based. These developments led rangatira to seek out a formal alliance with Britain – one that would provide protection against external threats and also the more unruly or unscrupulous British subjects. Hongi Hika thought he had entered into such an arrangement during his meeting with the British monarch in 1820. Other rangatira believed this alliance was intensifying in the early 1830s, probably as a result of the increasing contact that followed their 1831 petition to King William. That resulted in the appointment of Busby as British Resident, and the adoption of a national flag.

The Colonial Office, for its part, saw these developments differently. Although Britain’s involvement in New Zealand had increased during this period, culminating in Busby’s appointment, the British Parliament had repeatedly disavowed any sovereignty over New Zealand. Missionaries formed an increasingly powerful lobby against British settlement, but sought just enough of an official British presence in New Zealand to protect their mission and prevent the undue spread of unplanned settlement. However, as Busby’s term began, British commercial interests in New Zealand increased, and with this the number of people who came to live, particularly in the north of the country. Developments in New Zealand were beginning to test the British policy of minimum intervention.

Was there an ‘alliance’ between Britain and Māori of the Bay of Islands and Hokianga? In the term’s formal sense, in the context of relationships between states, we do not believe that there was, despite Lord Goderich’s reference to the chiefs’ ‘friendship and alliance with Great Britain’ in his letter to them on behalf of the King. However, the rangatira and the British Crown had certainly developed an understanding. Britain would offer the chiefs protection from other powers and help establish New Zealand’s international status. It would also do its utmost to ensure that Māori were not injured by British settlers. In return, the rangatira would continue to assist the interests of British commerce in New Zealand and would themselves refrain from attacking British subjects. The question was whether these loose arrangements would firm up in the coming years. We consider this question in our next chapter, on the Whakaputanga o te Rangatiratanga o Nu Tireni and the Declaration of Independence of 1835.
Notes


7. Ibid, pp 98–99


9. Salmond, *Two Worlds*, pp 112–113

10. Ibid, pp 125, 132, 158

11. Ibid, pp 206, 251

12. Document A21, p 28

13. Dr Donald Loveridge provided a range of examples of authorities and other commentators in the 1830s and 1840s citing Cook's actions as having established British authority in New Zealand: doc A18, pp 91, 102, 166, 168, 169, 172, 175, 213, 217.

14. Two men said they had already heard of the *Endeavour*, which showed how quickly news had spread from the site of Cook's previous encounter with locals, which was 200 kilometres to the south: Salmond, *Two Worlds*, p 213.

15. Shawcross, 'Maoris of the Bay of Islands', fol 15; Salmond, *Two Worlds*, pp 213, 216

16. Shawcross, 'Maoris of the Bay of Islands', fol 16–18; Salmond, *Two Worlds*, p 216. Shawcross's thesis was cited extensively by witnesses in our inquiry such as Dr Grant Phillipson, and O'Malley and Hutton.


18. Ibid, p 233

19. Shawcross, 'Maoris of the Bay of Islands', fol 18–19. Shawcross's speculation about the shellfish bed was repeated by Phillipson as fact (doc A1, p 50), but there is no evidence we have seen that actually confirms her suspicion.

20. Shawcross, 'Maoris of the Bay of Islands', fol 18–20. Salmond noted that Cook recognised many of these people from the previous trading while the ship was at sea: Salmond, *Two Worlds*, p 221.

21. Cook punished them for this with the lash and confinement. We note that Shawcross thought the theft occurred ‘immediately after’ the crowd advancing on Cook's party had been forced to retreat, but Salmond seemed to indicate a lapse of time, with the sailors having gone ashore during ‘the night’. Phillipson appeared to regard the kumara theft as part of the crew’s retaliation for the ‘cheating’ in trade before the *Endeavour* even entered the Bay of Islands, but we have seen no other suggestion to this effect: Shawcross, 'Maoris of the Bay of Islands', fol 28; Salmond, *Two Worlds*, p 224; doc A1, p 50.

22. Shawcross, 'Maoris of the Bay of Islands', fol 20

23. Ibid, fol 31

24. Document A1, p 50; Shawcross, 'Maoris of the Bay of Islands', fol 22

25. Salmond, *Two Worlds*, p 231


27. Document A11, p 58


29. Document A1, p 50


32. Salmond, *Two Worlds*, pp 299, 311–317; Shawcross, ‘Maoris of the Bay of Islands’, fol 45


34. Salmond, *Two Worlds*, pp 359–372; Shawcross, ‘Maoris of the Bay of Islands’, fol 57–60


37. Shawcross, 'Maoris of the Bay of Islands', fols 91–99, 103–107; see also Salmond, Two Worlds, p 383
38. Salmond, Two Worlds, pp 378–379, 386
39. Ibid, p 387
40. Ibid, pp 386–387, 395. We note that Phillipson and O’Malley and Hutton essentially agreed with Salmond that this particular violation of tapu was the main catalyst for the violence against the French. Shawcross, by contrast, made comparatively little of it: doc A1, p 52; doc A11, p 63; Shawcross, ‘Maoris of the Bay of Islands’, fols 107–108.
41. Document A11, p 63; Salmond, Two Worlds, p 386. Salmond added in conclusion that the French left ‘never understanding why they had been attacked, nor why their friends had betrayed them’: Salmond, Two Worlds, p 402.
42. Shawcross, ‘Maoris of the Bay of Islands’, fols 110–111; Salmond, Two Worlds, pp 387–388
43. There is some confusion in the sources about the exact number of Marion du Fresne’s party. The journals of two of the French officers, Roux and du Clesmeur, suggested that there were 16 – Marion du Fresne and 15 others – while the retrospective account of de Montesson, says there was a total of 17: Robert McNab, ed, Historical Records of New Zealand, 2 vols (Wellington: Government Printer, 1908–14), vol 2, pp 413 (Roux), 465 (du Clesmeur); Isabel Ollivier and Jeremy Spencer, Extracts from Journals Relating to the Visit to New Zealand in May–July 1772 of the French Ships Mascarin and Marquis de Castries under the Command of Major Marion du Fresne (Wellington: Alexander Turnbull Library Endowment Trust with Indosuez New Zealand Ltd, 1985), p 237 (de Montesson). See also Salmond, Two Worlds, p 393; Shawcross, ‘Maoris of the Bay of Islands’, fol 115.
44. Salmond, Two Worlds, pp 380–381, 393–396; Shawcross, ‘Maoris of the Bay of Islands’, fols 115–118. It is not entirely clear whether Te Kauri himself or Ngāti Pou killed the Frenchmen. The French were certainly told by Māori that Te Kauri had killed their compatriots, but it may just have been Ngāti Pou that committed the acts, given their need to redeem themselves in Te Kauri’s eyes for having accompanied Marion du Fresne when he breached the tapu at Ōpunga. See Salmond, Two Worlds, p 395; Phillipson (who preferred to describe Ngāti Pou as Ngare Raumati), doc A1, p 52; Ballara, Tawa, p 175. In her later book Between Worlds, Salmond expressed no doubt that Ngāti Pou ‘had been forced to take utu by killing him [Marion du Fresne]’: Anne Salmond, Between Worlds: Early Exchanges between Māori and Europeans 1773–1815 (Auckland: Penguin Books, 1997), p 381.
45. Salmond, Two Worlds, pp 396–400; Shawcross, ‘Maoris of the Bay of Islands’, fols 117–121
46. Salmond, Two Worlds, pp 401–402; Shawcross, ‘Maoris of the Bay of Islands’, fols 122–123
47. Document C22, p 4
48. Document B10, p 41
50. Document A1, p 52
53. Ward, British Policy in the South Pacific, pp 33–34
54. Document A11, p 67; Salmond, Between Worlds, p 175
55. Salmond, Between Worlds, pp 185, 190, 205–207; McNab, Historical Records, vol 1, p 131 (for King meeting Vauquenser at the Cape of Good Hope in July 1791)
56. Salmond, Between Worlds, pp 203–204, 207; McNab, Historical Records, vol 1, p 134. Salmond said these instructions ‘were drafted in London in November in 1791’ but they are in fact dated 20 August 1791.
57. McNab, Historical Records, vol 1, p 160. See also Shawcross, ‘Maoris of the Bay of Islands’, fol 131.
58. For example, on 15 January and 19 September 1792. See Salmond, Between Worlds, p 211; McNab, Historical Records, vol 1, p 153.
59. Shawcross, ‘Maoris of the Bay of Islands’, fol 131; Salmond, Between Worlds, pp 211, 213
60. We are unaware of the precise date. Dr (later Professor Dame) Judith Binney said April 1793; Salmond wrote ‘early 1793’: Binney, ‘Tuki’s universe’ in Tasman Relations: New Zealand and Australia, 1788–1988, ed Keith Sinclair (Auckland: Auckland University Press, 1987), p 15; Salmond, Between Worlds, p 207.
61. Binney in ‘Tuki’s Universe’ says ‘Ngahuruhuru or Te Kurukokototki’, and then abbreviates to ‘Huru’; Jones and Jenkins say Ngahuruhuru is incorrect, as it was not what King recorded. They trace the error to the posthumous 1964 publication of Dr Robert RD Milligan’s The Map Drawn by the Chief Tuki-tahua in 1793 (Mangonui, p 2). In their recent book He Kōrero: Words between Us, they explain that they are following Salmond in using Hurukokototki: doc A26, p 3; Alison Jones and Kuni Jenkins, He Kōrero: Words between Us (Wellington: Huia Publishers, 2011), p 205 n 35.
62. Salmond, Between Worlds, pp 207–209
63. Shawcross, ‘Maoris of the Bay of Islands’, fol 131; Salmond, Between Worlds, p 209
64. Salmond, Between Worlds, pp 214–219
65. Ibid, pp 227–230
66. Ibid, p 230; McNab, Historical Records, vol 2, pp 548–549
67. McNab, Historical Records, vol 2, p 549
68. Ibid, pp 549–550
69. Shawcross notes that only one of Tuki’s pigs remained alive a year later: Shawcross, ‘Maoris of the Bay of Islands’, fol 139.
70. Salmond, Between Worlds, pp 230, 232–233; doc A1, pp 209–210. Salmond and Phillipson both stated that Tuki’s display of the cabbage was a response to those who refused to believe how close he claimed Norfolk Island to be, but as King explained in his journal, ‘whether his
[Tuki’s] veracity was doubted, or that he was not contented with the assertion alone, I cannot tell’; McNab, Historical Records, vol 2, p 549.

71. Salmond, Between Worlds, pp 232–233
72. Shawcross, ‘Maoris of the Bay of Islands’, fol 136–137
73. Document A11, p 210
74. Document B10, p 41
75. Document A11, p 74
76. Document A1, pp 208–209. In November 1794, another ship, the Fancy, called at Doubtless Bay on its way from Norfolk Island to Hauraki, where it hoped to collect timber needed by the British navy. Tuki came on board and was pleased to receive messages and gifts from King, and several of his compatriots asked to be taken to Norfolk Island to see the kāwana. However, they soon left the ship when they became seasick in a storm. The master wished Tuki to accompany him to Hauraki but Tuki refused, saying he would not leave Doubtless Bay unless King came for him himself: Salmond, Between Worlds, pp 239–241.
77. Salmond, Between Worlds, pp 315–316; Shawcross, ‘Maoris of the Bay of Islands’, fol 147–148
78. ‘Chronological List of Vessels 1803 – 1840’, in Bay of Islands Shipping Arrivals and Departures 1803–1840, ed Rhys Richards and Jocelyn Chisholm (Wellington: The Parempata Press, 1992), p [6]; Shawcross, ‘Maoris of the Bay of Islands’, fol 125. Cook’s second and third Pacific voyages took him back to New Zealand, but he spent the majority of his time at Tōtara-nui (Queen Charlotte Sound) and did not venture back to the Bay of Islands.
79. Salmond, Between Worlds, p 322. This may overlook Huru’s share of the pigs given him and Tuki by King in 1793: see Shawcross, ‘Maoris of the Bay of Islands’, fol 139.
80. Salmond, Between Worlds, pp 322–325. Salmond did not herself say that Maki’s fate is unknown, but we assume her lack of any further comment suggests this is the case. O’Malley and Hutton noted the arrival in London of Teina and Maki, but did not name them and reported only that little was known about the background of the anonymous pair or their time in London: doc A11, p 84. Other scholars have missed the fact of their journey to London altogether or confused Teina with Maatara.
81. Salmond thought that the presence of young Māori serving as whaling crew in Port Jackson was what ‘reawakened Governor King’s interest in New Zealand’, although we do not doubt that the accusations against Rhodes also played a part: Salmond, Between Worlds, pp 323, 326.
82. Salmond, Between Worlds, pp 326–327
83. These are the words of Joseph Banks, who later saw Maatara in London: see Salmond, Between Worlds, pp 329, 550–551.
84. Salmond, Between Worlds, pp 329–330
85. Shawcross, ‘Maoris of the Bay of Islands’, fol 139–140
86. It is not clear how many sons Te Pahi had. He told King that he had 52 children: Salmond, Between Worlds, p 355.
87. McNab, Historical Records, vol 1, pp 262–263; Salmond, Between Worlds, p 350
88. McNab, Historical Records, vol 1, pp 263–264
89. As Shawcross put it, ‘Te Pahi was the highest Māori rangatira to travel abroad to date and was the first to do so in state’: Shawcross, ‘Maoris of the Bay of Islands’, fol 155.
90. Salmond, Between Worlds, p 351
91. Document A11, p 76
92. Salmond, Between Worlds, pp 351–354; McNab, Historical Records, vol 1, p 265
93. John Liddiard Nicholas, Narrative of a Voyage to New Zealand, 2 vols (London: Hughes and Baynes, 1817), vol 1, p 9; see also doc A11, pp 78–79
94. Salmond, Between Worlds, pp 351–352
95. A point made by O’Malley and Hutton: doc A11, p 78.
96. Shawcross, ‘Maoris of the Bay of Islands’, fol 153; doc A11, p 79
97. McNab, Historical Records, vol 1, pp 265–266
98. Sydney Gazette and New South Wales Advertiser, 26 May 1805, p 1
99. Salmond, Between Worlds, pp 327
100. King suggested that Te Pahi would ‘return to his own Country the greatest Monarch that ever left it’: Salmond, Between Worlds, p 356. Binney remarked that he came back ‘with his mana high’: Binney, ‘Tuki’s universe’, p 17.
101. Document A11, p 80
102. The general opinion seemed to be that this began in 1820, at Hongi Hika’s meeting with George IV (see below). We note, however, that Professor Donald Denoon and Dr (later Professor) Philippa Mein-Smith wrote in 2000 that Bay of Islands Māori perceived the relationship with King as ‘an alliance’, as ‘dozens’ of them ‘took overseas trips to Sydney as heads of state, traders, tourists and students’. Donald Denoon and Philippa Mein-Smith, A History of Australia, New Zealand and the Pacific (Oxford: Blackwell, 2000), p 67.
103. Document B13, p 15
104. Savage called Te Mahanga ‘Moyhanger’ and most historians have referred to him as ‘Moehanga’ (see, for example, Shawcross, ‘Maoris of the Bay of Islands’, fol 155; Ormond Wilson, Kororareka and Other Essays (Dunedin: John McIndoe, 1990), p 16; doc A11, p 81). However, Salmond reported that his descendants, such as Hori Parata, knew him as Te Mahanga: Between Worlds, pp 343, 551. Aldridge also said the use of ‘Moehanga’ was an error: doc B10, p 42.
105. Salmond, Between Worlds, pp 343–347, 529; Wilson, Kororareka, p 16. Note that on p 347 Salmond wrote that the Ferret got back to Port Jackson in December 1806 ‘and Mahanga made his way back to New Zealand’, but in her timeline of whaling ship movements on p 529 she wrote that the Ferret touched at Sydney to land dispatches on 17 February 1807 before leaving again and dropping Te Mahanga back in the Bay of Islands ‘c. March.’
106. Savage said Te Mahanga was ‘connected with families of the first consideration in these parts’ and an 1827 account described him as an uncle of the Ngāti Manu leader at Kororāreka, Te Whareumu: John Savage, Some Account of New Zealand: Particularly the Bay of Islands, and Surrounding Country, with a Description of the Religion and Government, Language, Arts, Manufactures, Manners and Customs of the Natives, &c &c. (1807; repr Christchurch: Capper Press, 1973), p 38; Salmond, Between Worlds, pp 347–348.
There is some suggestion in the historical record that Maatara went to London with Philip Gidley King on the _Buffalo_, which departed Port Jackson on 10 February 1807. However, we consider that Salmond correctly ascertained that Maatara had sailed on the _Richard and Mary_ some months earlier: see Salmond, _Between Worlds_, pp 360, 373, 528, 553; Robert McNab, _From Tasman to Marsden: A History of Northern New Zealand from 1642 to 1818_ (Dunedin: J Wilkie and Co, 1914), p 120; Shawcross, ‘Maoris of the Bay of Islands,’ figure opposite fol 156, fol 159; Wilson, _Kororareka_, p 28; A G L Shaw, ‘Philip Gidley King,’ _Australian Dictionary of Biography_, National Centre of Biography, Australian National University, http://adbl.anu.edu.au/biography/king-philip-gidley-2309/text2991, accessed 28 August 2013.

Salmond, _Between Worlds_, p 160

Alexander Berry in _Adventures of British Seamen in the Southern Ocean: Displaying the Striking Contrasts which the Human Character Exhibits in an Uncivilized State_, ed Hugh Murray (Edinburgh: Constable, 1827), pp 332–333; see also Salmond, _Between Worlds_, p 373

Ormond Wilson, _From Hongi Hika to Hone Heke: A Quarter Century of Upheaval_ (Dunedin: John McIndoe, 1985), p 57. Marsden actually wrote that ‘It is said that many of the Presents which had been given to the young Chief Matari, who was in England, at the time I was there, had been stolen from him’: Peter Harvard-Williams, ed, _Marsden and the New Zealand Mission: Sixteen Letters_ (Dunedin: University of Otago Press, 1961), p 27.

In her DNZB entry on Ruatara, Ballara wrote (in 1990) that ‘more recent research’ suggested that his parents were not in fact the siblings, respectively, of Te Pahi and Hongi (Angela Ballara, ‘Ruatara’, _DNZB_, vol 1, p 375). Ballara seems to have been referring to Sissons et al’s 1987 _The Pārīrī Trees are Laughing_, which gives different identities for Ruatara’s parents, does not mention any relationship to Te Pahi, and suggests that his relationship to Hongi was less immediate (Jeffrey Sissons, Wiremu Wi Hongi and Pat Hohepa, _The Pārīrī Trees are Laughing: A Political History of Ngā Pahi in the Inland Bay of Islands_ (Auckland: Polynesian Society, 1987), p 13). Writing in 1997, however, Salmond seems to have preferred Marsden’s version by stating that Ruatara was ‘a close relative of Te Pahi and the fighting chief Hongi Hika’: Salmond, _Between Worlds_, p 408.

Wilson, _Kororareka_, pp 30–31; Salmond, _Between Worlds_, p 408. Salmond only mentioned Ruatara’s discharge without pay in Sydney, but Wilson wrote that all three had the same experience. It is not entirely clear from Marsden’s records which is the case, but Wilson’s assumption seems reasonable. See John R Elder, ed, _The Letters and Journals of Samuel Marsden_, 1765–1838 (Dunedin: Coulls Somerville Wilkie, 1932), pp 60, 63.

Wilson, _Kororareka_, p 31

Salmond wrote that the gang were dropped at the islands in November 1807 and were there a year until the _Santa Anna_ relieved them in October 1808, a few weeks after another ship, the _King George_, had passed by and alleviated their greatest distress. However, other historians, such as Wilson and O’Malley and Hutton, have stated that the men were left for five or six months. It is not clear what source Salmond relied upon for her understanding that the men were left for a year. Marsden, whose account was based on information from Ruatara himself, wrote that ‘About five months after the _Santa Anna_ left Bounty Island the _King George_ arrived, commanded by Mr Chase, but, previous to the arrival of this vessel, the sealing party had been greatly distressed for more than three months for want of water and provisions’. This does tend to suggest that the men were left at the Bounty group in around February 1808 rather than November 1807, which would make a stay of eight months rather than six. The _Santa Anna_ had reached Norfolk Island by 1 March 1808 but was then blown considerably to the north, and did not make it back to the island until 19 May. It then sailed to Port Jackson and underwent repairs before setting sail at last to relieve the gang in October: Salmond, _Between Worlds_, pp 408–409; Wilson, _From Hongi Hika to Hone Heke_, p 36; Wilson, _Kororareka_, p 31; doc a11, p 96; Elder, _The Letters and Journals of Samuel Marsden_, pp 63–64; _Sydney Gazette_, 12 June 1808, pp 1, 17; _Sydney Gazette_, July 1808, p 2; _Sydney Gazette_, 23 October 1808, p 2.

Wilson, _Kororareka_, pp 31–32; Salmond, _Between Worlds_, pp 408–409

Elder, _The Letters and Journals of Samuel Marsden_, p 64. Salmond suggested that Ruatara’s decision came when the ship returned to Port Jackson and before it sailed for England, but Marsden’s actual words were: ‘After taking the skins on board [from the Bounty Islands], the vessel sailed for England’: Salmond, _Between Worlds_, p 409; Elder, _The Letters and Journals of Samuel Marsden_, p 64. We note two points here. First, if the ship was heading straight for England, Ruatara really had no choice in the matter but to go on the ship, because he could hardly stay where he was. The idea of electing to join the crew for the voyage to London applied only if the ship sailed somewhere else first. Secondly, it is not clear where Salmond obtained the idea that the ship made first for Port Jackson. According to the _Sydney Gazette_, 23 October 1808, p 2 – which Salmond cited (and did not name a later source) – ‘The Santa Anna, Captain Moody, sailed yesterday se’nnight for the sealing Isles; from whence she is to proceed to Great Britain.’

Dr (later Professor) James Belich wrote in 1996, for example, that in 1805 Ruatara ‘set out on the ultimate gift visit, to King George 111 of Britain. Trials and tribulations on whaling and sealing ships took him twice to Sydney, and to Bounty Island, but it was not until 1809 that he made it to London’. Ballara likewise wrote in her DNZB entry on Ruatara that his 1805 departure on the _Argo_ had apparently been in order to see George 111, and O’Malley and Hutton repeated this: James Belich, _Making Peoples: A History of the New Zealanders: From Polynesian Settlement to the end of the Nineteenth Century_ (Auckland: Allen Lane, 1996), pp 141–142; Ballara, ‘Ruatara’, p 375; doc a11, p 96.

On the lack of choice see note 119. It was perhaps because of this aspect that Wilson wrote, in _From Hongi Hika to Hone Heke_, that Ruatara’s voyage to London was ‘unintended’. That is belied by Marsden’s account. We note that in _Kororareka_, by contrast, Wilson wrote that the voyage was at Ruatara’s own request, ‘extraordinary’ as
that may seem given his experiences on the Bounty Islands; Wilson, *From Hongi Hika to Hone Heke*, p 36; Wilson, *Kororareka*, p 32.

123. Elder, *The Letters and Journals of Samuel Marsden*, p 64

124. Ibid, pp 64–65

125. Salmond, *Between Worlds*, p 410. While this is potentially evidence that Ruatara did get on board the *Santa Anna* in order to ultimately see the king, it does not seem conclusive. Ruatara may well have meant that, when his countrymen learnt that he had been to England and failed to meet the king, they would surely disapprove.

126. Elder, *The Letters and Journals of Samuel Marsden*, p 65

127. Salmond, *Between Worlds*, p 417

128. Salmond wrote that Bruce left the ship after his flogging at or about North Cape and made his way south after the *Lady Nelson* had departed. Wilson wrote instead that Bruce deserted at Te Puna and that this was ‘probably eased by the captain’s need to hasten the vessel’s return to Sydney’. Salmond would appear to be correct, as the logbook of the *Lady Nelson* recorded ‘Run from the ship Joseph Druce’ (Bruce’s alias) on 22 April 1806 when the ship was at the latitude of Karikari Bay. Bruce himself claimed in later years that Te Pahi had been ‘gratified by my attention, and being anxious to introduce the customs and arts of the English requested me to settle on the Islands’, to which the captain happily agreed. This claim of having the captain’s consent is undoubtedly fictitious, although it may be that Te Pahi and Bruce did discuss the latter settling at Te Puna at some point on the voyage. Jack Lee suspected that Bruce’s escape may even have occurred ‘with the complicity of Te Pahi’: Salmond, *Between Worlds*, pp 356–357; Wilson, *Kororareka*, p 55; Jack Lee, *The Bay of Islands* (Auckland: Reed, 1983), pp 41, 43 n 12; doc A11, p 87.


130. *Sydney Gazette and New South Wales Advertiser*, 12 April 1807, p 1

131. Salmond, *Between Worlds*, p 362

132. Ibid, pp 362–364

133. See, for example, Shawcross, ‘Maoris of the Bay of Islands’, fol 161; doc A1, p 212

134. Document A11, p 90

135. Shawcross, ‘Maoris of the Bay of Islands’, fol 161


137. Ibid, pp 365–366. Ballara wrote in her DNZB entry on Te Pahi that Bruce abandoned Atahoe before her death, but this seems contradicted by the fact of the headstone he had erected for her in a Sydney cemetery: Angela Ballara, ‘Te Pahi’, in DNZB, vol 1, p 475.

138. Salmond, *Between Worlds*, p 368


140. Salmond, *Between Worlds*, p 369. According to Wilson, in return for piloting the vessel into Whangaroa Harbour Te Pahi and his sons were given a free passage to Sydney: Wilson, *Kororareka*, p 18.

141. Wilson, *From Hongi Hika to Hone Heke*, p 59; Salmond, *Between Worlds*, p 369


143. Salmond, *Between Worlds*, pp 370–372

144. Ibid, p 373


146. Salmond, *Between Worlds*, pp 375, 377–379

147. The other hapū living at Whangaroa was Ngāti Pou. Both Ngāti Pou and Ngāti Uru had been driven to Whangaroa from the Bay of Islands after the death of Marion du Fresne: Salmond, *Between Worlds*, p 381.


149. On the intricacies of the matter, Wilson in *From Hongi Hika to Hone Heke*, p 58, wrote: ‘Other records disclose at least half a dozen explanations from Berry and George as to the causes of the massacre and it is fascinating though profitless to compare them with one another and to observe that as the affair receded into the past the explanations grew more detailed and precise.’

150. Wilson, *From Hongi Hika to Hone Heke*, p 57


152. Wilson, *Kororareka*, p 18

153. Document A11, p 95

154. Wilson, *From Hongi Hika to Hone Heke*, p 59. In ‘Maoris of the Bay of Islands’, fols163–164, Shawcross further argued that ‘Almost certainly Maori desire for plunder also provided an important incentive to the massacre – Te Pahi’s party were quick to plunder the vessel of everything moveable after having dispatched the crew’.

155. Document B10, pp 53–54

156. Wilson, *Kororareka*, p 24


158. Ibid, p 379. As O’Malley and Hutton put it, ‘Te Pahi had good grounds for claiming utu from Europeans visiting the Bay of Islands’: doc A11, p 92.

159. Shawcross, ‘Maoris of the Bay of Islands’, fol 164


161. Salmond, *Between Worlds*, pp 387–388, 391–392. The intense European reaction to the killings was discussed by Dr (later Professor) Lydia Wevers in her 2002 book *Country of Writing: Travel Writing and New Zealand 1809–1900* (in chapter 1, ‘Captain Ceroni’s watch’). Wevers related how the incident ended New Zealand’s relative anonymity in the *Sydney Gazette* and thereafter became the ‘general
referent’ in that newspaper ‘for any shipping casualty or report of cannibalism in New Zealand.’ As she put it, the episode’s ‘ripples spread outwards across the Tasman to London, a displacement charted in print for at least forty years’. Lydia Wevers, *Country of Writing: Travel Writing and New Zealand 1809–1900* (Auckland: Auckland University Press, 2002), pp 19, 32–33.

162. This attack was the subject of a Privy Council inquiry in 1812, with the Solicitor-General concluding that the whalers who had taken part were guilty of murder. Since none of the ships or persons responsible were by then in England, however, no one was ever brought to justice over the matter. There is some uncertainty on the matter of the number of Te Pahi’s people killed in the attack. William Leith, who arrived at the Bay of Islands 10 days after the raid, reported that 60 people had been killed. Two witnesses closer to the events told the Privy Council inquiry that at least 15 had died. Most histories record the figure of 60, although we note that Standfield, relying on the account of Lieutenant James Finucane, reported that up to 70 had died and Te Pahi had been among them: Salmond, *Between Worlds*, pp 390–391; Standfield, *Race and Identity in the Tasman World*, pp 121–122, 205.

163. Salmond, *Between Worlds*, p 391

164. Ibid, p 393


170. Shawcross, ‘Maoris in the Bay of Islands’, fol 169. For example, in February 1815 Tara was subjected to humiliating treatment on board the Jefferson but took no retribution against its crew of the kind meted out by the Whangaroa people after Te Ara’s experiences. As Wilson put it, ‘It need not however be assumed that Tara lacked the others’ sense of pride.’ Rather, Tara had to suffer the insults to keep the shipping trade at Kororareka and thus ‘sold himself for the axes and muskets of Europeans’: Wilson, *From Hongi Hika to Hone Heke*, p 61. There were exceptions to this. In 1810 or 1811 the crew of the New Zealander were caught digging up a patch of growing potatoes in the northern part of the Bay of Islands. In the ensuing fight, several Māori and Europeans were killed. According to Shawcross, it was said that the perpetrators were killed in part as retaliation for the earlier attack on Te Pahi and his people, as the New Zealander had been one of the vessels involved. However, while Shawcross reported that an entire boat party of Europeans had been killed (and eaten), Salmond noted just three European deaths: Shawcross, ‘Maoris in the Bay of Islands’, fol 167–168; Salmond, *Between Worlds*, p 477.


176. Marsden was explicit in his journal that Ruatara had embarked on the ship with three Māori companions, including a son of Te Pahi’s, although in his letter to Pratt of 19 November 1811 Marsden wrote that ‘I procured him [Ruatara] a Passage with two more of his Countrymen in the Frederick whaler’: Elder, *The Letters and Journals of Samuel Marsden*, pp 65–66; Harvard-Williams, *Marsden and the New Zealand Mission*, p 36.


178. This connection was made by Salmond, although her dating of this earlier incident to 1807 would appear to be in error: Salmond, *Between Worlds*, pp 368, 423.


181. Wilson, *From Hongi Hika to Hone Heke*, p 36. This was also remarked upon by Belich and O’Malley and Hutton: Belich, *Making Peoples*, p 142; doc A11, p 98.


183. Salmond, *Between Worlds*, p 420; Harvard-Williams, *Marsden and the New Zealand Mission*, pp 40–41. Salmond wrote that Ruatara was still at Parramatta when Kawiwi arrived and that it was Kawiti singing him a song composed for Ruatara by his wife Miki that stirred Ruatara to ask Marsden to arrange his passage home. Salmond surmised that Kawiti was one of the four Māori who had set sail on the Frederick, and that he, like Ruatara, may have been brought back to Port Jackson from Norfolk Island in August 1812: *Between Worlds*, 143
pp 422–423. However, in his letter to Pratt of 19 November 1811, which referred to the recent departure of Ruatara on the Frederick, Marsden wrote that Kawiti and another chief’s son had ‘come to day 16 miles to see me’: Harvard-Williams, Marsden and the New Zealand Mission, p 38. It seems therefore that Salmond was mistaken in this matter.

184. Salmond, Between Worlds, pp 417, 419–420
185. Ibid, p 428
186. Sydney Gazette and New South Wales Advertiser, 11 December 1813, p 1
187. Ibid
188. Ward, British Policy in the South Pacific, p 33
189. Document A21, p 28
190. While Salmond called this young man ‘Tui’ (as did Binney in The Legacy of Guilt and Phillipson in his evidence (doc A1)), he is also commonly referred to by historians as ‘Tuai’ (for example, by Wilson in both From Hongi Hika to Hone Heke and Kororareka, by Belich in Making Peoples, by O’Malley and Hutton in their evidence (doc A11), and by Manuka Henare in his doctoral thesis (doc A16)). Wilson wrote a short article in the Journal of the Polynesian Society in 1963 on the general confusion about Māori names and identities caused by Europeans ‘writing before the Maori language had been given a definitive orthography’: Ormond Wilson, ‘Tooi, Teeterree and Titore’, Journal of the Polynesian Society, vol 72, no 3 (1963), pp 267–270. Despite Wilson’s near certainty in that piece that the correct spelling should be Tuai, we have chosen to use Tui, in line with both Binney and Salmond as well as the spelling used by Nicholas (who wrote that Tui ‘had the name of a bird very common in New Zealand’): Binney, The Legacy of Guilt, p 200 n 46; Nicholas, Narrative of a Voyage to New Zealand, vol 1, p 241. Claimants such as Erima Henare also used ‘Tui’: doc A30, p 2. We note also that, while Salmond introduced Tui as being affiliated to Ngare Raumati, she also referred to both him and his brother Korokoro as Ngāti Manu: Salmond, Between Worlds, pp 427, 443, 455. We assume the brothers had both connections.
191. Salmond, Between Worlds, pp 428–432. Macquarie and Marsden had fallen out in early 1814, and Macquarie began to lend an ear to those who opposed Marsden’s moralising over the practice of colonial shipping. Macquarie even wrote disparagingly of Marsden’s advocacy of the ‘cannibalistic and treacherous natives of New Zealand and Tahiti’: Salmond, Between Worlds, p 432.
193. Salmond, Between Worlds, p 424; Belich, Making Peoples, p 142; Ballara, ‘Ruatara’, p 376
194. Salmond, Between Worlds, pp 435–436, 440
195. Ibid, p 433. Marsden was in the habit of calling important Māori leaders ‘King’. He referred to Te Uri o Kanee in the Rangihoua deed as ‘King of Rangee Hoo’ (see section 3.6.4) and later attempted to persuade Hongi Hika to assume that status, as we relate in chapter 4. The notion of a supreme Māori authority with whom to engage (and influence) clearly appealed to the missionaries and other Europeans alike.
196. Document A26, p 7
197. Salmond, Between Worlds, pp 436–440
198. Belich, Making Peoples, p 158
199. Salmond, Between Worlds, p 443
200. Ibid, pp 442–443
201. Ibid, p 445
202. ‘Government and General Orders’, Sydney Gazette and New South Wales Advertiser, 12 November 1814, p 1
203. Ibid
204. Document A21, pp 29–30
205. Salmond, Between Worlds, pp 446–447
206. Nicholas, Narrative of a Voyage to New Zealand, vol 1, pp 40–41
207. Document A11, p 102
208. Ibid; Salmond, Between Worlds, p 450; Belich, Making Peoples, p 143
209. Binney, The Legacy of Guilt, p 46. This was echoed by O’Malley and Hutton, who wrote that Ruatara was ‘Torn between his fears for the future, and his great desire to expand his agricultural and other practices’: doc A11, p 102.
210. Belich, Making Peoples, p 143. Belich seemed to imply that Ruatara’s ‘afterthought’ that the mission be located at Rangihoua was in fact a more calculated plan.
211. Wilson, From Hongi Hika to Hone Heke, p 40
212. Salmond, Between Worlds, pp 452–461
213. Elder, The Letters and Journals of Samuel Marsden, p 70
214. For example, they pointed to the lack of mention of it in Binney’s The Legacy of Guilt, Belich’s and Dr Michael King’s general histories, and the way that Salmond in Between Worlds referred to Marsden’s and Nicholas’s accounts of it only ‘in paraphrase’: doc A26, pp 10–11.
215. Document A26, p 13
216. Ibid
217. Salmond, Between Worlds, p 464
218. Ibid, pp 464–465
219. Document A26, pp 16–17. In a similar vein, Belich noted that ‘It was [Ruatara’s] words, not Marsden’s, that Maori understood at the first sermon’: Belich, Making Peoples, p 143. This placement of the Māori hosts at Rangihoua as the dominant actors rather clashes with the standard historical depiction of Marsden preaching to an attentive Māori congregation, which has been ‘honoured by stamps and by penny-dreadful historiography ever since’: Gavin McLean, ‘Rangihoua Pa and Oihi Mission Station’, Ministry for Culture and Heritage, http://www.nzhistory.net.nz/media/photo/rangihoua-pa-and-oihi-mission-station, last modified 4 September 2013.
220. Document A11, p 103
221. Binney, The Legacy of Guilt, p 50
222. As Shawcross wrote, it was a mistake to think, as Marsden did, that Ruatara actually wanted Christianity to be introduced among his people. Rather, ‘on recorded occasions when Ruatara expressed eagerness to have missionaries settled at New Zealand he consistently made it clear that what he hoped the missionaries would be able to impart to his countrymen was knowledge of European agricultural techniques and crops, knowledge which would enable Ruatara’s people greatly to
expand their food resources': Shawcross, ‘Maoris of the Bay of Islands’, fols 297–298.

223. On board the Active during its voyage to the Bay of Islands, Tui and Korokoro appeared put out, which Salmond suspected stemmed from Marsden’s promise to locate the mission at Rangihoua. Then, when Marsden visited Tara on Boxing Day, the old chief pressured him to establish the mission at Kororareka instead, which Marsden declined to do: Salmond, Between Worlds, pp 455, 466.

224. Belich, Making Peoples, p 143; Binney, The Legacy of Guilt, pp 49–50

225. In their recent book Words between Us, Alison Jones and Kuni Jenkins wrote that the Māori name for this place was ‘Te Hohi’, but it was called ‘Oihi’ by its European settlers: Jones and Jenkins, Words between Us – He Kōrero: First Māori–Pākehā Conversations on Paper (Wellington : Huia, 2011), p 89.

226. Gavin McLean, ‘Rangihoua Pā and Oihi Mission Station’, In fact, in The Bay of Islands, p 64, Lee went so far as to write that, ‘Had Marsden and his catechists searched the whole coastline, a more dismal location for their settlement could scarcely have been found.’

227. Lee, The Bay of Islands, p 64

228. Binney, The Legacy of Guilt, p 50


230. Wilson wrote that Ruatara’s death was ‘doubtless the consequence of that other innovation [besides wheat] resulting from his travels: tuberculosis’: Wilson, Kororareka, p 35. Belich similarly observed that Ruatara was ‘probably a victim of a disease from the same source as his new-found power’: Belich, Making Peoples, p 143.

231. Nicholas, Narrative of a Voyage to New Zealand, vol 2, pp 194–195

232. Salmond, Between Worlds, p 505

233. Lee wrote that, upon Ruatara’s death, ‘in accordance with his promise to Marsden, Hongi Hika assumed a vicarious responsibility for the safety of the mission people’: Lee, The Bay of Islands, p 73. More immediately at Rangihoua, however, Wharepoaka became the principal rangatira, although his status remained inferior to that of Hongi: Shawcross, ‘Maoris of the Bay of Islands’, fols 205, 207.

234. In January 1816 King referred to ‘us and the other prisoners that were in this settlement’: Binney, The Legacy of Guilt, p 55.


236. Shawcross, ‘Maoris of the Bay of Islands’, fol 295


238. Document A11, p 101


240. Ibid, pp 264–265


242. Document A18, p 21

243. Document A21, p 30


245. Yarwood, Samuel Marsden, p 192

246. Document A18, pp 21–22

247. Ward, British Policy in the South Pacific, p 44; McNab, Historical Records, vol 1, p 407

248. Ward, British Policy in the South Pacific, pp 46–47

249. McNab, Historical Records, vol 1, p 594


251. That year Kendall wrote that ‘such Settlers as depend wholly upon [the Society’s trade] cannot procure pork and potatoes sufficient for their families’. As Binney put it, the settlers had been forced to recognise that ‘the gun was the coin of this realm; and by 1818 every settler at Rangihoua was trading muskets: Binney, The Legacy of Guilt, pp 54, 59.


253. Binney, The Legacy of Guilt, p 69; Wilson, From Hongi Hika to Hone Heke, p 16; Salmond, Between Worlds, p 362

254. Hongi followed a month behind Te Morenga, emphasising the independence of the two rangatira on what some may have later regarded as the same expedition. Wilson thought Hongi might even have been ‘more influenced by a desire to prevent Te Morenga from gaining all the glory’ than by a desire for utu: Wilson, From Hongi Hika to Hone Heke, p 17.

255. Wilson, From Hongi Hika to Hone Heke, pp 40–41; Dorothy Urlich Cloher, Hongi Hika: Warrior Chief (Auckland: Viking, 2003), pp 100–104

256. Binney, The Legacy of Guilt, pp 60–69; Cloher, Hongi Hika: Warrior Chief, pp 121–124; Wilson, From Hongi Hika to Hone Heke, p 17


258. Binney, The Legacy of Guilt, p 68

259. It was while the Dromedary was being unloaded that a cask for Kendall marked ‘Leather’ broke open and revealed muskets. Marsden, who had consigned this cargo and was present when its true contents were revealed, later charged Kendall with arms dealing on the basis of this very incident: Binney, The Legacy of Guilt, pp 63, 78; Cloher, Hongi Hika: Warrior Chief, p 117.

260. Cloher, Hongi Hika: Warrior Chief, pp 122–125


262. Binney, The Legacy of Guilt, p 68

263. Ibid, pp 71–74; Cloher, Hongi Hika: Warrior Chief, pp 125, 129–131, 140. The ‘opportunist’ quotation is from Cloher, p 130.

264. Document A1, p 213

266. Binney, The Legacy of Guilt, pp 74–75

267. Wilson, From Hongi Hika to Hone Heke, p 43

268. Binney, The Legacy of Guilt, p 75; Cloher, Hongi Hika: Warrior Chief, p 141

269. As Erima Henare put it (doc A30(c), pp 34–35): ‘I te taenga atu o Hongi ki reira kaore i ki ki te Kingi; E te matua. Kia mohio mai koe ki tenei. Kaore ia i ki; E te matua. He tūtakianga o te tangata orite, mana orite – mana orite. Ka mutu te tūtakianga o ngā hunga nei tēra te whakapae i Aotearoa nei, tae noa mai ki tenei wā, na ngā kōrero a ngā kaituhitiori e whai manahia nei e te Karauna – i tuhia e rātou. Kao, kaua e kōrero mo ngā tuhinga a te Pākehā.’ We translate this as follows: ‘When Hongi arrived there – he did not say to the King; My father. It is important you know this. He did not say; My father. This was a meeting of people of equal status, of equal mana – of equal prestige. When their meeting was finished, that was what was conveyed in Aotearoa, and is still conveyed in those sentiments today. It is due to the writings of historians that the Crown’s status is elevated – that is due to what has been written by them. No, let us not talk of the written versions of the Pākehā.’

270. Document A30(c), p 40

271. Erima Henare’s own translation as quoted by counsel: submission 3.3.23, p 25

272. Document A1, p 113

273. Dr (later Dame) Claudia Orange suggested in her 1987 book that this was Wharepoaka. Phillipson considered the chief’s identity in greater detail and found various reasons for and against it being either Wharepoaka or Wharerahi, but seemed more convinced that it was the former: Claudia Orange, The Treaty of Waitangi (Wellington: Bridget Williams Books, 1987), p 12; doc A1, p 222.


275. Hōne Wiremu Heke to Queen Victoria, 10 July 1849 (doc A1, app) Document A1, p 214

277. Orange, The Treaty of Waitangi, p 10

278. Document A1, p 216

279. Cloher, Hongi Hika: Warrior Chief, pp 142–144; Binney, The Legacy of Guilt, p 76

280. Cloher, Hongi Hika: Warrior Chief, p 146; Binney, The Legacy of Guilt, p 78. Cloher wrote that the Speke’s voyage from England took 158 days, which would – by our calculation – suggest an arrival date of 29 May. However, Binney recorded an arrival date for the Speke of 18 May, which we have chosen to use since she named an actual date. We note in passing that other historians have suggested a markedly different period of waiting in Sydney for the onward voyage of four months, but we are unaware of the reason for this more significant discrepancy. See, for example, Wilson, From Hongi Hika to Hone Heke, p 19; Belich, Making Peoples, p 160.

281. Belich wrote that Hongi returned to New Zealand with ‘as many as 400 or 500 muskets, perhaps the largest single shipment Maori ever acquired’; while other historians, such as Manuka Henare – who relied on The Story of New Zealand by Arthur Thomson, who interviewed the elderly Waikato – have put the figure at 300: Belich, Making Peoples, p 160; doc A16, p 168. See also Arthur S Thomson, The Story of New Zealand: Past and Present, Savage and Civilized (London: John Murray, 1859).

282. Wilson, From Hongi Hika to Hone Heke, p 19 (relying on the contemporary observation of Francis Hall).

283. See for example, Wilson, From Hongi Hika to Hone Heke, p 19. Other historians to have given this version of events include Binney (The Legacy of Guilt, p 78 – although on Binney’s views see more below), Belich (Making Peoples, p 160), Lee (The Bay of Islands, p 104), Ballara (Tāua, p 192), and Manuka Henare (doc A16, p 169).


285. Cloher, Hongi Hika: Warrior Chief, p 147

286. Ibid, pp 130–131

287. See in particular Raeside, Sovereign Chief: A Biography of Baron de Thierry, pp 21–30, 48

288. Binney, Making Peoples, p 160. We note that de Thierry wrote in later life that he had advanced Kendall £800 of goods in England which Kendall then sold in Sydney for a handsome return. According to de Thierry, Kendall split the proceeds with Hongi, who used his share to purchase guns and ammunition. Writing in 2005 (that is, in an addition to her 1968 text, albeit without direct reference to Raeside or Cloher), Binney remarked that this narrative possibly ‘hid the fact that he [de Thierry] himself had shipped guns, to this value, to Hongi.’ She noted the debt to the Richards brothers but added that ‘there is no firm evidence, merely speculation’: Binney, The Legacy of Guilt, pp 183, 238–239. We note that Professor Paul Moon essentially accepted Cloher’s position in his book A Savage Country, where he wrote that the popular view of Hongi selling his gifts and purchasing the guns in Sydney en route back to New Zealand had ‘gained a level of credence which it may not entirely deserve’: Paul Moon, A Savage Country: The Untold Story of New Zealand in the 1820s (Auckland: Penguin, 2012), p 66.

289. Document A16, p 167

290. Cloher, Hongi Hika: Warrior Chief, p 16


292. Document A11, p 113

293. Document A26, p 19. They acknowledged, however, that their assessment would be met with scepticism by historians who had pointed to Hongi’s desire to obtain muskets.

294. Cloher, Hongi Hika: Warrior Chief, p 121

295. Document A30(c), p 40

296. Tribunal’s translation

297. Document A30, pp 2, 4; doc A30(a), p 7; doc A30(c), pp 9–10, 85

298. Document A16, pp 4, 158–159

299. Ibid, p 171

300. Document A30(c), p 90

301. Ballara, Tāua, p 192
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The casualty toll was favoured by Ballara and Wilson. Marsden noted that of Hengi (see below). We have not seen any other reference recommending the following morning with a further 50 deaths, including that of Hengi. Peter Bays observed that nearly 100 died in the fighting and that it was 'not to be confused with Taonui': doc A1, p 41–42.

Document A30(c), pp 41–42

Transcript 4.1.1, p 242 (as adapted by the Tribunal)

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Belich, Making Peoples, pp 167–168; Belich, Hangi Hika: Warrior Chief, p 293

Document A30(c), pp 41–42


See Wilson, From Hongi Hika to Hone Heke, pp 96–98; Ballara, Taua, pp 201–203; doc A1, p 41. According to Lee, the ship captain Peter Bays observed that nearly 100 died in the fighting and that it recommenced the following morning with a further 50 deaths, including that of Hengi (see below). We have not seen any other reference to renewed fighting on 7 March, and William Williams's estimate of the casualty toll was favoured by Ballara and Wilson. Marsden noted that the battle left 'about seventy killed and wounded on both sides': Lee, The Bay of Islands, pp 156–157; Elder, The Letters and Journals of Samuel Marsden, p 458.

Wilson, From Hongi Hika to Hone Heke, pp 98–99; doc A1, p 42; Ballara, Taua, pp 203–204

Document A1, p 221. Peter Bays, another ship's captain who witnessed the fight, and whose account Wilson thought made 'as much sense as any and more than most', argued by contrast that 'the natives were rather instigated to hostilities by laws of their own than provoked to it by any allurement which a foreigner might throw in their way': Wilson, From Hongi Hika to Hone Heke, p 97; Elder, The Letters and Journals of Samuel Marsden, p 457(n).

Elder, The Letters and Journals of Samuel Marsden, pp 497–498; McNab, Historical Records, vol 1, p 705

Elder, The Letters and Journals of Samuel Marsden, pp 497–498; McNab, Historical Records, vol 1, p 705. Elder did not provide a date for Marsden's letter.

Ballara, Taua, pp 204–205; Elder, The Letters and Journals of Samuel Marsden, p 498

Ballara, Taua, pp 365–366; doc A1, p 222; Wilson, From Hongi Hika to Hone Heke, pp 184–185; Moon, Fatal Frontiers, pp 34–36

Document A1, p 222

Ibid, pp 222–223
Taonui. We think they are correct, since Yate recorded the place of residence of 'Taonui' as Utakura (doc A16, p 175), which fits with our knowledge of Makoare Taonui. For example, see Ruth Ross’s entry on him in the 1996 Encyclopaedia: Ruth Ross, 'Makoare Taonui', in An Encyclopaedia of New Zealand, ed A H McLintock, http://www.teara.govt.nz/en/1966/taonui-makoare, last modified 22 April 2009.

344. Adams, Fatal Necessity, p 76
345. Document A1, pp 225, 228
346. Document A16, p 172. We admit that Manuka Henare did not actually say this, but it seems a reasonable interpretation of his position. Phillipson, for one, thought it clear that Henare had come 'to the conclusion that [the petition] was the work of its Maori signatories': doc A1, p 231. Perhaps in a similar vein to Henare, Parkinson wrote that the original text was ‘penned by Yate, as amanuensis for the chiefs’: doc D1, p 110. However, we note that, in a 2007 publication, Henare referred to the petition as a 'joint effort' between the chiefs and the missionaries, adding that 'The choice of words in the letter provides evidence that its composition was, at least in part, their [the chiefs'] own': Manuka Henare, 'The Māori leaders' assembly, Kororipo Pā, 1831', in Te Kerikeri 1770–1850: The Meeting Pool, ed Judith Binney (Wellington: Bridget Williams Books, 2007), pp 112, 116. Henare’s brief of evidence for our inquiry (doc B3, pp 43–47), was drawn from his doctoral thesis.

348. Ibid, p 173
350. Document D4, p 25. Parkinson wrote in response that the quality of the Māori language used should not be a surprise, since Yate was ‘a famously fluent orator and translator from Maori to English and vice versa’: doc D1(d), p 3.

351. Document A1, p 231
352. Ibid, p 220
353. Ibid, p 219
354. See Binney, The Legacy of Guilt, p 46, where Binney remarked upon the way these fears ‘were to be echoed again and again by Ngapuhi chiefs. The fate of the Aboriginals of New South Wales and Tasmania was not unknown to them.’

355. Document A1, p 221
356. Ibid, p 232; doc A18, p 45; Adams, Fatal Necessity, pp 76–77
357. ‘New Zealand’, Sydney Gazette and New South Wales Advertiser, 8 December 1831, p 2
359. See McNab, Historical Records, vol 1, p 297
360. McNab, From Tasman to Marsden, pp 138–142; doc A18, p 18
361. Ward, British Policy in the South Pacific, p 44; McNab, Historical Records, vol 1, p 407
362. Document A18, p 26
363. Nor was it interesting in the various plans put forward, from 1823, by Baron Charles de Philippe de Thierry for a colony of British settlers on his Hokianga 'estate' and beyond. With regard to de Thierry's 1825 proposal to cede the northern part of New Zealand to the French Government in return for its governorship for life, Loveridge observed that the 'only thing which seems to have grown and prospered during this period was De Thierry's imagination': doc A18, pp 27–31.

368. Document A18, pp 44–45
369. According to Phillipson, the Colonial Office opposed the use of troops since it reasoned that a civil official would be more likely to be trusted by Māori. Goderich hoped that the Resident would be supported by regular visits from the navy, but the Admiralty declined to make a ship available: doc A1, p 234.

370. Document A18, p 46
371. Ibid; doc A21, p 36
372. Document A1, p 234
374. Document A18, p 48
375. Ibid
376. Ibid, pp 46–47
377. Adams, Fatal Necessity, p 64
378. Ramsden, Busby of Waitangi, p 39
379. Document A18, pp 47–49
380. Ramsden, Busby of Waitangi, p 50
381. Document A18, p 49
382. Ibid, p 50
383. Ibid
384. Ibid, p 49
385. Richard Bourke to James Busby, 13 April 1833, BPP, 1840, vol 33 [238], p 6 (IUP, vol 3, p 54)
386. Ibid, p 4 (IUP, vol 3, p 52)
387. Ibid (IUP, vol 3, p 52)
389. Document A18, pp 51–52
390. Richard Bourke to James Busby, 13 April 1833, BPP, 1840, vol 33 [238], p 6 (IUP, vol 3, p 54)
393. Document A21, pp 34–35
394. Aside from the fruitless wait for news that Parliament had passed the South Seas Bill, Busby’s seven-month wait in Sydney was also due to the delay in building the frame of the house in which he would live while in New Zealand: Adams, Fatal Necessity, p 66; Ramsden, Busby of Waitangi, pp 50–52.

395. Richard Bourke to James Busby, 13 April 1833, BPP, 1840, vol 33 [238], p 5 (IUP, vol 3, p 53); see also doc A21, p 34; Ramsden, Busby of Waitangi, p 54
396. Document A18, p 53
397. Richard Bourke to James Busby, 13 April 1833, BPP, 1840, vol 33 [238], p 5 (IUP, vol 3, p 53)
399. ‘New Zealand’, *Sydney Gazette and New South Wales Advertiser*, 2 July 1833, p 2
400. Document A1, p 237
401. Document A11(a), vol 4, pp 1282–1283. Samuel Carpenter believed that both translations would have been made by William Williams, which accords with his greater reputation as a linguist and translator than his brother: doc A17, p 68.
403. Document D4, p 23
405. Document A1, p 240
406. Ibid, p 239
407. Ibid
408. Ramsden, *Busby of Waitangi*, p 58
410. Document A17, p 69
411. The master of the *Imogene* had refused to carry the frame and Busby had had to have it and a quantity of bricks shipped privately, on the *New Zealand*, *Busby of Waitangi*, pp 51–52.
412. ‘New Zealand: Shipping Intelligence’, *Sydney Gazette and New South Wales Advertiser*, 4 July 1833, p 2
413. Ramsden, *Busby of Waitangi*, pp 60–61
416. Lee, *Hokianga*, p 52
417. McNab, *Historical Records*, vol 1, p 686
418. *The Australian*, 26 November 1830, p 3
422. ‘Sydney Intelligence’, Colonial Times, 29 January 1833, p 2
423. Document A18, pp 54–55; doc A17, pp 16–17
424. Document A18, p 17
425. Document A18, p 55
426. Document A1, p 241; doc A18, p 55. Busby noted that the missionaries had even felt the absence of red could have left the rangatira feeling ‘s slighted’: doc A17, p 18.
429. Document A1, p 241
430. Ibid
431. Document A11(a), vol 4, p 1295
433. Baron Karl von Huegel, diary (translation by Reuel Lochore), ATL, Wellington, pp 432–433. Von Huegel wrote ‘Temorina, Taiamai, the lame Waikata, Heke’, but we think in this instance that ‘Taiamai’ must have referred to Te Morenga’s home.
434. Von Huegel wrote that the chiefs were ‘accompanying by only a few of their people, no horde numbering more than 50 persons, of whom more than one-third were women’: von Huegel, diary (translation), pp 429–430.
436. Von Huegel, diary (translation), pp 438–439
437. Document A1, p 241
439. Document D4, pp 31–32
440. Document A1, p 241
441. Marshall referred to Busby’s assistant as ‘Hongi’, who we are sure would have been Pare: Marshall, *A Personal Narrative*, p 108.
442. Ward, *British Policy in the South Pacific*, p 75
443. Document A18, p 55
445. Von Huegel, diary (translation), pp 440–441
446. Marshall, *A Personal Narrative*, pp 109; doc A1, p 241. Marshall thought they were also given pigs and potatoes, but von Huegel was adamant that ‘the only food served was that dubious flummery’: von Huegel, diary (translation), pp 442–443.
447. Document A11(a) vol 4, p 1296
449. Von Huegel, diary (translation), p 444
451. Von Huegel, diary (translation), pp 448–449
452. Ibid, p 449
453. Ibid, pp 433–434. This ship must have been the *Fortitude*. As the *Sydney Herald* reported on 17 April 1834: ‘Some months ago, a vessel called the *Fortitude* “touched ground” at Hokianga, in New Zealand – she was immediately boarded and her papers and the most valuable part of her cargo seized by a tribe of the New Zealanders, who were impressed with the idea that she was aground, and consequently a fair prize. The then “chief of the heads,” assisted by his brother Moeta and another brother interfered, insisting on a restitution, this being resolutely refused by the invading tribe, a serious engagement ensued in which Moeta’s brothers and many of his relatives and tribe fell a sacrifice to their John Bull feelings, but they succeeded in restoring the property to the vessel. Moeta, by the death of his brothers in this battle, became and is now the chief of his tribe. Mr Oakes on his recent return to this colony, having represented the above to the Lieutenant Governor, His Excellency availed himself of the opportunity of forwarding to Moeta, through Mr Oakes, a dispatch expressive of His
Excellency’s satisfaction at the noble conduct of the “valiant chief of the heads of Hokianga.” This dispatch was accompanied by an elegant gilt sabre and military cloak (the gift of His Excellency.) Moetara was wearing his cloak and sword when von Huegel met him and proudly showed the Austrian his certificate of thanks.

454. At the time, Pōmare was also embroiled with Busby in a bitter dispute over possession of a boat, which may have affected his attitude to the flag hui. Owed money by several settlers, Pōmare had seized their longboat, but Busby thought Pōmare in the wrong and even had the Alligator point its guns at Pōmare’s pā. Urgent missionary intervention, however, resolved the facts and vindicated Pōmare’s stance. See Ramsden, Busby of Waitangi, pp 70–71; Adams, Fatal Necessity, p 67.

455. Orange thought Pōmare’s arrival was deliberately late: Orange, The Treaty of Waitangi, p 20. We note that von Huegel’s account appears to place Pōmare’s arrival much earlier, before Busby began his opening address: von Huegel, diary (translation), p 438.

457. Von Huegel, diary (translation), pp 435, 438
458. Document A18, p 55 n 169
459. Document A1, p 243; Ramsden, Busby of Waitangi, p 66
460. Document A18, p 56
461. Ibid
462. Document A16, p 179
463. Orange, The Treaty of Waitangi, pp 20–21
464. Document A1, p 242. Phillipson also described this flag as the ‘majority choice’. But he also acknowledged, correctly in our view, that the vote had resulted in ‘the inability for a majority to agree on one flag’: doc A1, pp 241–242.

465. Document A1, p 242

468. Ramsden, Busby of Waitangi, pp 77–78
469. Ibid, pp 79–80
470. Document A17, p 19
472. Document A11, p 248
474. Ramsden, Busby of Waitangi, p 81
475. ‘Original Correspondence’, Australian, 1 July 1834, p 3
476. Ramsden, Busby of Waitangi, p 79. Ramsden noted, for example, the Sydney Herald’s report that Busby had prevented Europeans from pursuing his attackers – something which we consider quite plausible. However, we do not doubt the press’s hostility to Busby. The Sydney Monitor (28 June 1834, p 3) wrote: ‘The Europeans wished to call a meeting to adopt measures of safety and discovery, but Mr Busby considered it more prudent to pass the matter by as country luck. We shall be glad to hear of Mr Busby introducing his vines at the Bay of Islands. When the time comes that he can give the natives grapes and afterwards wine, we shall not hear of their attempting to kill him.’

477. Document A11(a), vol 4, p 1302. Busby mistakenly dated the third of these dispatches as 3 July: see doc A11(a), vol 4, p 1299.
478. On 30 October, Busby wrote that this had occurred ‘ten days ago’: doc A11(a), vol 4, p 1303.
479. Ramsden, Busby of Waitangi, pp 82–83; doc A17, p 20; doc A1, pp 251–252; doc A11(a), vol 4, pp 1303–1305
480. The Harriet affair thus involved the first action in New Zealand by British soldiers.
481. Document A11(a), vol 4, p 1304
482. Edward Markham, New Zealand, or Recollections of It (Wellington: Government Printer, 1963), p 81
483. Document A11(a), vol 4, pp 1304–1305. Markham wrote that one chief had advocated that Rete’s tribe ‘ought to sacrifice Twenty Slaves’, but the missionaries would not hear of it: Markham, New Zealand, or Recollections of It, p 81.
484. Document A11(a), vol 4, p 1304
485. Ibid, p 1303
486. Ibid, pp 1306, 1307, 1309, 1311
487. Ibid, p 1310
488. Document A17, p 19
489. Document A18, p 57; doc A11(a), vol 4, p 1313; Ramsden, Busby of Waitangi, pp 83–84
491. Document A11(a), vol 4, pp 1323–1324
492. Ibid, p 1324
493. Document A17, p 22
494. Ibid, p 23
495. Document A1, p 252

Page 114: The 1831 petition to William IV
1. Document A16, app 6. Dr Patu Hohepa claimed that the Māori text was written by Eruera Pare, but we believe that this was successfully refuted by Parkinson, who identified the handwriting very clearly as Yate’s: doc D4, p 25; doc D1(d), p 2.
2. Document A16, p 175
3. Document B10, p 64
Page 123: King William IV's response to the rangatira

Page 125: Busby's address and its translation
1. Note that we have the text of the translation because a written version was created, probably by William Williams, and printed along with the translation of the King's letter in Sydney, so that they could be widely distributed among Māori in the north of New Zealand. Ramsden noted that William Yate 'corrected the Maori version' before printing: Eric Ramsden, Busby of Waitangi: HM’s Resident at New Zealand, 1833–40 (Wellington: AH and AW Reed, 1942), p 58; doc A18, p 55; doc A1, pp 237–239; doc A17, p 68.

Page 130: Busby's address on the adoption of a flag, 1834
1. We have taken the text from document A16, p 186, but excluded the macrons inserted in the Māori text by Manuka Henare.
CHAPTER 4

HE WHAKAPUTANGA AND
THE DECLARATION OF INDEPENDENCE

4.1 Introduction
4.1.1 He Whakaputanga and the Declaration

By 1835, Rāhiri’s people had emerged into the world of international trade and politics with at least some of the attributes of statehood. They had a name, ‘Nu Tireni’, which they sometimes used in correspondence with Britain as a descriptor for these islands. Ships from their harbours sailed under a national flag. And their independence had been recognised by Britain, then the world’s dominant imperial power. Internationally, then, they had a collective identity. Within these shores, however, ‘Nu Tireni’ did not exist as a political entity. It did not possess the machinery of state as we would understand it today, nor indeed as the British understood statehood then. Hāpū remained the dominant unit of political life. Effective power rested with them and with their rangatira, whose authority depended to a significant extent on how successfully they pursued hāpū interests. The pursuit of those interests frequently led to inter-hāpū cooperation and alliance, and sometimes led to competition and warfare.

From Britain’s perspective, that was effectively the end of the story. As we saw in chapter 3, from the moment of his arrival in New Zealand, the British Resident James Busby had sought to mould autonomous hāpū into a national congress made up of principal rangatira. By the end of 1834, he had met with only mixed success. While rangatira had acted collectively to endorse the flag, they otherwise remained separate and independent, leading Busby to complain that ‘there exists neither Government nor established order in any shape in New Zealand’.

There are, however, other perspectives, which do not appear in British colonial records, but rather have been passed down to claimants from their tūpuna. Some claimants said that rangatira had been meeting for many years in the Bay of Islands, Hokianga, Whangaroa, and Whāngārei, to manage their relationships with Europeans. These meetings, some claimants suggested, occurred even during times of inter-hāpū conflict, suggesting that smaller quarrels were put aside to achieve larger goals. By the 1830s, they said, a kind of confederation had emerged or was emerging in a manner that did not override the mana of its constituent hāpū, but represented them collectively in external relationships. Other strands of claimant evidence referred to the emergence of a collective Māori identity, and to rangatira taking purposeful steps towards the establishment of a Māori state internationally aligned with Britain. To some of the claimants, by the beginning of...
1835 the machinery of state had begun to emerge; to others, it had already formed.

During the last few months of 1835, these questions of government and statehood were to move to the forefront of the relationship between rangatira and Britain – first as rangatira and Britain’s official representatives grappled with the question of how to use Māori authority to control British trade in alcohol, and then as they responded to a spurious claim by the adventurer Charles de Thierry to have purchased sovereignty over substantial parts of the Hokianga. The first of these events resulted in a short-lived local ‘law’ banning liquor imports into the Hokianga. The second resulted in He Whakaputanga o te Rangatiratanga o Nu Tīreni, known in English as the Declaration of Independence of the United Tribes of New Zealand.

He Whakaputanga (which can be translated as ‘an emergence’) was signed on 28 October 1835 by 34 rangatira. Over the next three and a half years, a further 18 rangatira – from the north and further afield – were to add their moko, signatures, and marks. In the text, the rangatira asserted their tino rangatiratanga over the parts of New Zealand north of Hauraki (the mouth of the River Thames). Referring to their gathering as ‘te Wakaminenga o nga Hapu o Nu Tīreni’ (‘the United Tribes of New Zealand’ in the English text), they declared that all mana and kingitanga (‘all Sovereign Power and Authority’) in respect of their territories resided with them. They agreed to meet annually at Waitangi to frame ‘ture’ or laws for the purposes of justice, peace, good order, and trade. They also asserted that no one else could frame laws for their territories, and no one else could exercise powers of government unless appointed by them and acting under their authority. Finally, in return for their protection of British subjects in their territory, they sought the King’s protection against threats to their mana.

When the English text was forwarded to Britain, Busby
4.1.2 A note on terminology
In our statement of issues, we referred to ‘He Whakaputanga/the Declaration of Independence’ as if it were a single document with distinct Māori and English-language versions. The claimants objected to this. In their view, the two documents are wholly separate. They argued that their ancestors debated and signed he Whakaputanga (the Māori-language text) and it was that text alone which conveyed their intentions, not the Declaration of Independence (the English-language text), which conveyed different meanings and was never debated or signed. The Crown, in its closing submissions, continued to refer to ‘He Whakaputanga/the Declaration’, implying that it saw the declaration as a single document in two languages, although it did not express this view with any force.

Later in this chapter we will discuss how the declaration was created, whether there are distinctions between the two versions, and whether either text is definitive. At this point, it is sufficient to acknowledge that there are texts in two languages. One, He Whakaputanga o te Rangatiratanga o Nu Tirenī (te reo Māori text), was the text that rangatira debated and endorsed, and it is the text that has shaped claimant understandings of what their tūpuna intended in 1835. The Declaration of Independence of New Zealand (the English-language text) shaped Crown understandings of what was intended, both in the 1830s and since.

In this chapter, as we noted in chapter 1, when we refer to he Whakaputanga, we are referring to the reo Māori text; when we refer to the Declaration of Independence (capitalised), we are referring to the English text. We use ‘the declaration’ (lower case) to refer to both texts together.

We note also that the sound now written as ‘wh’ was typically written as ‘w’ in the 1830s. The Māori-language text of the 1835 declaration therefore used the terms ‘Wakaputanga’ and ‘Wakaminenga’ where we would today use ‘Whakaputanga’ and ‘Whakaminenga’. In this chapter, we use the original spellings only in direct quotations; otherwise, we use the modern ‘wh’ spellings.

4.2 The Context for he Whakaputanga
4.2.1 Accelerated contact
In the previous chapter, we described how relationships between Māori and Europeans in the Bay of Islands, Hokianga, and other parts of the north had evolved during the late eighteenth century and early nineteenth centuries. Growth in trade, the arrival of missionaries and other settlers, international journeys by Māori, and the appointment of Busby as Britain’s official representative all provided points of contact. Where the two worlds intersected, there was accommodation and adaptation as both Māori and Europeans – for their own purposes and in their own ways – pursued the benefits of contact with each other (such as access to resources and technology) while seeking ways to control and minimise harm or conflict.

During the 1830s, trading relationships intensified as more ships visited and demand for New Zealand’s resources grew. The nature of trade also changed. Cash began to replace barter or gift-giving as forms of payment. Timber replaced flax as the principal export, increasing demand for labour and conflicts over rights. Food became an increasingly important export item.
Māori demand for European goods other than muskets was also growing, though muskets remained the principal import up to the mid-1830s. Tobacco was also in increasing demand.12

There was also steady growth in the British settler population. As settlers arrived, land transactions increased.13 By 1835, the European population north of Auckland still numbered only a few hundred, most of whom were in the Bay of Islands and Hokianga.14 They remained vastly outnumbered by Māori, whose population in the districts north of Auckland appears to have easily exceeded 12,000.15 ‘Patron–client’ relationships – in which settlers lived and carried out commercial activities under rangatira protection – remained the norm in the territories we are concerned with.16 Power, in other words, largely remained with Māori. Rangatira were aware of British military strength and of the potential consequences of large-scale European settlement, but it appears that in the mid-1830s the benefits of settlement were still perceived as outweighing the drawbacks.17

The 1830s was a period of relative, but not absolute, peace in the north. Relationships between Māori and Europeans were generally amicable, as each side made accommodations to maintain mutually beneficial relationships. However, tensions sometimes spilled over into open conflict for a range of reasons, including violations of tapu or mana, commercial disagreements, drunkenness, and to a lesser extent Māori loss of control over land or resources.18 Similarly, relations among Māori in the mid-1830s were more peaceful than they had been during the turbulent 1820s. The major southern campaigns had ended after Titore’s inconclusive taua to Tauranga.
in 1833, and peace had been secured through intermarriage between high-ranking people from Bay of Islands or Hokianga hapū and those from Ngāti Whātua, Ngāti Paoa, and Waikato (a matter we will discuss in more detail in chapter 5). Among Māori, political organisation continued to be based around hapū, sometimes acting in alliance with others. Relations between the hapū of the Bay of Islands' northern and southern alliances remained uneasy after the Girls’ War, and there was also fighting in the Hokianga in 1833 motivated by control over trade.

The 1830s also marked the beginnings of other significant changes as Māori began to engage with Christianity in significant numbers, and to show greater interest in European knowledge and ideas including those concerning peace and conflict resolution. We will discuss these issues in detail in chapter 5.

Overall, then, the mid-1830s was a crucial time in the evolution of northern Māori relationships with the wider world. In general, Māori continued to welcome Europeans for the benefits they brought, including access to goods, technology, ideas, and relationships. But they also sought to maintain control over relationships with settlers and traders, and to ensure the newcomers’ compliance with tikanga. These motivations had been evident in the 1831 petition to King William IV, which referred to the importance of trade while seeking British protection from the French and from troublesome European settlers.

Britain, too, wanted peace, trade, and control of its own disorderly subjects, albeit for reasons that reflected its own imperial interests and objectives. All of these motivations were reflected in the instructions given to Busby. He was told, also, to work through the influence of the chiefs, but he placed little value on Māori systems of leadership and decision-making, and after the Rete affair (see chapter 3) he also had little confidence in Māori systems of justice. In this, he was a product of his culture: like other Europeans of his era, he saw civilisation in ‘staged’ terms: that is, as a matter of progress up a ladder ‘from savagery to civilisation’, with British ideas and institutions at the top. In this, both Samuel Carpenter and Dr Manuka Henare suggested, the Edinburgh-born Busby would have been influenced by the Scottish Enlightenment view that clan-based social structures impeded advancement in commerce, education, and civilisation.

As we saw in chapter 3, Busby’s grand design was to persuade rangatira to form a national congress of rangatira able to make laws for all, and to adjudicate disputes in the manner of a British court. As he wrote shortly after his arrival, he hoped not only to establish this congress but also to bend it to his own ends, giving himself and Britain ‘almost entire authority’ over northern New Zealand. In this way, he would solve the intractable problem of advancing British interests and controlling British subjects in a land where he had neither legal authority nor practical power. He hoped, in short, to establish a Māori government controlled by the British. Indeed, as noted in chapter 3, as early as 1833 he was making plans not only for the adoption of the national flag but also for a government to issue passports for Europeans and to build a parliament house. Busby recognised that hapū were independent of one another and possessed ‘all the functions of sovereignty which their simple state of Society requires’. While he perceived that rangatira would be reluctant to surrender to any kind of national body based on majority decision-making, he was however determined to press ahead. As a first step, he had determined that ‘in any transaction which might be considered of an international character’ (including negotiations with him) all of the principal rangatira should be dealt with ‘in their collective capacity only’. In this, he appears to have misunderstood or been unwilling to accept the reality (discussed in chapter 2) that rangatira authority derived from hapū and so rangatira decisions required hapū consent. As Erima Henare told us, ‘It was the hapū who gave Rangatira their status, it was to the hapū that Rangatira owed their allegiance.’

By the end of 1834, Busby was entertaining thoughts of more direct British intervention. In the long term, he continued to believe it would be possible to establish a rangatira-led government and ‘impartial’ justice system under his influence, operating essentially as a British dependency. In the short term, however, he wanted British legal authority to control foreign ships and British subjects, and he also wanted Britain to send constables to help with this work. These questions of jurisdiction and authority were
to become more pressing on two occasions towards the end of 1835. The first of those concerned alcohol and its repercussions for order.

### 4.2.2 Ardent spirits and local law

In the early years of British settlement, Māori had shown little interest in liquor. Drunkenness was a problem among Europeans – particularly among sailors and sawyers – and this sometimes caused conflicts with both Māori and other Europeans. During the 1830s, however, some Māori who had regular contact with ships or British settlers had begun to drink spirits, and missionaries and other observers were noting with disapproval their occasional displays of public drunkenness, as well as the more common drunkenness of the Europeans.

Warren Jeremiah Moetara told us his tūpuna Moetara and rangatira ‘witnessed the porangi [madness] that came with it [alcohol] and asserted that this was not what they wanted for their people’. John Klaricich spoke of Moetara having his own problems with alcohol, as well as worrying about the effects on his people of liquor and drunken Europeans’ ‘lawless behaviour’. Drunkenness was also having an effect on commerce. According to Busby, some ships were no longer calling at the Bay of Islands because of alcohol-related problems.

In September 1835, efforts were made on both coasts to address these concerns. The missionary Henry Williams visited Busby at Waitangi to propose a ban on liquor imports to the district, to be enforced by local rangatira. Busby refused. Although he believed Bay of Islands Māori would happily pass such a law, they were in his view incapable of administering it in an impartial manner. As he saw it, asking the ‘rival Chiefs . . . and their lawless followers’ to enforce a law against British subjects would lead only to ‘riot and disorder’. Busby asked the New South Wales Governor Richard Bourke for legal authority and a constabulary so he could enforce a liquor ban himself.

Less than a fortnight later, however, a ban on the ‘importation and sale of ardent spirits’ was adopted in the Hokianga, in exactly the manner Busby had opposed. This was mainly a missionary initiative, though it also involved Thomas McDonnell, a British trader who in July 1834 had secured an appointment as ‘Additional British Resident’ in the Hokianga, partly by claiming that Busby was inefficient and by exaggerating both the population of the Hokianga and the level of disorder there. McDonnell was appointed as Busby’s subordinate and was instructed to consult the Resident, something he conspicuously failed to do on numerous occasions. On 21 September 1835, he chaired a meeting at the Wesleyan mission house at Mangungu, at which the liquor ban was adopted.

The leading Hokianga rangatira – Nene, Patuone, Moetara, Taonui, and Mohi Tāwhai – all supported the ban, as did McDonnell and the trader James Clendon. Offenders were threatened with large fines, and a ‘board’ made up of Moetara and two Pākehā traders was appointed to search ships and enforce the ban. Immediately after the meeting, Moetara and others apparently boarded ships in the Hokianga and emptied barrels of rum into the harbour. However, some settlers resisted the measure and the ban does not appear to have been enforced for long.

The affair was to highlight the differing approaches of the two British Residents to Māori jurisdiction. Busby, when he heard of the ban, promptly complained to Bourke that McDonnell had exceeded his authority. He repeated his view (see section 4.2.1) that laws should be recognised only if made by all rangatira ‘in their collective capacity’; and he also re-emphasised his lack of confidence in Māori law enforcement, arguing that any action against British people or property should be carried out only under direct British supervision. McDonnell, a few weeks later, wrote to Bourke about the ‘utter hopelessness of congregating all the native chiefs at any one place for the purpose of enacting any law within [their] collective capacity’. Whereas Busby sought a national parliament of rangatira operating under his guidance, along with enforcement power under his direct control, McDonnell was content with local laws and local enforcement based on hapū authority. Bourke and the New South Wales Legislative Council sided with McDonnell, approving the Hokianga liquor ban on condition that it was enacted and enforced by Māori ‘under the Native Law’.

While this affair was still simmering, questions of Māori government and lawmaking were to be raised from
another direction, when Busby and Bay of Islands missionaries received letters from the Anglo-French adventurer Charles de Thierry, announcing plans to establish a sovereign state in the Hokianga.

4.2.3 The ‘Sovereign Chief’ of New Zealand
As we saw in chapter 3, de Thierry – who had French parents but had lived most of his life in England – had met Hongi Hika, Waikato, and the missionary Thomas Kendall in 1820 at Cambridge University. During that visit, he had asked Kendall to obtain land for him in New Zealand, and in 1822 Kendall signed a deed with Patuone, Nene, and Muriwai purporting to exchange some 40,000 acres in the Hokianga for 36 axes. The purchase was later disputed, but de Thierry – on the basis of the deed, and his discussions with Hongi and Waikato – began to press ahead with ideas for colonisation, and spent much of the 1820s seeking the support of the British and then the French Government.

By the time he approached the latter in 1825 (having failed to attract British investors and after spending a period in prison for bankruptcy), he was claiming to have acquired not only land but also sovereignty.43

De Thierry had then spent some time travelling (he was briefly involved in an ill-conceived proposal to construct a Panama canal), before he arrived in the Pacific in June 1835. He stopped for a few weeks in the Marquesas, declaring himself King of Nuku Hiva, before moving on to Tahiti in August. From there, he wrote to Busby and the Church Missionary Society (c.m.s.).44 To Busby, he announced that he was ‘on my way to New Zealand’ – with armed troops – ‘for the purpose of establishing there a Sovereign Government’. He indicated that he was informing Busby merely as a courtesy, having already told the French and British kings, and the president of the United States.45 He informed the missionaries that he had been invited to New Zealand by Hongi and other rangatira: ‘And as a Sovereign
Chief by purchase, I have declared the Independence of New Zealand; that is my own Independence as Sovereign Chief.\textsuperscript{46} De Thierry much later claimed he had asserted his sovereignty only because Britain had refused to annex, and only in relation to the land he had purchased, though there are reasons to doubt this explanation.\textsuperscript{47}

Busby was uncertain how to respond. British authorities had long been concerned about the possibility of other European powers becoming involved in New Zealand, and this may have influenced his response – although, as Dr Grant Phillipson said, the Resident did not appear to view de Thierry’s threat as any kind of national act by France.\textsuperscript{48} Rather, Busby thought de Thierry was most likely a ‘madman’ – but, as he said to Bourke, ‘there appeared to be sufficient method in the madness of such a man, to be productive of much mischief’.\textsuperscript{49}

He had also learned from one of the CMS missionaries who knew of Kendall’s involvement that de Thierry had been promoting his colonisation schemes for more than a decade. Fearing that de Thierry might align himself with one or other tribal group in a way that gave him a power base while also destabilising intertribal politics, Busby decided to act with haste.\textsuperscript{50} He told his superior:

I have . . . resolved to call at as early a day as possible a meeting of the Chiefs in order that they may declare the Independence of their Country, and assert as a collective body their entire and exclusive right to its Sovereignty: and their determination to maintain that right in its integrity, and treat as a public enemy any person who professes to assume a right of sovereignty within their Territories: and especially to warn the writer of these Letters against approaching these shores, on pain of being treated as Independent States have a right to treat persons who attempt the usurpation of Sovereign rights within their borders.\textsuperscript{51}

Busby added that he would ‘probably also be induced to apply to [Her Majesty] so far to take them under his protection, as to guarantee their Country against the intrusion of such adventurers,’ and he expressed confidence that Britain would come to Māori aid if de Thierry did manage to land. Busby hoped that these steps would persuade de Thierry that it would be ‘madness’ to come to New Zealand.\textsuperscript{52}

As well as informing Bourke, the Resident wrote to rangatira and to British settlers outlining the threat he perceived from de Thierry. Inviting the rangatira to a hui at his residence at Waitangi two and a half weeks later, he said that he had received a letter ‘from a person afar off who desires to be king of the Maori people’, and asked them what should be done with this ‘interfering person’. ‘Shall the land be handed over to him, and all you be slaves, or not?’\textsuperscript{53} Seventy copies of this circular were printed and distributed.\textsuperscript{54}

4.3 The Making of the Whakaputanga

4.3.1 The drafting of the English-language text

Busby’s next step was to draft the Declaration of Independence of New Zealand, an English-language text declaring the sovereignty of northern rangatira, and the establishment of an independent state.\textsuperscript{55} Specifically:

- In article 1, the ‘hereditary chiefs and heads of tribes of the Northern parts of New Zealand’ were said to declare the ‘Independence of our country’, which was said to be an independent state ‘under the designation of The United Tribes of New Zealand’.
- In article 2 of this text, the chiefs were said to declare that ‘All sovereign power and authority’ within this independent state resided ‘entirely and exclusively’ with them ‘in their collective capacity’. They were also said to declare that they would not permit any other legislative authority to exist within the new state, and nor would they permit any ‘function of government’ to be exercised, except by people who they appointed and who acted under the authority of laws made by them.
- In article 3, they were said to agree that they would meet ‘in Congress’ every autumn at Waitangi, to frame laws ‘for the dispensation of justice, the preservation of peace and good order, and the regulation of trade’. They were also said to invite ‘Southern
Tribes’ to ‘lay aside their private animosities’ and join them in this lawmaking confederation, for the sake of protecting their new state.

Finally, in article 4, the chiefs were said to request that a copy of the declaration be sent to King William IV, along with a message thanking him for his acknowledgement of their flag, and asking that—in return for their protection of British subjects in New Zealand—he ‘continue to be the parent of their infant State’ and ‘become its Protector from all attempts upon its independence’. Busby later cast doubt on whether the request for protection was included in the original draft or added as a result of discussion with the rangatira—a matter we will consider below.

This brief text set out the key elements of Busby’s plan to replace existing systems of authority with a congress of rangatira, and in so doing to extend British influence by working through the authority of rangatira. It declared authority to reside with chiefs ‘in their collective capacity’. It proposed the establishment of a legislature made up of ‘hereditary Chiefs and Heads of Tribes’. It also seemed to foreshadow the possibility of that legislature delegating powers to carry out ‘Functions of Government’. In this, Busby seems to have seen Britain—and perhaps himself personally—as the likely recipient of these delegated powers: as we saw above, he had already asked Britain to send constables and grant him British legal authority to carry out executive functions.

**4.3.2 Busby’s account of the hui at Waitangi**

On 28 October 1835, in response to Busby’s invitation to discuss their response to de Thierry, 35 rangatira gathered at Busby’s residence at Waitangi. According to Busby, they represented the majority of people north of the River Thames. Many of those who had signed the 1831 petition attended, though several Hokianga rangatira could not be there, apparently because of flooding. Also present were the missionaries Henry Williams and George Clarke, and the traders James Clendon and Gilbert Mair.

This was not the first meeting to which rangatira had been invited by Busby. Manuka Henare, in his doctoral thesis, suggested that they would have regarded Busby’s residence as a kind of ‘marae’—a place where they could meet, debate and seek consensus—and Busby as a ‘foreign political adviser’. Busby reported that he gave each rangatira a blanket, and ‘expressed my regret that I had no accommodation to offer him’, especially as the weather was poor. He also offered pork. As with the flag hui 18 months earlier, Busby sought to deal only with those he saw as principal rangatira, and once again this led to resistance. It was, he reported, ‘extremely difficult to get the Chiefs to separate themselves from their connexions, and to form themselves into anything like a regular assembly’. Nonetheless, a debate was held, and he Whakaputanga agreed and declared.

The only known documentary evidence of what took place at this hui comes from Busby himself. In his dispatch to Bourke on 31 October 1835, he enclosed a copy of the English-language text and gave a relatively brief account of what had been discussed. First, he addressed de Thierry’s claims to land and sovereignty. The three rangatira named on the land deed (Patuone, Nene, and Muriwai) were not at the hui, but Busby had been told that de Thierry’s alleged purchase was disputed. Waikato, who had met de Thierry at Cambridge, ‘indignantly denied that he had ever invited that individual to come out and govern the Country’; nor had Waikato received any gifts, except in return for what he himself had given de Thierry.

Busby then said that the ‘Chiefs were perfectly unanimous in asserting their determination not to permit the landing of the Baron de Thierry; nor to submit to his Government’. He had also ‘addressed them on the great importance of laying aside their petty jealousies, and contentions’, and instead ‘uniting as one man’ in the defence of their country, lest any lack of unity be exploited by ‘any adventurer’ such as de Thierry.

The rest of Busby’s dispatch was devoted to his explanation of and justification for the declaration, ‘which I drew up for the Chiefs; and which, after a considerable time spent explaining it by both the Missionaries and myself—was unanimously agreed to.’ He began by referring to
article 4, in which chiefs were said to have asked that the King become their protector against attempts on their independence.

Busby went on to assert that the Declaration settled the basis of a Government for the Country upon the principle . . . that the powers of a Government should be vested exclusively in the Chiefs of Tribes, in their Collective capacity.

This, Busby argued, was the only basis for government that was 'at all likely to promote the improvement of the people themselves; or to afford any degree of safety and protection to British Subjects, who are settled, or may settle, among them.' So long as Māori property rights were protected, Busby said, 'I have little doubt that the Chiefs might be led to enact, and to aid by their influence and power, the enforcement of whatever Laws the British Government might determine, to be most advantageous to the Country' so long as the execution of those laws was supported by a (presumably British-led) military force.

If Britain were to establish a government backed by a military force, Busby continued, it would be 'based upon the principle of protecting a Nation in its minority, and preserving it from those evils' that British subjects might expose its 'simple Inhabitants' to. Furthermore,

no interference would be permitted with the rights of the people, individually or collectively; but what should be exercised in trust for the Country; and be more than justified by the advantages conferred.

Finally, Busby argued,

the establishment of the Independence of the Country under the protection of the British Government would be the most effectual mode of making the Country a dependency of the British Empire in everything but name.

In other words, Busby intended the declaration not only to see off de Thierry but also to establish a legislature under British influence, which in turn would provide a basis for Britain to establish a government backed by its own military force. By these means, the Resident hoped that Britain would be able to advance its imperial interests while also bringing what it saw as the benefits of civilisation to Māori.

In encouraging the rangatira to take these steps, Busby believed that he was acting according to his instructions and in a manner that was consistent with British interests and policy towards New Zealand, as reflected in its recognition of the New Zealand flag. He did not believe that Britain could sit by in the face of de Thierry's claim of sovereignty, but neither did he believe that Britain would want to respond by asserting its own power and taking possession of the country 'at the sacrifice of the just rights of the natives.' In any case, his dispatch suggested, such a move was not necessary since Britain could protect its interests by manipulating a congress of rangatira to enact the laws that it preferred, as we set out above.

Busby's dispatches to Bourke said nothing about what rangatira thought of his plan for a legislature with power over all and a government to enforce its laws. Indeed, those dispatches did not even confirm that these particular matters were discussed in any detail. In other writings, however, Busby said that the plan was discussed and that rangatira expressed reservations. Specifically, in a draft letter to his patron, the Earl of Haddington, in October 1836, Busby commented that the rangatira were told of the plan but had

sagacity enough to see that any resolutions they might agree to or laws they might enact would tend nothing to the establishment of order amongst them – They rightly observed that though eleven of their number should regulate their conduct by the law if the 12th were disposed to break it, they had no resource but to let crime go unpunished or to levy war Tribe against Tribe as at present.

Some decades later, in unpublished memoirs, Busby wrote that during the hui 'it was fully explained that each chief had relinquished his power, and the congress of Chiefs . . . would review the conduct of each Chief against whom there might be grounds of complaint,' before
repeating that the rangatira did not see any way for this collective authority to be enforced.  

4.3.3 How the declaration was drafted

Busby’s initial dispatch to Bourke contained no detail about how the declaration was drafted, aside from his comment that he had drawn it up, and that after discussion it was unanimously adopted. In effect, therefore, he presented the English-language text to Bourke as if it was what rangatira had assented to. That was not in fact the case. Rather, the text they debated was He Whakaputanga – a Māori-language translation. Both texts are set out in full on pages 168 and 169, and we will consider the differences between them in section 4.4.

In March 1836, Busby gave Bourke his account of how this translation had been made. Having completed his draft in English, Busby said, he then sent it to CMS missionary Henry Williams, asking that it be translated into Māori and that Williams and other missionaries ‘offer any suggestions for its improvement which might occur to them’. No such suggestions were made, leaving Busby to conclude ‘that the declaration was entirely approved by all the Missionaries who had an opportunity of examining it’. According to Dr Don Loveridge, the inference to be drawn from this account was that both the English-language and Māori-language texts had been drafted before rangatira met with Busby on 28 October 1835.

Some of the claimants took issue with this interpretation, arguing that it unfairly minimised Māori agency in the creation of He Whakaputanga. First, they said, it diminished the role played by Eruera Pare, a young relative of Hongi’s, who was described in the signed text of He Whakaputanga as ‘te kai tuhituhi’ (the scribe). According to Dr Phil Parkinson, this description simply meant that Pare wrote out a fresh copy of the text that Williams had translated so as to disguise the fact that this declaration of rangatira independence was a British initiative. This is consistent with Busby’s accounts: the Resident did not mention Pare at all in his dispatches around the time of the signing, but five years later was reported in a Sydney newspaper as saying that the declaration was ‘in the handwriting of the son of a chief’. Dr Patu Hohepa and Erima Henare both argued that Pare’s role was much more significant, as did Manuka Henare. According to them, Pare not only wrote out the Māori text but also had a significant influence on its phrasing and the concepts it expressed. The evidence, Hohepa said, could be seen in the quality of its language and expression, which were ‘formal Ngapuhi idiolect’. He said that, although the idea and the first draft began with Busby, ‘Nā Eruera Pare-hongi i tuhi, He Whakapūtanga’ (‘Eruera Pare-hongi wrote “He Whakapūtanga”’). Several claimants also emphasised the broader context in which He Whakaputanga was created. Even if the declaration was Busby’s idea, they suggested, their tūpuna agreed to it only because it was consistent with their longer-term aspirations for their relationship with Britain and the British. Nuki Aldridge, for example, referred to the declaration as being suggested by Busby but adopted by rangatira for their own purposes. Hohepa said: ‘Nā
Ngāpuhi anō Ngāpuhi i whakatika koia Ngāpuhi e ū tonu nei ki te mana o Te Whakaputanga, i te mea he mea waituhi i runga i te whakaaro i totō ake i pūpu ake i te hinengaro ō tēnā kaumatuia ō tēnā rangatira, ō tēnā rangatira’ (‘It was Ngāpuhi themselves who set their destiny. Ngāpuhi still cleaves unto the mana of Te Whakapūtanga, because it was constructed from the thoughts and intellect of each and every chief’). Erima Henare said that the declaration had arisen from a long-term process aimed at unifying Bay of Islands hapū and establishing ‘some form of governance’ – a process we will discuss further in section 4.4. If Busby were to be credited with the declaration, Henare said,

then it needs to be noted that the thought and essence behind it belongs to the ancestors of the descendants who sit here today. Not the pakeha. That is new to Ngapuhi. That is why most of Ngapuhi cling to He Whakaputanga. [It was] A thought that blossomed from the brains of Maori.  

Other witnesses also gave reasons to question the view of the declaration as entirely the creation of Busby and Williams. Loveridge referred to a claim made by Busby in 1837, that, when Māori requested that the King act as a parent to the ‘infant State’ and protect it from attempts on its independence, “The sentiment and the language were their own.” This, Loveridge suggested, was difficult to reconcile with Busby’s earlier comments describing the declaration as one that he had drafted and the missionaries had translated. Samuel Carpenter, however, suggested that Busby’s claim – made 20 months after he Whakaputanga was declared – was a ‘self-serving’ attempt to justify
greater British intervention, at a time when he was lobbying for that to occur.\textsuperscript{84}

Carpenter also noted that the English text that Busby sent to Britain bore a note from him to the effect that it is a ‘correct copy of the Declaration of the Chiefs, according to the translation of Missionaries who have resided ten years and upwards in the country’.\textsuperscript{85} This, Carpenter said, ‘implies that missionaries translated the final signed Māori text into English’ rather than the other way around.\textsuperscript{86} Parkinson, however, argued that Busby was simply trying to disguise his own involvement in the declaration.\textsuperscript{87}

Parkinson also provided us with another, little-known text of he Whakaputanga which is held in the collections of Archives New Zealand.\textsuperscript{88} According to Parkinson – an expert on archival documents – this text was in Henry Williams’s hand, with a final paragraph in Busby’s script giving the date of the declaration and noting that it was signed in his presence.\textsuperscript{89} The wording of the Williams text is almost identical to that of Pare’s, which was signed by the rangatira. There are some differences of wording or formatting, but most are minor.\textsuperscript{90} The draft contains a number of corrections in which words have been either deleted or inserted, and these corrections are reflected in Pare’s final text.\textsuperscript{91} These corrections appear to us to also be in Williams’s hand.

Parkinson considered whether the Williams text could have been a copy made after the hui for printing purposes but concluded that it was not.\textsuperscript{92} Rather, both he and Manuka Henare saw it as a first draft.\textsuperscript{93} In Parkinson’s view, this was convincing evidence for Busby’s explanation that he drafted the declaration and Williams then translated it prior to the hui, with Pare then making an identical copy.\textsuperscript{94} To Henare, on the other hand, the corrections in Williams’s draft were evidence that changes were made as a result of discussion at the hui. He saw particular significance in one of the corrections, which we will discuss later.\textsuperscript{95} Henare argued that during the hui itself Busby’s draft would have been read out in te reo Māori, ‘and then opened for comment and debate’. After amendment, the text would have been read again and further debated until rangatira agreed.\textsuperscript{96}

### 4.3.4 The adoption of he Whakaputanga

Busby reported that the rangatira present unanimously assented to the declaration.\textsuperscript{97} Following debate, 34 rangatira came forward and showed their agreement by adding their moko, signatures, or marks beside their names.\textsuperscript{98} The names of those who signed are shown in the table over, as are their tribal affiliations as recorded on printed copies of the declaration. We have retained the spellings used in the signed document. We have also marked those who signed the 1831 petition with a ‘P’ and those who are known to have been present at the 1834 flag hui with an ‘F’.\textsuperscript{99}

The signatures were witnessed by the missionaries Williams and Clarke and the traders Clendon and Mair. Parkinson speculated that Busby deliberately kept his name off the document as part of his attempt to ‘disguise the fact that it was his work’, instead ‘prevailing on’ Clendon and Mair to act as witnesses.\textsuperscript{100} Jack Lee made the same point in more generous terms: ‘Busby himself, as a public servant, discreetly refrained from signing.’\textsuperscript{101}

### 4.3.5 Further signatures

A codicil was subsequently added to he Whakaputanga, which read:

\begin{quote}
Ko mātou, ko ngā Rangatira, ahakoa kihai i tae ki te huihuinga nei, no te nuinga o te Waipuke, no te aha rānei, ka wakaee katoa ki te wakaputanga Rangatiratanga o Nu Tireni, a ka uru ki roto ki te wakaminenga.
\end{quote}

Manuka Henare, in his thesis, provided the following translation:

\begin{quote}
We, the rangatira, although not able to attend the great gathering (huihuinga), because of floods and for whatever other reasons, we all support (wakaee) the declaration of authority (independence) over Nu Tireni, and we now enter into the sacred confederation (wakaminenga).
\end{quote}

Beneath this codicil, a further 18 moko or signatures were added during the next three and a half years.\textsuperscript{102} Of these, only the first six appeared in the versions of the...
It is not possible to determine the exact dates on which all rangatira signed. According to Busby, Nene arrived at Waitangi the day after he Whakaputanga was signed, so it seems reasonable to conclude that he signed then. Two others (probably Huhu and Toua) apparently signed before 4 November. This would leave the Te Rarawa leader Panakareao signing sometime after that date but before Kiwikiwi (Ngāti Manu) signed on 18 January 1836. We cannot be sure when Tāwhai, Mate, and Patuone signed, except that it was between 29 March 1836 and 25 June 1837. Mahia signed between 12 July 1837 and 16 January 1838.

He Whakaputanga was remarkable for the range of leaders it brought together. Both the northern and southern alliances were represented, along with leaders from Hokiangi, Te Rarawa, and Ngare Raumati (although te Uri o te Aho leader Pororua was a notable absentee). Most of the rangatira who had signed the 1831 petition were represented. The vast majority of initial signatories were from Bay of Islands and Hokiangi territories (including the interior), or were Bay of Islands leaders who had taken possession of Whangaroa territories in the 1820s, so the claim to represent all areas ‘i raro mai o Hauraki’ may have initially been an exaggeration. However, the later signatures extended its reach further. Huhu, Tona, and Panakareao and Te Morenga signed on behalf of Te Rarawa. Mahia signed for Te Aupōuri. Nene, Patuone, Taonui, Tāwhai, and Pita-Matangi were from Hokiangi. Parore and Tirarau both had Ngāti Whātua affiliations; Parore had lived at Waipoua from the late 1820s, and Tirarau lived at Tangiteroria, between
the Whangārei and Kaipara Harbours. The last two signatories, of Te Hapuku and a kaituhituhi representing Te Wherowhero, extended the reach of he Whakaputanga further south (we will discuss them further in section 4.8.4). As Dame Claudia Orange put it, ‘most major northern chiefs . . . Christian and non-Christian, friend and enemy, were brought together in one cause. This was no mean achievement.’

### 4.3.6 Tribunal views on the making of he Whakaputanga

The documentary and oral evidence we received about the creation of he Whakaputanga had limitations. Very little was recorded by anyone other than Busby, who was writing to his Colonial Office superiors and his patron. Not only was his record incomplete, but it undoubtedly was coloured by his preconceptions about both British and Māori interests. While the written record provides some insight, it cannot give definitive answers on some matters. Similarly, it does not appear that any detailed, consistent oral record of the debate has survived, which is perhaps surprising given the importance of he Whakaputanga to the claimants. In spite of these limitations, we think it is possible to draw some conclusions.

We can be sure that Busby called the hui. Although there is some debate about his general motivations (which we will return to later), it is clear that the immediate catalyst was de Thierry’s letter. The Resident was, in other words, responding to a perceived foreign threat with the potential to interfere with both Māori and British interests. We also see no reason to doubt Busby’s assertion that he wrote the first draft in English. In this respect, it is notable that he had more or less exactly predicted the content in his dispatch to Bourke two and a half weeks before the hui.

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<table>
<thead>
<tr>
<th>Year</th>
<th>Date</th>
<th>Signatory</th>
<th>Tribal affiliation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1836</td>
<td>18 January</td>
<td>Kiwi</td>
<td>Tāne p</td>
</tr>
<tr>
<td></td>
<td>9 February</td>
<td>Tira r</td>
<td></td>
</tr>
<tr>
<td></td>
<td>29 March</td>
<td>Haimona Pita-Matangi</td>
<td>No te popoto</td>
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<tr>
<td></td>
<td></td>
<td>Tawai</td>
<td>No te Mahurehure</td>
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<td></td>
<td></td>
<td>Mate</td>
<td>No na te Moe</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Patuone</td>
<td>No te nga te rangi</td>
</tr>
<tr>
<td>1837</td>
<td>25 June</td>
<td>Parore</td>
<td>No te nga tiapa</td>
</tr>
<tr>
<td></td>
<td>25 June</td>
<td>Kaha</td>
<td>No nga te tau tahi</td>
</tr>
<tr>
<td></td>
<td>12 July</td>
<td>Ko Timorenga l</td>
<td>No te Rarawa</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Mahia</td>
<td>No te Hapouri</td>
</tr>
<tr>
<td>1838</td>
<td>16 January</td>
<td>Taonui p</td>
<td>No te popoto</td>
</tr>
<tr>
<td></td>
<td>24 September</td>
<td>Papahia</td>
<td>No te Rarawa</td>
</tr>
<tr>
<td></td>
<td>25 September</td>
<td>Hapuku</td>
<td>No te Watu apiti (Hawke’s Bay)</td>
</tr>
<tr>
<td>1839</td>
<td>22 July</td>
<td>Ko te werowero</td>
<td>Na ko ngati mahu ta ko kahawai te kai tuhituhi 2</td>
</tr>
</tbody>
</table>
Henry Williams was the principal translator. The draft in his handwriting is clear evidence of this, and also lends weight to Busby’s assertion that the translation was completed before the 28 October hui. Although Busby was later to say that some of the language in article 4 was the work of the rangatira, that is not consistent with the existence of the draft showing that article in Williams’s handwriting. Furthermore, in that 1837 dispatch Busby had an agenda: to persuade Britain to establish a protectorate government in New Zealand. That dispatch also quoted article 4 selectively, apparently in support of Busby’s protectorate aims, as will become clear below.

Even if Williams was the principal translator, however, we do not know whether the translation and the corrections were solely his work, nor whether he was advised or assisted by Pare, or indeed by other missionaries. We also do not know when or how the corrections were made. It is possible that they were made during the hui, as a result of debate. Most of the changes were not substantial, but at least one of them was (see section 4.3.3). In summary, the Whakaputanga was most likely what Busby’s initial dispatches implied: a missionary translation of an English text, which Pare then copied out.

That does not diminish its significance as a declaration of the mana of northern leaders. The rangatira who assented to it were not mere passive recipients of a declaration conceived and created by agents of Britain. Rather, they debated it fully, and then agreed to it willingly and for their own purposes. Having been told that an armed foreigner was about to come and usurp both their lands
Declaration of the Independence of New Zealand

1. We, the hereditary chiefs and heads of the tribes of the Northern parts of New Zealand, being assembled at Waitangi, in the Bay of Islands, on this 28th day of October, 1835, declare the Independence of our country, which is hereby constituted and declared to be an Independent State, under the designation of The United Tribes of New Zealand.

2. All sovereign power and authority within the territories of the United Tribes of New Zealand is hereby declared to reside entirely and exclusively in the hereditary chiefs and heads of tribes in their collective capacity, who also declare that they will not permit any legislative authority separate from themselves in their collective capacity to exist, nor any function of government to be exercised within the said territories, unless by persons appointed by them, and acting under the authority of laws regularly enacted by them in Congress assembled.

3. The hereditary chiefs and heads of tribes agree to meet in Congress at Waitangi, in the autumn of each year, for the purpose of framing laws for the dispensation of justice, the preservation of peace and good order, and the regulation of trade; and they cordially invite the Southern tribes to lay aside their private animosities, and to consult the safety and welfare of our common country by joining the Confederation of the United Tribes.

4. They also agree to send a copy of this Declaration to His Majesty the King of England, to thank him for his acknowledgment of their flag; and in return for the friendship and protection they have shown, and are prepared to show, to such of his subjects as have settled in their country, or resorted to its shores for the purposes of trade, they entreat that he will continue to be the parent of their infant State, and that he will become its Protector from all attempts upon its independence.

Agreed to unanimously on this 28th day of October, 1835, in the presence of His Britannic Majesty’s Resident.

(Here follow the signatures or marks of thirty-five Hereditary chiefs or Heads of tribes, which form a fair representation of the tribes of New Zealand from the North Cape to the latitude of the River Thames.)

English witnesses:

(Signed) Henry Williams, Missionary, CMS.
George Clarke, CMS.
James C Clendon, Merchant.
Gilbert Mair, Merchant.

I certify that the above is a correct copy of the Declaration of the Chiefs, according to the translation of Missionaries who have resided ten years and upwards in the country; and it is transmitted to His Most Gracious Majesty the King of England, at the unanimous request of the chiefs.

(Signed) JAMES BUSBY, British Resident at New Zealand.
Principal residences of the Whakaputanga signatories as at the time they signed.

Location: Waitangi
Signatory: Te Tao
Signatories after 28 October 1835: *
and their mana, they took Busby’s advice as the representative of King William – just as they had 18 months earlier when they selected a flag. Everything we have heard about the circumstances in which he Whakaputanga was produced persuades us of this. Just as Busby had his own reasons for seeking an opportunity to establish British-style government and law, including his beliefs about what was good for Māori and for Britain, so were rangatira seeking opportunities to further their alliance with Britain and so to protect and enhance their mana. For both sides, de Thierry’s fanciful ambitions provided the direct catalyst for pre-existing aspirations and developments to be formalised and declared.

4.4 Mana, Rangatiratanga, Law, and Alliance: The Declaration’s Four Articles
Having considered how the declaration was created, we now turn to the four articles and their meanings, considering each of them in turn. We will consider the declaration’s overall meaning and significance in later sections.

4.4.1 Interpreting the texts
(1) Which text was authoritative?
We heard many views about the language used in the declaration, and about the differences between the Māori and English texts. Claimants saw he Whakaputanga and the Declaration of Independence as separate texts, with different meanings, which therefore ‘cannot be used interchangeably’. Many said it was he Whakaputanga – not the Declaration of Independence – that their tūpuna debated and signed, and that he Whakaputanga should therefore be recognised as the authoritative text.\(^ {113} \)

Manuka Henare, in his thesis, said the English text was not even an accurate translation but ‘an explanation of what Busby and the missionary translator hoped the rangatira were intending and doing’.\(^ {114} \) In his view, therefore, he Whakaputanga was the only version of the declaration:

Convention suggests it is a two-language declaration. It is not. It is a one-language proclamation in Māori language only to which Māori signatories have signed as have a small number of English witnesses.\(^ {115} \)

Henare also gave another reason for regarding he Whakaputanga as authoritative. In an oral culture, he said, the written text would have mattered less than the spoken word. The rangatira would have seen the text merely ‘as a way of concluding substantive agreements reached orally’. In the absence of any authoritative record, he argued, the best evidence of what was discussed is contained in the Māori text, which would have been read out during the debate.\(^ {116} \)

(2) Language and world view
The claimants also gave evidence about the idiom and phrasing used in he Whakaputanga. Hohepa, as noted earlier, said that the text used ‘formal Ngapuhi idiolect, or Te Reo Tohunga o Te Mita o Te Reo o Ngāpuhi’.\(^ {117} \) Nuki Aldridge said, ‘He Wakaputanga is more like something written by a Māori person, which is shown, for example, by the use of concepts from the marama taka such as nga-huru.’\(^ {118} \) Höne Sadler shared this view, saying, ‘He Whakaputanga was written by someone with some fluency in te reo o Ngāpuhi.’\(^ {119} \)

In a 2004 essay, the Māori studies scholar Professor Margaret Mutu expressed a contrary view, arguing that the language in he Whakaputanga was ‘awkward’ and poorly crafted, reflecting (in her view) Henry Williams’s limits as a translator and the difficulties of conveying western legal concepts in a language to which those concepts were foreign. Whereas Hohepa and Manuka Henare saw Pare’s influence in the text, she believed that Henry Williams was the translator.\(^ {120} \)

Others pointed out the use of mihinare Māori (missionary Māori) expressions, particularly in respect of what one claimant counsel described as its ‘vocabulary of power’.\(^ {121} \) According to Bishop Waiohau Te Haara, the Bible provided a ‘meeting point’ between the worlds of Māori and British, and he and many other witnesses turned to theological texts for clues about what Williams and rangatira intended.\(^ {122} \) Aldridge, however, warned that many words and concepts could not be translated directly:
I could only attempt an analysis in the English language if the two languages had something in common. But where is the common ground? In my own understanding, there is none. Some of the words in He Wakaputanga are derived from English, such as ‘Kingitanga’, but most are He Kupu Maori. There are no cultural links between Maori and the Indo-European languages. You can’t translate them directly.123

Other claimants also emphasised the importance of understanding He Whakaputanga in its historical and cultural context, and particularly in terms of Māori cosmology.124 John Klaricich spoke of feeling ‘sympathy, aroha’ for the translators, given the difficulties they faced in attempting to bridge the ‘immense’ gulf between Māori and British world views.125

(3) The meanings of specific words and phrases
We heard detailed evidence from several witnesses about the meanings of specific phrases in the texts. In table 1, we set out in full the modern-day back-translations (translations of the Māori text back into English) of He Whakaputanga provided to the Tribunal by Hohepa, Aldridge, and Manuka Henare, as well as Mutu’s back-translation from her 2004 essay. Henare’s version, which he described as ‘semantic-historical’, was originally produced for his thesis.126 Hohepa, a linguist, is a former professor of Māori studies, and a former Māori Language Commissioner; he described his translation as ‘stilted, but as exact and as literal as the English language would allow.’127 Others to provide detailed explanations of the text included the claimant Wharetatao King,128 Parkinson, and Carpenter. Neither Carpenter nor Parkinson claimed to be fluent in te reo Māori, though both offered expertise in the analysis of documentary evidence relating to Māori-language texts.129

The claimants submitted that they alone should be acknowledged as the experts in interpreting He Whakaputanga.130 Some claimant counsel said that we should rely on back-translations by ‘claimant witnesses with specialist te reo knowledge’, while giving less weight to those non-claimant witnesses who lacked specialist knowledge in te reo Māori or tikanga and who had instead formed their views based on English texts.131 Counsel for Rima Edwards and other claimants submitted that ‘Ngapuhi are the experts on the Maori understanding of He Whakaputanga’132

As noted earlier, Crown counsel in their closing submissions referred to ‘He Whakaputanga/the Declaration’, implying that they saw the declaration as a single document in two languages. Counsel argued that the ‘evidence of the claimants is that the translation into Māori was a good one’ and (notwithstanding the claimant evidence about the role of Pare) expressed the view that this demonstrated Henry Williams’s skills as a translator. Counsel did note, however, that Britain’s understanding of the declaration in 1835 would have been based on the English-language text.133

4.4.2 Article 1 – ‘wenua rangatira’ and ‘te Wakaminenga’
The first article of He Whakaputanga was a declaration by signatory rangatira of their ‘rangatiratanga’ in respect of their territories, and a declaration of the status of those territories as ‘wenua rangatira’. It also referred to their gathering as ‘Ko te Wakaminenga o nga Hapu o Nu Tiri’. In the English text, the article declared the unification of the tribes to establish an independent state under the name ‘United Tribes of New Zealand’.

(1) ‘Rangatiratanga’ and ‘wenua rangatira’
Where ‘rangatiratanga’ and ‘wenua rangatira’ were used in He Whakaputanga, the Declaration of Independence used the terms ‘independence’ and ‘independent state’. Claimants, however, favoured back-translations that emphasised authority, or absolute or sovereign power, as distinct from independence. Wharetatao King, for example, said ‘rangatiratanga o to matou ake wenua’ referred to ‘sovereignty of our hapu regions’.

Several claimants also gave evidence about the term ‘wenua rangatira’, suggesting that it was far from a direct translation of ‘independent state’, and contained nuances that could not easily be explained in English. The most detailed explanation was provided by Klaricich, who described ‘wenua rangatira’ as being ‘about belonging, about land at peace explicit in practice of custom, uniquely
Klaricich also emphasised that ‘wenua’ referred not to territory or land as a possession but to its nurturing and sustaining qualities.

‘Wenua rangatira’ also encompassed rangatira authority over their lands, consistent with customary law and their leadership responsibilities – which, in the 1830s, led rangatira to work with others, pursuing both commerce and peace in the interests of the wellbeing and mana of their hapū.

Aldridge noted that the phrase ‘Ko te Wakaminenga o nga Hapu o Nu Tirenī’ was underlined in the original text, and to him that ‘highlighted that this organisation already existed’ prior to 1835, although ‘No-one has talked about that in history.’ As he explained it,

Te Wakaminenga was the gathering together of the rangatira, in response to the changes that the rangatira had seen occurring with the arrival of Europeans. The purpose of Te
[1.] We the very – absolute – highest level – chiefs of the tribes of New Zealand north of Hauraki who have been assembled here at Waitangi (Busby’s residence is where the name originated), at Tokerau (the tidal channel close to the foreshore beneath Busby’s residence) on the 28th day of October, 1835, declare the Sovereign state of our land and state that a Sovereign Land will be declared by us, to be named Te Wakaminenga a Nga Hapu a Nu Tireni – The Assembly of Hapu of New Zealand.

[2.] The Kingdom, the mana within the land of Te Wakaminenga a Nu Tireni is declared here to be solely and entirely of and with the very – absolute – highest level chiefs of and at our gathering, and we also declare that we will not permit any other person / grouping, and also any other Governing Entity to be empowered within the land of Te Wakaminenga a Nu Tireni, only person chosen by us, in terms of our laws enacted by us in our gathering together.

[3.] We the very absolute highest level chiefs agree to formally meet at Waitangi in the autumn of each year to frame laws to dispense justice that is right, that sustains or to sustain true and proper peace, to end wrongdoing, to ensure true and proper trading and furthermore, to inform strangers from the south (or above) to abandon warfare, and also, to recall the resurrection of our (not your) land, and that they join Te Whakaminenga o Nu Tireni United Aotearoa.

[4.] We state that a report be written concerning the charter of this our declaration to the King of England, to convey our aroha because he agreed to the Flag for us. And furthermore, because we care for and look after the white people living ashore, sailing here to trade, is the reason we say that the King be left as a parent figure to (not for) us during our Childhood or formative period in case our Sovereignty is negated.¹

[1] We are the Hereditary Chiefs (Rangatira) of the Maori nation of New Zealand North of Hauraki having passed a resolution in Assembled Congress at Waitangi–Tokerau 28th October 1835 threat proclaiming Sovereign Authority over all our land and thereafter we proclaimed that estate be in a state of peace to be named ‘The General Assembly of the Tribes of New Zealand’.

[2] That sovereignty . . . the authority of the lands of the general assembly of New Zealand . . . will reside solely with the hereditary chiefs (rangatira) resolved in Assembled Congress. Thereafter be it also resolved never to let the creation of any legislation (laws) by foreigners nor any other government be established on any estate of the General Assembly of New Zealand but only persons elected / nominated by us and who are fully conversant with the custom and practice of our tikanga. These we have resolved in Assembled Congress.

[3] We the hereditary chiefs (Rangatira) collectively agree to meet in judicial congress at Waitangi in the autumn of each year to create laws for the administration of justice, peace and security, the end to lawlessness, and fair trade and commerce. An invitation is offered to all Southern Tribes to leave aside all disputes to bear in mind a state of wellbeing now exists over our estate so as they can become part of the general assembly of New Zealand.

[4] We collectively agree that a document be written of the circumstance of this our emergent sovereign nation to the King of England to offer our sincere thanks for his recognition of our sovereign colours (ie, the flag) and that we will foster and watch over Pakeha (ie, a statement on immigration perhaps including both protection and the exercise of law and order) those that settle on our shores and those who come to trade conversely, we ask that the King remain as guardian to us in our developing Statehood against all who wish to deny us our Sovereign Authority.²

Modern-day back-translations of he Whakaputanga
He Whakaputanga and the Declaration of Independence

175

Manuka Henare

[1.] We, the absolute leaders of the tribes (iwi) of New Zealand (Nu Tireni) to the north of Hauraki (Thames) having assembled in the Bay of Islands (Tokerau) on 28th October 1835. [We] declare the authority and leadership of our country and say and declare them to be prosperous economy and chiefly country (Wenua Rangatira) under the title of ‘Te Wakaminenga o ngā Hapū o Nu Tireni’ (The sacred Confederation of Tribes of New Zealand).

[2.] The sovereignty/kingship (Kīngitanga) and the mana from the land of the Confederation of New Zealand are here declared to belong solely to the true leaders (Tino Rangatira) of our gathering, and we also declare that we will not allow (tukua) any other group to frame laws (wakarite ture), nor any Governorship (Kawanatanga) to be established in the lands of the Confederation, unless (by persons) appointed by us to carry out (wakarite) the laws (ture) we have enacted in our assembly (huihuina).

[3.] We, the true leaders have agreed to meet in a formal gathering (rūnanga) at Waitangi in the autumn (Ngahuru) of each year to enact laws (wakarite ture) that justice may be done (kia tika ai te wakawakanga), so that peace may prevail and wrong-doing cease and trade (hokohoko) be fair. [We] invite the southern tribes to set aside their animosities, consider the well-being of our land and enter into the sacred Confederation of New Zealand.

[4.] We agree that a copy of our declaration should be written and sent to the King of England to express our appreciation (aroha) for this approval of our flag. And because we are showing friendship and care for the Pākehā who live on our shores, who have come here to trade (hokohoko), we ask the King to remain as a protector (matua) for us in our inexperienced statehood (tamarikitanga), lest our authority and leadership be ended (kei whakakahoreitia tō mātou Rangatiratanga).³

Margaret Mutu

[1.] We, the paramount chiefs of the tribes of New Zealand north of Hauraki met at Waitangi in the North on 28 October 1835 and declared the paramount authority over our land and it is said we declare a state of peacefulness/the land is uncontested/the land is at peace/some land dedicated for this occasion which is to be called The Gathering/Confederation of the Tribal Groups of New Zealand.

[2.] The kingly authority is the ultimate power, authority and control of the land of the Confederation of New Zealand and is said here to lie only with the paramount chiefs at our meeting and we also say that we will never give over law-making power to any other persons or any other governing body to be spoken of in respect the land of the Confederation. The only people who we have said are authorised to set down our laws we have been speaking of at our meeting.

[3.] We the paramount chiefs say here that we will meet at the council at Waitangi in the autumn of each year to set down laws so that judgement will be correct, that peace will prevail, that wrong-doing will end, that trading will be conducted properly and correctly, and we also say to the foreigners of the south to abandon fighting so that they can give thought to saving our land and so that they can join the Confederation of New Zealand.

[4.] We said that a document / letter is to [be] written concerning the compilation of this Declaration of ours to the King of England to convey our warm acknowledgement that he has agreed with the flag for us. And because we look after and protect the Europeans living ashore here who come here to trade, so therefore do we say to the King that he leave a mentor for us in our ‘childhood’ (ie, as we are learning their ways), lest our paramount authority be denied.⁴
Wakaminenga was for Maori to control their own changes in the 'new world'.

Aldridge did not give a specific source for his kōrero about Te Whakaminenga, but referred to elders at various times and places giving him 'their oral history' which they expected him to 'transfer on . . . into the future'. In particular, he referred to elders of Whangaroa, which he returned to as an adult after growing up and spending much of his life in Auckland. According to Aldridge, these gatherings had begun after Te Pahi's return from his second visit to Sydney (see chapter 3), when he sought to bring hapū together, having recognised that separately they could not survive increased European settlement. An initial meeting was held at Te Ngaere (Whangaroa) in 1808. Soon afterwards, Aldridge said, a second gathering was called at Motueka (Flat Island, also Whangaroa), where rangatira 'pledged their hapu to be part of Te Wakaminenga, and it became tapu as far as they were concerned'. From then on, many more gatherings were held in various places including Mangaiti, Pupuke (both also Whangaroa) and Waitangi. It was not clear from Aldridge's evidence whether, in his view, the term 'Te Whakaminenga' came into use as early as 1808, or whether the gatherings began then and the name came later.

Aldridge referred to Te Whakaminenga as 'an assembly' which was 'more formal than a huihuinga'. He also referred to it as a 'governing organisation', and said it represented a 'coming together of the tribes'. Nonetheless, it did not diminish hapū autonomy. Rather, through Te Whakaminenga, hapū worked together in alliance to protect and reinforce their autonomy. As part of this process, Aldridge said, hapū 'swore an allegiance . . . that all the tribes would protect each other from having their mana trampled on', while individual rangatira would continue to be responsible for their own areas.

These gatherings could, however, make decisions, with hapū either initiating the discussion or giving their later consent. In this manner, Aldridge said, laws were made covering occupation, trade, peace, and good order. To him, therefore, he Whakaputanga did not create a new decision-making body; rather, it was the other way around:

The purpose of he Whakaputanga, he said, was to explain existing political structures to future generations: 'In short, our people didn't care about declaring independence . . . They didn't need it, because they already had Te Wakaminenga.' The document, however, provided 'a way to transfer information into the future'.

Several other claimants also gave evidence about these gatherings. There was a high degree of consistency about 1808 as a date on which either a unified decision-making body was established or initial discussions took place about that unification, although some witnesses gave later dates. There was also a high degree of consistency about meetings involving senior rangatira having occurred in various places. More than one claimant named Te Pahi, Hongi, Ururoa, Waikato, Te Tupe, Tirarau, Te Manu, and Kawiti as attending these gatherings. These gatherings were said to have been held at various locations around Whangaroa, the Bay of Islands and Hokianga (including the interior), and Whāngārei. There was consistency among claimants about the Te Ngaere origins. Ivy Williams of Ngai Tupango referred to large plantations there, and of hapū being brought together to work on them. Te Ngaere had been known as 'Nga Here', and referred 'to the ties that bound us together as rangatiratanga was exercised'. He said Motueka island was also the site of cultivations, as well as 'command decisions', and for those reasons had never been built on. Ani Taniwha told us the tradition I know is that He Whakaminenga met beginning around 1808 and continued through the signing of Te
Tiriti. People still meet in current times under the name He Whakaminenga.\(^{159}\)

Taniwha said that after 1808 rangatira met at Te Touwai Bay in the Whangaroa Harbour, where there were then 27 poupou (posts) in the harbour to which visiting rangatira could moor their waka. She had also heard of meetings at Te ngaere, which was known as ‘Meeting Place of the Chiefs’.\(^{160}\) Her evidence, however, was that the first meeting was not in response to the arrival of Europeans, but rather to the Ngāpuhi defeat by Ngāti Whātua at the battle of Moremonui in 1807.\(^{161}\) Only later did the meetings turn their attention to Europeans, with discussions about where they would be allowed to live, and about maintaining ‘social order under tikanga’ during changing times.\(^{162}\)

Some of the claimants said international trade was a principal motive for the formation of Te Whakaminenga, while others said it was formed to address land losses, European challenges to tikanga, or other matters arising from contact.\(^{163}\)

It is important to be clear that not all claimants referred to Te Whakaminenga existing prior to he Whakaputanga. Among those who did, it was not always clear to us whether they saw it as a single body with consistent membership, or rather as a series of meetings that were more in the nature of traditional inter-hapū huihuinga (gatherings). Nor was it always clear whether the claimants saw it as representing all Māori within the areas it was said to have met in (Bay of Islands, Hokianga, Whangaroa, and Whāngarei – a territory that broadly corresponds to the 11 maunga of what is today known as Ngāpuhi-tūturu) or specific alliances or groupings within those territories.

Several claimants referred to a deliberate strategy of unification or nation-building, which had either begun in 1808 or in Hongi’s time. Some explicitly linked this to meetings of Te Whakaminenga prior to 1835, while others did not. Pari Walker of Te Parawhau and Ngati Ruamahue told us that ‘From at least as early as 1808, many Maori were discussing concerns they had about the Hapu Hou that had landed on these shores and the impacts they were having.’ Kukupa and his son Tirarau, along with many other rangatira from Whangaroa and elsewhere, were at the initial discussions at Te Ngaere in 1808 ‘where the authority to pursue a pathway of unity was agreed to by Nga Hapu Rangatira in attendance’. This was subsequently ‘given its green light . . . on Motueka nui by the Tohunga.’

At the completion of this hui Rewarewa Tahi at Mahinepua was identified as the first Pa to be aligned to the Wakaminenga o Nga Hapu o Nu Tireni. From that time the Kaupapa of Unity of Nga Hapu Rangatira i raro mai Hauraki and He Wakaminenga o Nga Hapu o Nu Tireni was debated and discussed in depth by many Rangatira throughout the northern alliance (i raro mai Hauraki) for the next 27 years.\(^{164}\)

Erima Henare said that Kawiti, Hongi, and others in the 1820s discussed unifying hapū ‘under a single king’—though there was no agreement on whether that King would be Hongi of the northern alliance or Pōmare 1 of the southern alliance. Henare also said that further talks were held about unification among Bay of Islands hapū after Hongi’s death in 1828.\(^{165}\) Hugh te Kiri Rihari told us that cooperation among Māori was nothing new:

Since ancient times those of Tai tama tane and Tai tama wahine have been inextricably bound and interdependent – the tides are linked and all northern Maori lived by the kawa of Rahiri.\(^{166}\)

Haami Piripi, who gave evidence about he Whakaputanga from a Te Rarawa perspective, saw Te Whakaminenga as arising from a process of alliance-building similar to the one that had created the Te Rarawa confederation and said that it initially met from 1814 under the name Ko hui-a-rau.\(^{167}\) Some other claimants mentioned Ko hui-a-rau as either being the source of Te Whakaminenga or evolving from it.\(^{168}\) Some claimants said Te Whakaminenga was responsible for the adoption of the flag of the United Tribes in 1834, as well as for the creation of he Whakaputanga.\(^{169}\)

We have covered this evidence in some detail, both because it is important to the claimants’ understanding
of the Whakaputanga and because it is new in the historical record. Before we move on, we think it is important to consider other views and evidence about Te Whakaminenga. The Crown did not dispute the evidence that rangatira had been meeting from 1808 onwards, but said this was ‘rather unsurprising’, and that rangatira of various hapū would be expected to meet ‘from time to time and for various purposes’. The Crown’s view, however, was that Te Whakaminenga as described in the Whakaputanga referred to a single entity – a supreme legislature comprising tino rangatira – with powers to make law for all hapū. In the view of Crown counsel, Aldridge’s evidence did not demonstrate that such a body existed at any time before 1835.

It is also relevant to consider what Europeans observed during the 1820s and 1830s. The missionaries had for many years advocated that Māori unite under a single King – Marsden had suggested Hongi take the role, but he refused on the grounds that all hapū were autonomous. This is consistent with Erima Henare’s evidence (above) that discussions were held about unification among Bay of Islands hapū, though it does not suggest that any decision was made to actually unite.

Angela Ballara, in a 1973 master of arts thesis about Bay of Islands Māori political organisation based mainly on missionary records and other documentary sources, described the significance of hahunga (ceremonial stripping and reinterring of bones), hākari (ceremonial feasts), and other inter-hapū meetings which occurred regularly during the 1820s and 1830s in locations such as Waimate, Kawakawa, Taiamai, Waitangi, Wangai, Whangaroa, and the Hokianga. Hākari, she concluded, had political significance since they cemented ties among neighbouring hapū, though they did not generally function as decision-making forums. Hahunga, in contrast, had more overt political functions. Hahunga most often occurred in te ngahuru (autumn) following the kūmara harvest, and often doubled as councils of war or as events that reinforced peace once conflicts had ended. One, for example, occurred shortly before Titore’s expedition to Tauranga in 1832; there were also hahunga at Kawakawa and in the Hokianga following the Girls’ War, though it is not clear from the evidence we have seen whether these were separate events for the northern and southern alliances.

The missionary William Yate described hahunga as meetings where ‘many tribes assemble from a distance; much merriment and feasting goes on; many political matters are settled; and the arrangements for the ensuing year are made for fishing or for war.’ It is clear that these were very often regional events, and often crossed the usual alliance boundaries, although it seems that who was invited depended on the circumstances. It is also clear that they did not have any powers over individual rangatira or hapū: as Ballara said, even if a decision was reached, which could only occur by consensus, no one could be forced to follow it. In spite of their political functions, Ballara concluded that hahunga were held for ceremonial purposes first; their ‘secondary’ purposes ‘depended on which chiefs had major political aims to further.’ The leaders in the Bay of Islands and Hokianga appear to have abandoned hahunga after May 1835, giving the expense of the associated hākari as their principal reason. Given the political functions of hahunga, it is possible that their abandonment had political significance; it is also possible that rangatira found other ways to meet without the attendant expense (by 1835, vast amounts of food were being consumed at these events), and without offending European sensibilities as hahunga did. We heard little evidence on this from either claimants or the Crown.

The key point is that there is documented evidence of Bay of Islands, Hokianga, Whangaroa, and Whāngārei Māori having systems in place before 1835 for rangatira to come together and deliberate in concert about war, peace and other matters. The evidence suggests that meetings occurred regularly, and involved a wide range of rangatira from the Bay of Islands and surrounding areas, though it does not appear that the same groups and leaders attended each time.

It is also important to consider the claimant evidence about Te Whakaminenga in light of the division that existed between the northern and southern alliances during the period under discussion. The decades since about the 1770s had been turbulent times in the Bay of Islands and surrounding areas, as the northern alliance extended
its influence into Waimate and Kerikeri and the southern alliance moved into Taiamai. That turbulence continued in the 1820s, as the northern alliance defeated Ngāti Pou in Whangaroa, and defeated and absorbed Ngare Raumati in the Bay of Islands.\[176\] The northern alliance expansion was completed when the southern alliance ceded Kororāreka following the Girls’ War in 1830. During the 1830s, tensions between these two rival kin groups remained high: warfare almost broke out again in 1832 and 1834, and did break out 1837 as we will discuss in section 4.8.2.\[177\]

In the Hokianga, there were also related but competing groups, such as Te Māhurehure under the leadership of Tāwhai, Ngāti Korokoro under the leadership of Moetara, and Ngāti Hao under the leadership of Patuone and Nene. Again, these had close ties not only with each other but with many of the Bay of Islands hapū. Again, there were conflicts – such as the one that occurred in 1833 between Moetara and Te Hikutū, Ngati Manawa, and Te Rarawa over the plunder of a trading ship under Moetara’s protection.\[178\] Within the wider district covered by this inquiry, there were also many other hapū both to the north and south of the Bay of Islands–Hokianga territories.

In terms of external relations, the various hapū of the Bay of Islands and also the Hokianga sometimes fought together in alliances and sometimes fought separately.\[179\] Also, as we said in chapter 3, some of the key initiatives identified as evidence of unification – such as Hongi’s visit to London, and the 1831 petition to King William IV – were more northern alliance initiatives than southern.

It seems difficult, then, to reconcile the evidence of autonomous action by hapū within these areas, and regular conflict between them, with the idea that they were unifying and were making decisions through a single assembly during much of the period after 1808. On this point, however, we note the views of Hori Temoanaroa Parata, who said Te Whakaminenga began as a unified response to the arrival of Europeans, but was marked by disputes as the northern alliance expanded and the tribal makeup of the Bay of Islands changed. ‘Despite these tensions,’ he said, ‘the rangatira continued to meet to discuss He Whakaputanga.’\[180\] Erima Henare made a similar point. ‘Ngapuhi can still fight over matters,’ he said, giving the example of tensions between Bay of Islands and Hokianga hapū over the deaths of Pōmare i’s son Tiki and his cousin Whareumu in 1828.

But . . . at the same time that matters such as this were going on, our people were able to sit down and treat with one another and people who are landing on these shores. And again that goes back to the economic and martial strength of Ngapuhi at that time, that it was then, able to deal with all its internal exigencies as well as its external ones.\[181\]

It is important to remind readers here that, even though the name Ngāpuhi was not used for all Bay of Islands and Hokianga hapū, and even if those hapū sometimes fought, they nonetheless retained a very acute awareness of their close kinship. The missionary William Williams, for example, observed after the deaths of Tiki and Whareumu that the southern alliance ‘did not wish to fight with the other tribes, as they were one people, and nearly related.’\[182\]

We arrive at this point, then, with ‘Te Whakaminenga’ potentially having different meanings to different parties. To many claimants, it was a formal assembly of rangatira from autonomous hapū, gathering together to deliberate and act in concert. There was a division among the claimants, however, between those who thought Te Whakaminenga existed prior to 1835, and those who thought it was created by he Whakaputanga. Busby, however, clearly intended it to be a supreme legislature with powers over hapū, who would therefore no longer be fully autonomous. To distinguish between these points of view, from this point we will use the terms ‘congress’ to describe the legislature with powers over hapū, and ‘Te Whakaminenga’ for the gatherings referred to by Aldridge and other claimants.

4.4.3 Article 2 – Mana, kīngitanga, law, and government

In the second article of he Whakaputanga, the rangatira not only declared that mana and kīngitanga rested with them but also made it clear they would not permit anyone else to attempt to make laws or govern, except under their authority. The English text said that ‘all Sovereign Power and Authority’ rested with the rangatira ‘in their collective
capacity’, and declared that only they ‘in Congress’ could make law and sanction its enforcement. The claimants raised several points about the meanings of this article and differences between the Māori and English texts.

(1) ‘Ko te Kingitanga ko te mana i te whenua’
While witnesses back-translated ‘ko te Kingitanga ko te mana i te wenua’ in various ways, all were consistent in a view of power or authority deriving from the land, as distinct from being simple authority over it. According to Aldridge: ‘Maori have always said that without land we’re nothing – the mana comes from the land . . . From Rangi and Papa – whatever comes from those is my mana.’

Haami Piripi referred to Maori Marsden’s explanations of mana, which we discussed in chapter 2. He told us:

The Mana Tūpuna, Whenua and Tangata paradigm can be utilised to explore the issue of sovereign ‘type’ rights and interests by trying to determine the extent to which the concepts overlap. If Mana contains within it all forms of authority over all things (which it achieves through a genealogical methodology), then it is difficult to accept that the sovereign type authority espoused by western theories is separate or divorced from it.

In Manuka Henare’s view, ‘Ko te mana i te wenua’ refers to

the mana intrinsic and infused in the land, which flows directly from it to the rangatira. The whenua gives to rangatira the mana and is the basis upon which they must act as custodians and defenders of the land and its mana.

The phrase used in the English text, ‘all sovereign power and authority’, in Henare’s view addressed only ‘the effects of the mana ie power and authority’, and not ‘the source of the mana intrinsic in the land’. ‘Mana i te whenua’ was ‘more subtle and extensive’ than sovereign power.

The claimants had little to say about the use of ‘kingitanga’. However, it is clear that rangatira involved in he Whakaputanga would have had some concept of kingly status and power both through direct contact and through discussions with Europeans. Among them, Waikato had met King George IV in London in 1820, and nine years earlier Kawiti had visited Port Jackson and complained of his treatment: ‘I was a King in New Zealand, but now I am a Cook at Port Jackson.’ We also noted above that discussions had occurred about appointing a northern Māori king. The 1831 petition had also demonstrated an understanding of the King’s power in both British and global affairs, and that understanding would have been reinforced by Busby’s address on his arrival in 1833.

Samuel Carpenter argued that Henry Williams deliberately combined ‘kingitanga’ and ‘mana’ in an attempt to convey the English concept of sovereignty. The choice of ‘kingitanga’ was in his view ‘obvious’. Not only was the King the English sovereign, but the visits of rangatira to England would also have conveyed some sense of what ‘sovereign power’ implied. ‘Mana’, in Carpenter’s view, was also ‘a natural choice’, implying authority and control, though mana was ‘not the Māori equivalent of Kingitanga.’ While ‘rangatiratanga’ might also have provided a useful equivalent for ‘sovereign power and authority’, it had already been used in article 1 for ‘independence’.

(2) Wakarite ture or framing laws
Having declared that mana and kingitanga (or, in the English text, sovereignty) rested only with them, the rangatira then declared in the remainder of article 2 that no one other than them would have powers to ‘wakarite ture’ – that is, no one else would have the power to frame laws.

Some witnesses said that ‘ture’ was a mihinare Māori term derived from the word ‘Torah’ in the Bible, and that this could imply ‘God’s law’ or commandments, as well as regulations or statutes. Carpenter said the use of ‘ture’ in the context of he Whakaputanga ‘would have conveyed to rangatira a notion of law or custom different from Māori tikanga.’ In combination with ‘kawanatanga’ (see section 4.3.1(3)), it would have suggested ‘a combination of civil/ secular law and Christian morality.’

Aldridge gave a similar view, back-translating ‘ture’ as ‘written law’ and also distinguishing it from tikanga. As discussed in chapter 2, he explained that tikanga
enshrined enduring principles underlying human behaviour; from these principles came ‘kaupapa’ – such as tapu, muru, and mana; and from those kaupapa came ‘ritenga’ or the application of laws through, for example, a rāhui on fishing. The underlying tikanga could be applied to any situation as required.\textsuperscript{195} Ture, he said, was a written form of ‘ritenga’ – that is, it was subordinate to both tikanga and kaupapa.\textsuperscript{196} In Aldridge’s view, mana bestowed the right to make law. All that was left for a fully functioning legal system was ‘maru’ – the power to apply the law. Early Europeans, Aldridge said, ‘didn’t see courthouses, judges and lawyers, or a police force’, and so assumed there was no law enforcement. Māori people, however, ‘lived’ their kaupapa and ritenga:

They lived the tapu and rahui – they knew what it meant to Manaaki – and they knew what it meant to transgress. The people governed themselves through their long-established social systems.\textsuperscript{197}

Aldridge also said that article 2 specifically declared that no laws would be made by ‘hunga ke’ – a term that in his view meant ‘foreigners’, as distinct from other tribes, who were described as ‘tauwi’.\textsuperscript{198} The English text was less specific, referring only to ‘no other Legislative Authority’. In other words, in Aldridge’s view, a distinction was being made between foreigners such as de Thierry (who lacked any authority in New Zealand) and Māori who had not signed he Whakaputanga but were recognised as possessing authority within their own territories.

Very few other claimants addressed ‘ture’ in any level of detail. To most, he Whakaputanga was significant not as an experiment with ture but because it ensured that tikanga would prevail – a point we will address in more detail in section 4.6.1.

(3) \textit{Kāwanatanga and functions of government}

Having declared that no one except for them would have law-making powers within their territories, the rangatira then declared that no one else would be able to govern, unless appointed by them and acting under the authority of their laws.

To many of the witnesses, the critical point about ‘kawanatanga’ was that it implied a lesser authority than ‘kingitanga’ or ‘mana’, or ‘rangatiratanga’ as it was used in article 1. Several witnesses referred to 1830s Māori editions of the Bible, in which ‘kawanatanga’ appeared as a translation for ‘province’ or for Roman ‘governors’ – both of which were clearly subordinate to kings and kingdoms (for which the term ‘kingitanga’ was generally used, though ‘rangatiratanga’ was also used at times).\textsuperscript{199} Rangatira also had some familiarity with ‘kawanatanga’ through the relationships that Te Pahi and others had formed with Governor King in New South Wales.\textsuperscript{200} In Haami Piripi’s view, the article made a ‘deliberate distinction . . . between the status of the sovereign (ie Kingitanga) and the institution of governance (Kāwanatanga)’ – both of which, he pointed out, were English-language terms for English institutions.\textsuperscript{201} Carpenter also saw a hierarchy in which the order of the terms in article 2 reflected their relative weight. First came ‘supreme or sovereign authority’, then the power to make laws, and lastly the executive powers or ‘functions of government’. The ‘borrowing’ of kāwanatanga from English reflected ‘a missionary view that the notion of a national government was a British one and had no Māori equivalent’. Both he and Dame Anne Salmond saw the article as reserving executive powers for the rangatira, unless they collectively agreed to delegate those powers.\textsuperscript{202} The significance of this, Dame Anne said, was that ‘kawanatanga’ could be delegated if the rangatira chose to:

In such an arrangement, however, they would retain intact their rangatiratanga or independence and their mana and kingitanga or sovereign authority or power. The Declaration is unambiguous, and the relationship between these key terms is very clear.\textsuperscript{203}

(4) ‘ . . . in their collective capacity . . . ’

In the first sentence of article 2, mana and kingitanga over the territories of Te Whakaminenga were said to reside solely in ‘nga Tino Rangatira anake i to matou huihuinga’. In the English text, this phrase was rendered as ‘the hereditary Chiefs and Heads of Tribes in their collective
Capacity’ (emphasis added). This implied a transfer of power from hapū to Te Whakaminenga as a new collective body, which no doubt is what Busby intended. For many of the claimants, however, the phrase simply referred to the authority of the rangatira who had gathered at Busby’s residence to discuss the declaration, and not to any transfer of that authority to a collective law-making body. It was, in fact, simply inconceivable to most claimants that mana could be transferred in this way. As we said earlier, rangatira did not possess that mana as individuals; they possessed it only to the extent that it derived from the land, hapū, other relationships, and their exercise of tikanga.

The vast majority of claimants saw he Whakaputanga not as a way of transferring the mana of each hapū to a collective, but rather as a way of reinforcing and strengthening that mana through joint action. Piripi, for example, said Te Whakaminenga was seen ‘as an expansion of whanau, hapū and iwi’ through which ‘a new national solidarity of Hapū and Iwi’ was created. He said his elders had taught him that it was ‘a natural law’ for hapū and iwi to align into larger groups. Te Whakaminenga was ‘such a collective or alliance’ which, like all larger collectives in the Māori world, had ‘the institution of Hapū as their building block.’

Furthermore, as we saw earlier, the view of many claimants was that he Whakaputanga did not establish a new collective decision-making body at all; it merely recognised the rangatira gatherings that were already taking place, which – according to those claimants – reinforced hapū authority, rather than subordinating or replacing it.

### 4.4.4 Article 3 – Meetings of Te Whakaminenga

Article 3 of he Whakaputanga set out an agreement for the rangatira to meet in ngahuru (autumn) in a ‘runanga’ to create ‘ture’ for specific purposes. Both Hohepa and Manuka Henare agreed that ‘runanga’ represented a formal gathering; Aldridge used the phrase ‘judicial congress’. All three agreed that these ture would be aimed at dispensing justice, ensuring peace, ending wrongdoing or lawlessness, and ensuring fair trade and commerce.

Although these functions seem clear, they raise a question about the intended jurisdiction of Te Whakaminenga. All of the functions described in he Whakaputanga reflect concerns that had been raised in the 1831 petition, as well as in Busby’s instructions and in his 1833 address: they were concerns that arose when the Māori and British worlds collided. An inference might be drawn that the ture made by Te Whakaminenga were intended to cover that colonial frontier, but not necessarily inter-hapū relations, nor hapū and whānau. Aldridge’s description of the gatherings held after 1808 clearly implied that they were set up to manage this new sphere of influence – relationships with foreigners – as distinct from inter-hapū relationships, or behaviour within hapū or whānau.

The second part of article 3 is an unambiguous call for hapū and iwi in other parts of New Zealand to abandon intertribal warfare and join Te Whakaminenga. While the sentiment was straightforward, applying it would very likely not have been. Very few years had passed since the most recent taua to Tauranga – Titore had returned only at the end of 1833. Other southern raids had occurred in 1831 and 1832; and only a decade or so had passed since Hongi’s great southern excursions which had defeated hapū throughout much of the North Island. According to Aldridge, the invitation to southern tribes to join Te Whakaminenga underlined the importance of declaring Ngāpuhi territories a ‘land in a state of peace’. The rangatira were ‘asking the southern tribes to join us and remember our whenua rangatira, he taonga mo te manuhiri, don’t be afraid of Ngāpuhi anymore that’s what they were trying to say.’

We also note here that the commitment to meet during the harvest season (ngahuru) was consistent with the existing tradition of holding hahunga, hākari and other inter-hapū councils during that time.

### 4.4.5 Article 4 – Friendship and protection

In chapter 3, we explored what Māori saw as a friendship or alliance with Britain, and in particular with British monarchs. Many claimants referred to that alliance, which in their view had begun with the visit of Hongi and
Waikato to Britain, and had endured through the 1820s and the first part of the 1830s. The 1831 petition had been an attempt to rekindle it following the deaths of both Hongi and King George IV, and arising from new challenges associated with increased contact between Māori and Europeans. This was, as we saw, a relationship based on mutual benefit. Britain sought access to New Zealand trade and resources, and to establish order among its unruly subjects. Māori also wanted to trade – to acquire new goods, knowledge, and technology, and establish themselves on the global stage – while also negotiating the challenges that arose from increasing contact with outsiders. The rangatira believed that in Britain they had an ally.

The fourth article of He Whakaputanga addressed this relationship. The first part of the article unambiguously expressed appreciation for the King's recognition of the flag. The second part then set out the terms of the relationship between rangatira and Britain. In return for their friendship towards and care of British settlers and traders in their territories, the rangatira sought something from the King: that he should remain as their 'matua' during their 'tamarikitanga', so that that their rangatiratanga should not be ended or negated. In the Māori text, it was clear that the purpose of seeking a 'matua' was 'kei wakakahoreti to matou rangatiratanga' (lest rangatiratanga be denied or negated). The English text had a more ambiguous construction, entreating the King 'that He will continue to be the Parent of their Infant State, and that He will become its Protector from all Attempts upon its Independence'. This could be read as implying that the 'Parent' relationship was pre-existing, whereas the 'Protector' status was new; and that the 'Parent' role had a more general purpose than the 'Protector' role which was specifically directed at seeing off 'Attempts upon . . . Independence'.

Consistent with the Māori text, most witnesses saw this as being a request for protection against threats to mana or to sovereignty – especially external dangers such as that purportedly presented by de Thierry. Carpenter's view was that the 'language of alliance and protection' used in this article echoed that of the 1831 petition, which had asked King William IV to act as a 'friend and guardian', particularly with regard to threats from the tribe of Marion.

During the hearings, Aldridge told us that the meaning of 'matua' in He Whakaputanga had been a matter of debate among his own people. In his view, it applied to Te Whakaminenga as a collective – as a fledgling state – but not to its constituent hapū; if that had been intended, the rangatira would have asked for a matua for 'the hapū', not a matua 'ki a mātou'. The King, in other words, was not being asked to be a rangatira or an ariki. Rather, the use of 'matua' had a specifically international purpose: King William was being asked to see off foreign threats to Māori authority, and at the same time to help Māori deal with new practicalities such as 'documentation, immigration and recognition within the international community'. Hohepa said that the status of 'matua' is based on whakapapa. The King was being asked to be a parent for his own (British) family, not for Māori: 'Not as a parent over everything . . . Things that pertain to us and our lands, we would create those.' Piripi noted that the request for protection immediately followed a reference to the flag, and to him the two were linked. The flag had opened up opportunities for Māori to trade internationally, and the King was being asked to nurture the 'fledgling Māori confederacy'. Busby, as we saw earlier, anticipated a much broader protectorate arrangement.

### 4.5 Britain's Response to the Declaration

Following the declaration, Busby wrote to Bourke and to the Colonial Office in London, advising them of its content as he saw it, and enclosing the English text but not the Māori one. He also wrote to McDonnell, informing him about the declaration, and to de Thierry, dismissing his claims to land and sovereignty, and warning him off entering New Zealand. To attempt such a landing, he said, would be an act of 'madness' and 'criminality', against which de Thierry would face 'the most spirited resistance from the whole population'.

We have already discussed the content of Busby's
dispatches to Bourke immediately after he Whakaputanga was signed. By the end of November, Busby had received no word of response from the Governor about his declaration – the 'Magna Charta of New Zealand Independence', as he was to describe it to his brother.\textsuperscript{220} He had, however, received Bourke's instructions in respect of the Hokianga spirits ban. As we said earlier, Busby had objected to this 'law' on grounds that laws should only be recognised only if made by all rangatira 'in their collective capacity', because he lacked faith in Māori capacity to enforce the ban impartially, and because he believed that asking Māori to enforce laws over Europeans might provoke disorder.\textsuperscript{221} Bourke, however, had no patience with Busby's objections, and in fact instructed the Resident to use McDonnell's local, ad hoc approach as a model for his own conduct. If this was not grievous enough to the Resident, Bourke also accused him of either neglecting or wilfully disregarding these instructions by failing to support the ban.\textsuperscript{222} We do not know whether Bourke had received the declaration before he sent his instructions, but it seems unlikely. Regardless, he made it abundantly clear that Busby's principle of working only with rangatira 'in their collective capacity' meant little to him.

Busby responded that asking rangatira to enforce the ban would be 'a direct infraction of the Fundamental Laws of their country as embodied in the [D]eclaration of Independence'. He told McDonnell not to enforce the ban.\textsuperscript{223} Busby also provided Bourke with further explanation of he Whakaputanga and how he saw it operating. He insisted that it did not in itself establish either legislature or government; rather, it settled a 'foundation' for both. Even this, Busby said, had come 'at an earlier period than I had intended'. As he had indicated previously, he had little confidence in Māori law enforcement – indeed, as he saw it, any attempt to use Māori force against British interests would in most cases be 'little better than authorized outrage' and a 'betrayal' of his duty as Britain's representative. He hoped, some day, to lead Māori to an understanding of how British law worked and the advantages it would bring to them – but, in the meantime, he recommended that there be no further attempts at lawmaking by Māori.\textsuperscript{224} He Whakaputanga, in other words, had declared the establishment of a legislature on paper, but Busby had no intention of seeing it operating any time soon.

Busby was to wait another two and a half months for an official response to the declaration. On 12 February 1836, Bourke and the New South Wales Legislative Council sent a dispatch in which they appeared to view the declaration as being directed more at the Hokianga liquor ban than at de Thierry. Bourke and the Legislative Council acknowledged the declaration 'as an approach towards a regular form of Government in New Zealand' and approved of Busby's initiative in taking advantage of 'the excitement apparently created by . . . Baron de Thierry' to achieve this end. However, they rejected the part of article 2 in which the rangatira claimed exclusive rights to legislate, saying that it had been 'intended to subvert' the spirits ban.\textsuperscript{225}

According to Bourke, the declaration said that no law was to be passed or function of government exercised by other tribes (that is, those who were not parties to the declaration) 'without the consent of those Signing the Declaration', and that, given its limited geographical coverage, this was 'altogether premature and imprudent'. The declaration of course made no claim to powers anywhere except north of Hauraki. Bourke also told Busby that he should have submitted the content of article 2 for prior approval, and in future was to obtain that approval before proposing anything for the rangatira to adopt.\textsuperscript{226}

On 16 March, Bourke wrote to Glenelg making similar points, and in particular claiming that Busby had deliberately sought to undermine the liquor ban in spite of support for it from missionaries, rangatira, British residents in New Zealand, and 'this Government'.\textsuperscript{227}

On 25 May, Glenelg responded to Bourke, acknowledging the declaration:

\begin{quote}
I have received a Letter from Mr Busby, enclosing a Copy of a Declaration made by the Chiefs of the Northern Parts of New Zealand, setting forth the Independence of their Country, and declaring the Union of their respective Tribes into One State, under the Designation of the Tribes of New Zealand. I perceive that the Chiefs, at the same Time, came to the Resolution to send a Copy of their Declaration to his Majesty, to thank Him for His Acknowledgement of their
\end{quote}
Flag; and to entreat that, in return for the Friendship and Protection which they have shown and are prepared to show to such British Subjects as have settled in their Country, or resorted to its Shores for the Purposes of Trade, His Majesty will continue to be the Parent of their infant State, and its Protector from all Attempts on its Independence.

With reference to the Desire which the Chiefs have expressed on this Occasion to maintain a good Understanding with His Majesty’s Subjects, it will be proper that they should be assured in His Majesty’s Name, that He will not fail to avail Himself of every Opportunity of showing His Goodwill, and of affording to those Chiefs such Support and Protection as may be consistent with a due Regard to the just Rights of others and to the Interests of His Majesty’s Subjects.\(^228\)

In Carpenter’s view,

Although this despatch noted the substance of the declaration, it did not extend official British endorsement of the declaration as constituting an independent New Zealand state. The emphasis was rather on the relationship of support and protection which Britain could offer the New Zealanders.

Even that, Carpenter argued, might be qualified by Glenelg’s reference to the ‘Rights of others and to the Interests of His Majesty’s Subjects.’\(^229\) He also noted that the Crown ‘never formally assented to, or gazetted, the Declaration.’\(^230\) Professor Paul McHugh, however, argued that Britain ‘accepted straightforwardly’ the declaration’s assertion of Māori sovereignty:

> Although the authorities in New South Wales and Britain were not persuaded by Busby’s insistence upon confederated sovereignty only, the wider recognition of Māori sovereignty contained in the Declaration was endorsed.\(^231\)

Glenelg’s message was eventually passed on to Busby much later. It was sent in November 1836, and reached the Resident in January 1837. No meeting was held to deliver it to rangatira, for reasons we will come to later.\(^232\) Glenelg made further comment in another dispatch to Bourke in August 1836, commending Busby for orchestrating the declaration in the face of de Thierry’s claims, but agreeing with Bourke’s assessment of article 2.\(^233\) In Loveridge’s view, Busby’s ‘general course of action was approved, but his specific tactics were condemned.’\(^234\)

Busby rejected Glenelg’s criticisms, assuring Bourke that the declaration was aimed solely at defeating de Thierry’s attempts to establish a sovereign government. The words of article 2 (which declared in the English text that the rangatira alone held ‘All Sovereign Power and Authority’ and that no one other than them could make law within their territories or govern except under their authority) ‘would have been in no respect different’ if the Hokianga liquor law had never existed. Busby also argued that the spirits ban could scarcely be considered a ‘Law’, because that would imply ‘the existence of a Legislature and a Government’ when none existed in the Hokianga. He underlined his intention that the confederation would ultimately extend to cover the whole of New Zealand, provided that it received proper British backing. However, he also expressed doubt about the possibility of calling the rangatira together again, either at that time or later, owing to intertribal conflict, which we will consider in section 4.8.1.\(^235\)

Some historians have agreed with Bourke’s assessment of article 2. Both Carpenter and Phillipson referred to the views of John Ross, who argued in 1980 that Busby’s overriding purpose had been to undermine the spirits ban and settle a personal vendetta with McDonnell.\(^236\) Ross had argued that article 2 was ‘totally irrelevant’ as a response to de Thierry, and was inserted solely to undermine McDonnell and the Hokianga liquor ban: ‘a weapon, in brief, in what had become a ridiculous vendetta with McDonnell.’\(^237\) Parkinson said that although the declaration was ‘ostensibly aimed at . . . de Thierry’, its real target was ‘a different, and indeed personal argument’ about the spirits ban.\(^238\)

Other expert witnesses saw links between the liquor law and the declaration, but took the view that these were based more on policy differences than personal rivalry. As Loveridge said, Busby’s entire policy was based on dealing with rangatira ‘in their collective capacity’, and ultimately establishing a single Māori government. The creation of
‘ad hoc regional councils’ would no doubt make that more difficult. The letter from de Thierry, in Loveridge’s view, created ‘an opportunity to take action before such alternative governments could become entrenched.’ In that way, the declaration was ‘triggered’ by de Thierry, ‘insofar as de Thierry’s letter gave Busby an excuse or opportunity to implement a plan which he had been nurturing for at least two years.’ Carpenter agreed that Busby had been looking for opportunities to establish a congress of rangatira ever since he set foot in New Zealand. Both he and Phillipson rejected Ross’s claim that the declaration had little to do with de Thierry.

In our view, Loveridge’s explanation of the links between the liquor ban and the declaration is convincing, to the extent that Busby took the opportunity provided by de Thierry’s letter to implement his long-held policy of dealing with rangatira in their collective capacity, and also relatedly to derail the Hokianga attempt at local lawmaking. While there was personal rivalry between Busby and McDonnell, we do not think that was his principal motivation for calling the rangatira together. It is clear from Busby’s dispatches that he saw article 2 as entirely relevant to the potential threat from de Thierry: as he explained it to rangatira (section 4.3.2), it was their lack of unity that left them vulnerable to foreign influence, and the means to address that was the establishment of a collective decision-making authority.

It is also clear that most contemporary European observers in New Zealand saw the declaration as a response to de Thierry, not McDonnell. The views of Captain Robert FitzRoy, who visited the Bay of Islands briefly at the end of 1835, are relevant on this point. FitzRoy had recently been in Tahiti, and when his ship, the *HMS Beagle*, sailed into the Bay, anchoring between Paihia and Kororāreka, it was initially assumed to be de Thierry’s. According to FitzRoy, ‘one boat only approached reluctantly . . . to reconnoitre; but as soon as it was known that the expected intruder had not arrived, visitors hastened on board’. Had de Thierry indeed come to New Zealand at that time, FitzRoy reckoned, ‘he would hardly have escaped with [his] life.’

FitzRoy, who found Busby ‘an isolated individual’, wrote that the declaration had been stimulated by ‘the rumoured approach of de Thierry’, and was intended to prevent such foreign intrusions. This, FitzRoy wrote, would be achieved through the framing of a constitution and the establishment of a form of government . . . which should have a steadying influence over their unwieldy democracy, and leave them less exposed to foreign intrusion.’ The Kororāreka resident Joel Polack also clearly held the view that the declaration was motivated by de Thierry, though by the time he wrote of it in 1837, he regarded it as an overreaction.

The differing approaches of Busby and McDonnell are also interesting for other reasons. Busby had persisted with his ambitious plan to establish a legislature based on the collective authority of all rangatira even as he had begun to understand that Māori had their own ways of doing things, and that while Māori may have been willing to experiment with European ways they were not about to wholly discard their own. McDonnell’s approach on this occasion appears to have been more in line with the reality that power was held locally (although we should note here that many of McDonnell’s actions as Additional British Resident were directed at advancing his own trading interests, rather than the broader interests of either the British or Māori). FitzRoy also had something to add here. According to him, having established a constitution and a form of government’ 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 Busby was absolutely nothing, not even that of a magistrate over his own countrymen; so of course he could have no power over the natives.

FitzRoy formed these views during a nine-day stay, during which he claimed to have received numerous requests to intervene in disputes, both among Europeans and also between Europeans and Māori. He found that Busby had declined to act on these disputes because he lacked formal
authority. In FitzRoy's view, the missionaries were the 'only real . . . authority' in the Bay of Islands.\textsuperscript{247}

Thus, although articles 2 and 3 were important parts of the declaration, it seems that by the end of 1835 nobody saw any prospect of them operating in the manner that Busby had intended -- that is, nobody believed that a congress of rangatira with supreme lawmaking authority had actually been established or would be established anytime soon. Busby himself did not. Nor did McDonnell, FitzRoy, Bourke or Glenelg. Nor, indeed, did the rangatira who signed he Whakaputanga.

4.6 An Emergence?

Having discussed the declaration's four articles, and the British reaction to the declaration, we are now ready to consider its overall meaning and significance in 1835. We will first set out the claimant and Crown positions on this question, and then consider other historical evidence, before presenting our own conclusions in the next section.

4.6.1 Claimant evidence and submissions

We described earlier how Māori sought to manage their relationships with Britain in ways that harnessed the benefits and minimised the negative effects. We also explained that rangatira sought to retain control of their relationships with Europeans, and by 1835 had been largely successful. Claimants generally saw he Whakaputanga in exactly this context. For the vast majority, the principal purpose of the declaration was to assert mana and rangatiratanga.

Various underlying motivations were given, though the dominant themes were control of Europeans, control of territories, and fulfilment of tikanga such as manaakitanga and kaitiakitanga.\textsuperscript{248} Aldridge, for example, characterised the process of coming together through Te Whakaminenga as being intended 'to deal with this wave of . . . te ngaru, te waipuke o te Pākehā,' and Pari Walker said its focus was to protect te ao Māori 'given the arrival of this Hapu Hou to our shores.'\textsuperscript{250}

The other key purpose, according to the claimants, was to further what they saw as an alliance between their tūpuna and Britain. To some extent this relationship was seen as providing protection against invaders such as de Thierry, and against less orderly British elements already established in the north; to many claimants, however, a more significant motivation was to secure access to British goods and knowledge, and peaceful working relationships with British people.\textsuperscript{251}

Three other major themes also emerged. The first was the development of an inter-hapū alliance or confederation, which some saw as leading to their unification;\textsuperscript{252} the second was what several saw as the emergence of ‘Ngāpuhi’ nationhood;\textsuperscript{253} and the third was the emergence of an inter-hapū decision-making structure, either created by or declared by he Whakaputanga.\textsuperscript{254}

For most claimants, the focus of he Whakaputanga was solely or principally on relationships with foreigners -- that is, with the British monarch and officials, and with settlers, sailors, missionaries, traders, and occasional interlopers such as de Thierry. However, a small number said that he Whakaputanga may also have been aimed at regulating inter-hapū relationships -- keeping peace between them so that they could trade with the British, or (in the view of a very small number of claimants) trade and share resources with each other.\textsuperscript{255}

We consider these themes in more depth below.

(1) Unification and emergence of a nation-state

Aldridge, in his evidence, said the term ‘He Whakaputanga’ could be translated as ‘the emergence’, by which he meant 'that we are emerging as a nation, as ourselves, to be ourselves.'\textsuperscript{256} This did not mean, however, that a new nation was being created:

the Maori nation that was already there [in Te Whakaminenga], but was just emerging onto the world stage. This was the nation that took hold of He Wakaputanga.\textsuperscript{257}

Other claimants also referred to he Whakaputanga as heralding the emergence of a new state, though there was differing evidence about whether that state already existed and was being declared, or he Whakaputanga created it, or he Whakaputanga merely heralded it as an aspiration.\textsuperscript{258} Haami Piripi characterised the declaration as
the ‘birthing’ of a new state, and as ‘sow[ing] the seed of national and regional sovereignty’. He also described it as ‘the founding constitutional document of Ngāpuhi-Nui-Tonu’. As he saw it,

By the time discussions began between Rangatira about a national body of representative Rangatira (Te Whakaminenga) Te Rarawa had already begun the transformation from localised Hapu to a region wide confederation of Hapu entities. An extension of this notion to cover the nation was just a logical next step in a process of political survival . . . 259

The use of ‘Nu Tireni’ rather than a Māori term was significant, Piripi said, since it indicated that the creation of he Whakaputanga was part of a ‘transformational’ process in which Bay of Islands and Hokianga hapū were adopting new political forms. The phrase ‘He Whakaputanga o te Rangatiratanga o Nu Tireni’ could be translated as ‘The Birth of New Zealand’.260

The fullest explanation of emerging nationhood, however, was provided by Manuka Henare, who had completed doctoral research on the subject and provided evidence as an expert witness.261 He described two forces converging during the 1820s and 1830s, together resulting in a Māori nation emerging on to the global stage ‘like an unfolding fern frond’. The first was the emergence of a distinct national identity, shown through both increasing identification as ‘Māori’ and increasing willingness to adopt the transliteration ‘Māori’ and increasing willingness to adopt the transliteration ‘Nu Tireni’ as a descriptor for these islands. This, in itself, provided at least ‘a feeling of a nation’.262

The second force was political. Rangatira had from the 1820s begun to recognise that participation in global trade – in fulfilment of their obligation to sustain their communities – might require ‘a new political process . . . perhaps something independent of the existing tribal process’.263 According to Henare, a series of six events provided the outward expressions of this nation-making process. These events were linked, and reflected deliberate choices by northern rangatira to come together. We addressed the first four events in chapter 3. They were Hongi’s meeting with King George IV and with the House of Lords; the 1831 petition; Busby’s arrival; and the adoption of a flag. He Whakaputanga was the fifth – and the sixth was to be te Tiriti five years later.264 When Busby presented his ideas for unification, Henare said, they ‘made sense’ to the rangatira, and allowed them to assert their nascent sense of national identity on an international stage.265

It is important to note that Henare’s understanding of nationhood was based on shared cultural and/or political identity, rather than the existence of a single government. His definitions were based on the work of philosophers, sociologists, and geneticists, rather than international or constitutional lawyers.266 The claim of nationhood, he said, was based on morality and natural justice, rather than legal positivism.267

Many claimant counsel, in their closing submissions, argued that there had been a deliberate process of unification or nation-building among Bay of Islands and Hokianga hapū from around 1808 onwards.268

(2) A declaration of mana and sovereignty
For the vast majority of claimants, the main purpose of he Whakaputanga was to assert the mana and sovereignty of the signatories’ hapū. Their territories were declared to be under their authority at a time when that authority remained largely intact but was coming under some pressure. The substance of he Whakaputanga, according to John Klaricich, was the chiefs’ ‘Declaration based on their understanding of leadership, of the exercise of their power and authority over their hapu land, from which their authority originated and is sustained’.269 Patu Hohepa, similarly, gave evidence that ‘The single reason for this [declaration] was to clearly express their mana or
rangatiratanga so that those non-Māori within and outside Nū Tīreni will know.'\textsuperscript{271} Wiremu Heihei said that, when his tūpuna Tāreha placed his moko on the declaration,

he was essentially affirming that his mana from time immemorial, came from Io Matua Kore down through the Māori gods (Tumatauenga), to his ancestors, which fell on him, and he released it down to all his descendants.\textsuperscript{272}

Although mana and sovereignty are far from interchangeable, the claimants submitted that he Whakaputanga amounted to a declaration of both.\textsuperscript{273} Annette Sykes, Jason Pou, and Miharo Armstrong, representing claimants from Ngāti Manu, Ngāti Kura, and several other hapū, submitted that, although ‘the concept of “mana” must not be contorted to meet British legal theory’, there was a meeting point in jurist William Blackstone’s definition of sovereignty as ‘a supreme, irresistible, absolute [and] uncontrolled authority’ existing in all forms of government.\textsuperscript{274} This, counsel said, ‘renders into English the concepts of mana rangatiratanga, mana taketake, mana motu hake, [and] Ngāpuhi haputanga’. Counsel therefore rejected any suggestion that the independence and authority asserted in he Whakaputanga were not equivalent to sovereignty. Rather, he Whakaputanga contained ‘an unambiguous assertion of Māori sovereignty’.\textsuperscript{275}

Piripi said his Te Rarawa tūpuna ‘could only have viewed the construct of sovereignty through their own indigenous perspective’, and must have seen he Whakaputanga as a means of ‘expanding and reconfiguring their own Mana and authority paradigm’.\textsuperscript{276} According to him, Māori concepts of authority could be understood only in the context of Māori explanations for the birth of the universe and the creation of universal laws. In that context, mana was ‘a much more inclusive and extensive vision than the British explanations of sovereignty’.\textsuperscript{277}

Nonetheless, Piripi said, the ‘tenets’ or ‘core elements of sovereignty’ were present in Māori society prior to the arrival of Europeans. This sovereignty was ‘utilised, adapted and modified to meet the wave of Pākehā colonisation’, and ultimately found its expression in he Whakaputanga. The declaration, in his view, highlighted ‘the fact that these chiefs considered it imperative that they declared sovereignty, and were willing to act in concert with each other as a confederacy in order to do so.’\textsuperscript{278}

In Piripi’s view,

the Te Rarawa Signatories acted in a manner consistent with their sovereignty by signing He Whakaputanga in order to protect and emphasise their sovereignty and Mana over their Iwi and Rohe. This authority is alive today . . . \textsuperscript{279}

The claimants also provided insights into the purpose of this declaration of mana or sovereignty. Hohepa said the intention was for Māori to control their own country and assets without foreign interference.\textsuperscript{280} Piripi’s view was that the rangatira intended to ensure that their mana could ‘prosper within the melee of a rapidly changing economic and political landscape’.\textsuperscript{281} Rima Edwards’s view was that he Whakaputanga confirmed the status of its signatories as ‘ngā tino rangatira . . . ngā tino kairanga i te tira o te waka’ (‘the true chiefs . . . the true navigators of the waka’). He also quoted a karakia, composed by Aperahama Taonui in 1840, which described he Whakaputanga as ‘he whakaaturanga ki te ao, ki te mana o ngā rangatira o ngā hapū ki tēnei whenua ki Aotearoa’ (‘an expression of the chiefliness of Niu Tīreni to show to the world the prestige mana of the hapu’).\textsuperscript{282} Erima Henare said that ‘other than trade, what our people hoped for in He Whakaputanga was that the Māori worldview would remain dominant in this country.’\textsuperscript{283}

Other claimants also saw he Whakaputanga as an attempt by the signatories to ensure that tikanga continued to apply to all people within their territories. Heihei said that when Tāreha signed he Whakaputanga he was seeking the benefits of trade (as conferred by the flag), but his principal focus was Māori authority and law:

I marama ana . . . ia eharā nā He Whakaputanga e whiwhi ai rātou i to rātou mana-motuhake, i te mea kua tū motuhake noa atu rātou (ngā hapū) me te mea ana, ko a rātou ture, tika hoki, he mea tuku iho no ngā Tikanga o Matua Kore (eg. he

\textsuperscript{(2)} Downloaded from www.waitangitribunal.govt.nz
He Whakaputanga me te Tiriti: Whenua tuku, rahui, Tapu me te Whangai pērā ana i te keehi o Toko i riro nei e Auha raua ko Whakaaria.

I Tareha ki enei Tikanga i a ia i te ora, ko tana ohaki kia i tonu tona iwi me ngai Pakeha ki enei Tikanga. I whakaee ana hoki ia kia noho mai te Pakeha ki te taha o ngā Māori engari ki raro i te Mana Māori Motuhake.

He... understood that He Whakaputanga simply affirmed and declared to the world what the current position was to be, which was: “Ko mātou ngā Tino Rangatira.” He also understood that He Whakaputunga did not give independence as such because they were already an independent nation (Hapu) and that the basis of their laws and rights were a natural progression of the natural laws [of] Io Matua for example Tapu, Rahui, Tuku whenua, Whangai.

His expectation of Pakeha was that they continue to live along side Māori but subject to Māori Mana Motuhake.

Kiharoa Parker told us that the purpose of he Whakaputanga was to assert rangatiratanga so that Māori laws and values would prevail:

The Ariki and Rangatira of the Taiamai had the understanding or intention of kaitiaki of New Zealand. They were the Rangatira of their area; they were not handing over any kind of sovereignty. They were not going to let any other country dictate their laws.

Emma Gibbs-Smith gave evidence about the role of whakapapa as a source of identity, responsibilities, and relationships between people and the environment. In her understanding, it was whakapapa and the Māori ‘belief system’ that he Whakaputanga guaranteed. She spoke of her great-great-grandfather Kai Te Kemara signing the declaration because he ‘wanted to ensure his chiefly authority was not subject to the authority of any other person,’ thus fulfilling his responsibilities as a rangatira to manage resources for the benefit of his people.

My matua all said to me, if I was to take more than I needed, eventually there would be nothing for tomorrow. I know this is why my tupuna, Kai Te Kemara was so supportive of the Whakaputanga in 1835. He experienced and could see exploitation by the pākeha. He understood the importance of retaining his Rangatiratanga so that his people survived.

(3) The role of Te Whakaminenga

Many of the claimants regarded he Whakaputanga as formalising an alliance or confederation between hapū, based around decision-making through Te Whakaminenga. Piripi, for example, said rangatira would have seen it as a verification of their sovereign status as leaders and chiefs of their Iwi, Hapū and Whānau groups, and an effort to form a strategic political alliance with the other tribes of Ngāpuhi-Nui-Tonu and with other tribes. Erima Henare and others spoke of hapū unifying around shared whakapapa. In essence, by coming together, hapū saw themselves as better able to respond to the changes occurring around them.

We have already set out much of the claimant evidence about Te Whakaminenga in section 4.4.2(2). In our view, however, some additional questions remain. First, the relationship between confederate and hapū authority needs further consideration. Secondly, we think there is a need to consider Te Whakaminenga’s sphere of influence: was its decision-making role to be focused on relationships with foreigners, or was it also to make decisions concerning inter-hapū relationships?

Aldridge’s evidence was that Te Whakaminenga could make decisions or create laws with hapū consent, but not override hapū authority. He described different spheres of influence in Māori law, governing whānau, hapū, and inter-hapū relationships – although the underlying tikanga, in his view, remained constant. His description of Te Whakaminenga clearly implied that it existed to manage a new sphere of influence – relationships with foreigners. Most other claimants who addressed these issues had similar views.

Annette Sykes and her co-counsel said that the notion of a collective exercise of authority by Te Whakaminenga was additional to, and not by way of substitution for
the authority that would continue to operate at hapū and iwi level, as it had done for centuries past.295

Counsel further said:

Clearly supreme power, mana remained with the sovereign authority of the iwi and hapū who for agreed upon purposes, would come together as Te Wakaminenga to manage particular spheres of activity and if appropriate to delegate authority to such other bodies as may be required to meet the exigencies of any particular situation but who also retained the power to withdraw from that collective decision making if that was so demanded by any particular situation.296

Other claimant counsel submitted that he Whakaputanga did not subordinate the authority of individual chiefs to the collective. Rather,

the whole point of He Whakaputanga was that mana could be exercised on a collective level, without compromising the specific mana held by individual rangatira in respect of their hapū.297

Hohepa expressed a similar view when Crown counsel asked him about this matter. He drew an analogy between he Whakaputanga and a wartime alliance:

ko ngā mana kei ngā rangatira o ia hapū. Ka hono haere ngā hapū e ārite ana ngā mana o tēnā, o tēnā. Mehemea, ka haere ki te pakanga, pērā i te wā o Hongi Hika, ko ngā hapū kāore e whakaāēa ana ki tōna whakahaeretanga, ka hoki ki te kāinga . . .

mana has resided with each hapū. When the hapū come together their mana was equal. If they went to battle, like the times of Hongi Hika, the hapū who did not agree with those, they went home . . .

Hohepa said that this did not change with he Whakaputanga.298

Dr Bruce Gregory compared he Whakaputanga to the Swiss confederation:

The essence of a confederation is that power is essentially retained in the constituent members and they only agree to cooperate on certain matters. The Swiss confederation at these times had vastly different laws, different languages, different weights and measures. The confederation did agree to fight against invasion, recognise each other’s independence, and ensure that trade through the alps was maintained. This is remarkably similar to Maori aspirations.299

In he Whakaputanga, Gregory said:

Each hapū continued to exercise tikanga, the tikanga facilitated safe and secure inter hapū trade, and access to specified resources through other hapū territory. They [Māori] were looking for mechanisms to enable the international leg of their trading operations to be similarly secure.300

While they argued that authority remained with hapū, many claimant counsel submitted that Māori of the Bay of Islands, the Hokianga, and neighbouring districts nonetheless had a system of government in place through Te Whakaminenga. According to counsel for te Rūnanga o Ngāti Hine, Busby and other British observers believed that rangatira would ‘mimic British modes of governance and assemble in an orderly way at an appointed time each year in a kind of local Parliament’. The rangatira, however, did not believe that they had to establish anything new: “They already had their own governance arrangements and they regarded He Whakaputanga as an explicit acknowledgement of that fact.”301 Counsel for Te Rīwhi Whao Reti and other te Kapotai claimants said that some Crown witnesses struggle with the evidence . . . that the rangatira were meeting in the decades prior to He Whakaputanga because there is no documentary evidence for this. This is because they would like to believe that Maori had no form of government or forum for decision making to regulate themselves, therefore they were inferior and in need to a greater authority. However, joining allegiance and coming together for a common purpose was not a new concept. Since ancient times their hapū had been forming alliances with other hapu for
war, planting, harvesting, food gathering and other kaupapa. He Whakaputanga was just another example of this.\textsuperscript{302}

Moana Jackson, called as an expert witness for the claimants, said that he Whakaputanga created a constitutionally different site of power where mana could be exercised in a co-operative and collective way that nevertheless still acknowledged the specific mana of its constituent members.

Jackson likened Te Whakaminenga to ‘a new “marae” where polities could exercise interdependent authority while preserving their own independence.’\textsuperscript{303}

Manuka Henare had argued in his thesis that Te Whakaminenga was intended to have power to make laws for hapū, and he described this as ‘a radical development.’\textsuperscript{304} However, he did not repeat that point in his evidence, which instead emphasised what he saw as the confederate nature of Te Whakaminenga, alongside the point that Te Whakaminenga did not diminish hapū autonomy. Henare drew our attention to the fact that article 1 of he Whakaputanga explicitly recognised the mana of hapū in the phrase ‘Ko te Wakaminenga o nga Hapu o Nu Tireni’ (emphasis added), not merely ‘Ko te Wakaminenga o Nu Tireni’. Furthermore, he noted that the words ‘o nga hapu’ had been inserted as a correction into the Henry Williams draft of he Whakaputanga. In his view, this probably occurred during debate between Busby and the rangatira:

In this way, their individual leadership of whānau-hapū, responsibilities and powers are recognised and when they come together as Te Whakaminenga, the sacred gathering of leaders they act also in a collective capacity. They acquire a collective leadership set of responsibilities, but it does not in any way diminish their individual responsibilities.\textsuperscript{305}

John Klaricich sought to explain the motivations behind he Whakaputanga, and the relationships it created, by referring to the 1833 dispute between Moetara and Te Rarawa over access to trade. Following that dispute, which Moetara survived only narrowly, peace was made at Kawewhitiki Point on the north side of Hokianga Harbour, resulting in Moetara agreeing to confine his trading relationships to the south. That peacemaking, Klaricich said, contained echoes of the much earlier relationship between Nukutāwhiti and Ruānui, whose people had ‘freely used both sides of the harbour’, and intermarried, showing that the harbour was ‘not a barrier to human relationships’. He Whakaputanga, he noted, occurred two years after Kawewhitiki, and once again echoed previous events:

The reasons for both events [Kawewhitiki and he Whakaputanga] was a desire to secure a workable, respectful enduring relationship between two peoples. The reasons for each were not dissimilar nor were the desired outcomes. It can be said Kawewhitiki and He Whakaputanga mirrored each other, or He Whakaputanga reflected Kawewhitiki.

Based on their experiences at Kawewhitiki and at the flag hui, Moetara and other Hokianga rangatira ‘would have understood implicitly what was being sought through He Whakaputanga’:

He (they) would have understood and supported the need for trade and commercial development for Māori and that joint understandings and fair equitable agreements were needed to enable two peoples to respect and work alongside each other in peace. Moetara would have been mindful of the constraints hapu boundaries would always impose on trade and commerce and would have been mindful of his leadership obligations to his hapu, to retain power and authority. For Moetara the mark he placed on He Whakaputanga was as enduring as the verbal agreement he gave at Kawewhitiki.\textsuperscript{306}

The inference to be drawn is that he Whakaputanga reinforced the mana of each rangatira within his own territories, enabling him to engage in the wider world – just as the peace secured at Kawewhitiki had.

\textbf{(4) Alliance with Britain}

Many claimants referred to the evolution of Māori relationships with Britain, emphasising both the political events and the personal side of the relationship arising
from the meeting between Hongi and King George IV. For many claimants, one of the most significant aspects of he Whakaputanga was its attempt to strengthen and deepen this ongoing bond. Consistent with the text of he Whakaputanga, the claimants saw this alliance as an entirely reciprocal exchange with a largely foreign relations focus, under which they agreed to protect (and trade with) British subjects, while asking Britain for protection from foreign threats to their authority. Counsel for the Wai 249 and Wai 2124 claimants, for example, submitted that he Whakaputanga was a ‘clear statement’ by rangatira of their ‘independence and ability to govern themselves, needing only assistance should they be threatened by any outside parties’. He Whakaputanga also represented another step in the ‘special relationship’ that Māori believed had been forged with Britain since 1820, under which the Crown had made an ‘unambiguous offer of protection’.

The claimants also saw other motives for this relationship. Trade was the obvious one, as discussed above. Others saw the relationship in terms of British guidance of the fledgling Māori state as it began to evolve its international relationships. Annette Sykes and her fellow counsel suggested that rangatira were seeking British protection from ‘the wrongdoings of its citizens who were living amongst them during the period’. In this context, the commitment to ‘explore’ the establishment of ‘formal European style judicial and legal systems’, as set out in article 3, could be seen as an ‘effort . . . to promote cross cultural understandings to minimise conflict arising from a lack of understanding of Tikanga Maori and Maori Law’.

Busby had envisaged the request of the rangatira for protection as a plea for Britain not only to keep the French out of New Zealand but also to establish a government within it, albeit one under nominal Māori authority. In later dispatches to Bourke, he would refer to the example of the Ionian Islands off Greece’s west coast, which in 1815 had been constituted as a state under British protection. The islands were to have their own legislature while a British high commissioner carried out the functions of government. There were many variations on such arrangements within the British Empire at the time. In Manuka Henare’s view, Busby had probably discussed the Ionian Islands idea with rangatira at the time of he Whakaputanga, and would have believed they were heading for such an arrangement. The principle, Henare said, was based on that set out by the eighteenth-century Swiss jurist Emerich de Vattel, ‘where a new emerging nation wished to be established, the people could ask an existing well-established state to assist them in a protectorate relationship’ without ceding sovereignty or the right to self-government. We should note here that the Ionian Islands did not agree to become a protectorate, and nor did Britain recognise them as having independent sovereignty prior to 1815. Rather, the protectorate arrangement was imposed on them as part of European peace arrangements following the Napoleonic Wars. In these ways, the Ionian example differs from that of New Zealand, where Britain had clearly recognised Māori independence (as discussed in chapter 3).

Most claimants saw he Whakaputanga as establishing a relationship that was more in the nature of an alliance than a protectorate. There was also very wide agreement that article 4 did not in any way limit the mana or sovereignty of hapū, nor devolve any authority to Britain. Counsel for te Rūnanga o Ngāti Kahu and Ngāti Kuta ki te Rāwhiti submitted that the King was being asked to provide assistance to Te Whakaminenga ‘as required’ (counsel’s emphasis):

Given that Māori were sovereign and vastly outnumbered the Pakeha population at the time, it is submitted that the rangatira would not have requested an overarching authority from the King.

Wiremu Heihei told us about Tāreha assenting to he Whakaputanga:
I marama ia, ko tana tū hei Rangatira nui o Ngāpuhi e kōrerorero ana ki Te Rangatira nui o Ingarangi. Rangatira ki te Rangatira, Ariki ki te Ariki . . .

Ko tana whakaputanga, kia marama mai ai te Kingi, ko ta rātou Rangatiratanga, ko rātou Kingitanga i whakaaengia, i whakaungia, I whakahonorenga, ma rota i te kara i tohungia ai e ngā Rangatira me te Kingi, i whakaaengia, whakaungia hoki, e te Kingi.

His understanding was that he as the Rangatira nui o Ngāpuhi was addressing Rangatira nui o Ingarangi. Rangatira to Rangatira, Paramount to Paramount . . .

His declaration to the world was to be honoured, not negotiable.

His declaration was to make clear to the King that their Rangatiratanga, their Kingitanga was acknowledged, accepted and honoured through the flag chosen by the chiefs being acknowledged and endorsed by the King . . .

Rima Edwards described a relationship of mutual benefit, bound together by trade and mutual offers to ‘care for each other’. Through he Whakaputanga, Edwards said, ‘the World will know of this relationship that England now has with Aotearoa’.

**4.6.2 Crown submissions**

Crown counsel, in their closing submissions, acknowledged that he Whakaputanga would have been seen in 1835 as ‘a clear assertion of sovereignty and independence by those rangatira who signed it, coupled with a request that Britain protect Māori from foreign powers’. Prior to 1835, the Crown had not claimed to have sovereignty (that is, ‘a prerogative capacity to constitute a local authority or any legislative capacity’) over New Zealand, and he Whakaputanga did nothing to change that. The assertion of Māori sovereignty, counsel submitted, applied only to ‘the part of New Zealand that is north of Haurāki’.

Crown counsel also noted that he Whakaputanga ‘made a request to the Crown for protection.’

The Crown’s [1835] response was to advise rangatira that the Crown would afford “such support and protection as may be consistent with a due regard to the just rights of others and to the interests of His Majesty’s subjects”. This would have intensified the Crown–Māori relationship.

To this extent, the Crown’s perspective appears to be reasonably consistent with that of the claimants. However, it differed from the claimants in other respects.

As we saw earlier, to many of the claimants ‘Te Whakaminenga’ referred to inter-hapū meetings that were already taking place and reflected a kind of assembly or confederation in which hapū sovereignty was not diminished but was at times exercised jointly. The Crown did not dispute that inter-hapū meetings were occurring ‘to discuss important issues’. Nor did it dispute that, after the declaration, hapū continued to exercise ‘a form of sovereignty and independence that was consistent with hapū autonomy’. However, Crown counsel submitted, Te Whakaminenga was intended to establish something new. Te Whakaminenga, counsel said, was to be a supreme legislature ‘with power to make laws for the hapū of signatory rangatira’. In this way, he Whakaputanga was intended to establish ‘a supreme confederative form of sovereignty’ which would override the authority of individual hapū; and it also ‘expressed the aspiration of rangatira to develop a functioning nation state’ but which under normal circumstances ‘did not alter hapu autonomy’.

Crown counsel submitted that the declaration of rangatira sovereignty was unilateral. That is, the Crown in 1835 did not sign the document or make any commitments in it; the declaration represented only the will of ‘those rangatira who signed it’. Counsel also said that in 1835 British official understandings of the declaration ‘would have been premised on the English text’. However, ‘the translation was a good one’. Crown counsel based this assertion on Hohepa’s evidence about the quality of the language, which we referred to in section 4.3.1. Counsel also submitted that there was ‘in fact, little dispute between the Crown and the claimants about the meaning and effect of He Whakaputanga / the Declaration’.

Counsel emphasised that the declaration needed to be understood in the broader context of events preceding it, including Britain’s steps to control its own subjects in.
a country where it had no jurisdiction. Nonetheless, de Thierry's letter provided the 'immediate trigger' for the declaration.\footnote{330}

### 4.6.3 Historical interpretations of the declaration

The Declaration of Independence, as it has usually been called, has received little attention in New Zealand scholarship, and even then has usually been dismissed as a failure and of little relevance. Most often it has been seen as an attempt by Busby to establish – with little or no Māori input – the 'settled form of government' his instructions envisaged. Its only relevance, according to this interpretation, was in its confirmation that Māori were not capable of imposing order on New Zealand's colonial frontier, and so (as we explore in chapters 5 and 6) required assistance in the form of British protection or annexation.

Manuka Henare, in his thesis, challenged this interpretation. New Zealand's colonial history, he argued, has generally been told from a colonial perspective in which Britain is the active and superior player, and Māori have the essentially passive role of accepting British sovereignty.\footnote{331} This was 'particularly noticeable in the accounts (or lack of accounts)' of he Whakaputanga, which in mainstream history had typically been 'ignored, simply denigrated or dismissed as irrelevant'.\footnote{332} Henare gave numerous examples, including those of William Pember Reeves, who in 1898 described the declaration as a 'comical scheme', and Alexander McLintock, who in 1958 described Māori sovereignty as 'fiction', and 'mawkish sentiment'.\footnote{333}

Even in more recent times, many historians have focused on Busby's motives for drafting the declaration and given little consideration to what rangatira might have intended. Keith Sinclair's \textit{History of New Zealand} presented the declaration as an over-reaction to a non-existent threat from de Thierry – a 'big diplomatic gun [fired] at a cardboard silhouette'. Sinclair also described the declaration's recognition of indigenous sovereignty as a 'polite fiction'.\footnote{334} Michael King, in \textit{The Penguin History of New Zealand}, described Busby as persuading Māori to sign the declaration 'in exchange for a . . . cauldron of porridge'. Furthermore, 'Māori had no input' into the declaration, which 'had no constitutional status' and 'no reality', and so was dismissed by colonial officials.\footnote{335} Paul Moon, in \textit{Fatal Frontiers}, his history of New Zealand in the 1830s, wrote of the declaration as a doomed attempt to 'fabricate a modern nation state where none had existed before'.

Was the declaration an overreaction to de Thierry's capricious desire to be a king? Absolutely, but it was as much a panacea for Busby's defunct residency as it was a deterrent to his French adversary. There was nothing wrong, though, with killing two birds with this particular stone, as Busby reasoned. The trouble was, however, that the declaration was little more than a pebble. Good intentions were one thing, but when it came to enforcing them, the chiefs in the confederation, along with Busby, soon discovered there were no teeth in their agreement.\footnote{336}

Other historians have given more consideration to Māori intentions. James Belich, in \textit{Making Peoples}, presented the declaration as Busby's attempt to 'warn off the French and bilk his rival . . . McDonnell', while also acknowledging that 'Māori may have had their own motives in adhering to it'.\footnote{337} Claudia Orange's \textit{The Treaty of Waitangi} considered the declaration in more depth than most New Zealand histories. In her view, the establishment (on paper) of a confederation of chiefs was intended to shore up British influence in New Zealand, and was 'similar to tactics being used with other indigenous peoples in the Pacific where foreign powers were vying with each other'. Māori, too, had an eye on the Pacific: they were aware of the 'challenges accompanying European intrusion' in places such as Tahiti, Hawaii and Tonga, and were 'shrewd enough to see the advantages to be gained by forming some alliance' with Britain.\footnote{338}

In Manuka Henare's view, the 'extraordinary political event of 28th October 1835 would in the life of any modern nation state be celebrated as a milestone of achievement'.\footnote{339} Not only were those events significant in terms of 'mana Māori history' but they were also 'of historical significance for . . . other indigenous peoples in the Pacific and elsewhere around the world'.\footnote{340} Mainstream history, he said, had removed Māori 'from the theatre of Pacific Island peoples' histories' and instead made them
‘part-time players in European, specifically British, settlement history’.

Many of the claimants agreed with this. In our view, published interpretations of he Whakaputanga have generally been based on English-language texts and British concerns, and have as a result been largely dismissive of the declaration. We also think that many interpretations of he Whakaputanga have made the mistake of viewing it through a retrospective lens. For example, we now know that, when de Thierry finally arrived in New Zealand, he was unable to claim his full allotment of land, let alone assert sovereignty. However, this knowledge was not available to Busby, who considered the possibility that de Thierry was a ‘madman’ but thought that it was better to take the threat seriously rather than regret it later; nor was it available to the rangatira, who had been informed only that an armed foreigner was coming to be their sovereign. Similarly, the view of he Whakaputanga as an irrelevant failure is based on perceptions of how it (and in particular the legislature functions that Busby sought) subsequently worked in practice. Overall, in our view, he Whakaputanga has been interpreted in a manner that has reflected British justifications for later deciding to set the declaration aside, rather than being judged in its own context.

The claimant evidence presented to this inquiry and the historical research conducted for it perhaps go some way towards redressing this imbalance. Certainly, the research commissioned on behalf of the Crown, claimants, and the Tribunal itself has brought he Whakaputanga into the spotlight to a greater extent than ever before. Some of that research was based on written sources, and sought to explain British understandings and motivations in considerable depth. That research was in many respects consistent with the existing scholarship. Other research, however, focused on Māori actions and motivations to a greater extent than has previously been the case. Within that research, there was one dominant theme: that the rangatira who signed he Whakaputanga were more interested in enhancing their mana and developing their relationship with Britain than they were in experimenting with new, British-style systems of law and government.

Phillipson, for example, saw the declaration as part of a longer-term relationship between Bay of Islands Māori and the Crown. As well as rejecting de Thierry’s claims of sovereignty, the priorities of those who signed were ‘thanking the King for accepting their flag, and . . . renewing their alliance with their matua across the seas.’ We note, however, that this interpretation reflected the assertion that both the sentiment and language of article 4 had been inserted on the day at the chiefs’ insistence; as discussed earlier, we are sceptical about that claim, which Busby made in 1837 when his agenda was to win Crown support for his proposals for British intervention.

Phillipson also commented on the British reaction, noting that the Crown had ‘once again assured Bay of Islands Māori in a public and formal way of the Crown’s friendship and protection.’ He wrote:

The alliance between the British Crown and Māori was . . . taken a further step by King William’s acceptance of the Declaration. The governments of New South Wales and Britain had now formally recognised the independence of New Zealand and the right of Māori to govern themselves, both in the reception of the flag in 1834 and now again in the recognition of the Declaration in 1836. These two events were accompanied by protestations of friendship and protection on both sides, and stand squarely in the developing relationship started effectively by Hongi Hika and George IV in 1820, and now renewed on repeated occasions by William IV, governors of New South Wales, Secretaries of State, and Colonial Office officials.

Busby’s goal of establishing a government under the authority of a Māori legislature, Phillipson thought, was most likely of less significance to rangatira than this mutual alliance. The rangatira ‘did not think the confederation government, which they were apparently signing up to, would actually work’, and may have agreed to its inclusion in he Whakaputanga either ‘as a matter of form’ because Busby wanted them to, or because it was seen ‘as an ideal, something that they would like to see created but at the moment thought unworkable.’

Merata Kawharu covered similar themes. She, too, thought that rangatira were less interested in Busby’s vision
for ‘a new form of authority, a confederation of chiefs’; and more interested in their alliance with the Crown and enhancing the mana and wellbeing of their people.\textsuperscript{347} He Whakaputanga, in her view, provided an opportunity to expand the alliance with the Crown, allowing rangatira to ‘continue asserting their customary authority’ while the Crown provided ‘support and protection’.\textsuperscript{348} This could be seen as part of a general direction of taking opportunities to enhance ‘independence, authority, development and well-being’ by engaging in trade and commerce, acquiring new technology and skills, and forming new alliances.\textsuperscript{349}

Like Manuka Henare, Kawharu emphasised the oral nature of Māori decision-making. In her view, rather than being concerned with the detailed wording, the rangatira would have seen He Whakaputanga as ‘a beginning of ongoing discussion’, which was likely to take slightly different courses for each rangatira, ‘depending on their needs and those of their hapu’.\textsuperscript{350}

Ralph Johnson, too, saw He Whakaputanga in the context of the Māori–Crown alliance. In his view, the Crown’s actions during the early 1830s would have created a clear expectation that it would respect and actively protect Māori independence and authority, and he Whakaputanga would have reinforced that expectation:

Ngapuhi most likely understood He Whakaputanga as further acknowledgement of their mana and their rights as tangata whenua. The document was in keeping with the earlier oral discussions between Hongi and King George. And following on from these earlier actions and statements of the British Crown, Maori who signed saw the document as acknowledging and securing their autonomy, as well as renewing a preferential relationship with the British Crown. The document was a statement of their collective rangatiratanga, though the authority to exercise such dominion . . . did not reside in the document. Chiefly authority and rangatiratanga was theirs to exercise as tangata whenua.\textsuperscript{351}

As Johnson saw it, however, several factors combined to give Britain a different impression of the document – not least its reliance on the English text.\textsuperscript{352}

Those historians who focused more on documentary evidence and British motivations, by contrast, were more inclined to see the declaration in terms of its origins in Busby’s attempts to form a congress of rangatira, or a British protectorate government legitimised by a veneer of Māori authority.\textsuperscript{353} Professor Paul McHugh saw Busby’s desire to establish this congress as a ‘virtual obsession’, and said that this ‘concern . . . with the collective rather than tribalised sovereignty’ characterised Busby’s entire term as Resident. In this, Busby ‘was not acting in the dark’. He would have been well aware, McHugh said, of British relationships with ‘confederations of indigenous polities’ in India and North America, which had enjoyed highly ritualised relations with the Anglo-European arriviste, as powerful allies and potentially devastating enemies whose support was to be solicited and the authority of whose leaders was fully recognised.\textsuperscript{354}

Professor Alan Ward and Carpenter both explored the possibility that the declaration was intended as a basis for the establishment of some kind of protectorate. According to Ward, Māori had been discussing such an arrangement since the 1820s. His source for this view was Samuel Marsden, who (as discussed earlier) wanted rangatira to unite under a king. We will consider Marsden’s views further in chapter 5.\textsuperscript{355} Carpenter saw the declaration as an attempt by Busby to establish ‘informal control’ or ‘indirect rule’ over New Zealand – an approach, he noted, that Britain typically took when it wanted the benefits of trade and the ability to control British subjects without the trouble or expense associated with formal annexation and declaration of sovereignty.\textsuperscript{356} ‘There is no doubt,’ Carpenter added, ‘that [the] protectorate language [in article 4] was a prominent code for British control.’\textsuperscript{357} In Carpenter’s view, Busby saw each hapū as possessing its own independent sovereignty – a fact he was determined to change by establishing a confederation capable of ‘exercising a collective Sovereignty or Government by means of a national assembly or Parliament.’\textsuperscript{358}

Loveridge believed that there was significance in the establishment – on paper – of a commitment to unify and establish a congress:
Busby, it appears, had been talking up the advantages of a central government since his arrival in 1833. At his very first meeting with the chiefs, for example, he told them that a vital step in Britain's rise as a world power began when its people 'ceased to go to war with each other, and all the tribes became one people'. We know that the Protestant missionaries supported the concept of a Maori government, and we of course know that the chiefs were receptive to Busby’s proposals on 28 October 1835... In other words, the idea of forming a Maori government of some description had been in the air for some time.  

Loveridge noted, however, that the rangatira expressed misgivings about any collective government that required them to submit to majority rule. In his view, they did not expect the proposed congress to have any role in regulating intertribal relationships.  

Several historians considered the question of where sovereignty was meant to lie – with the collective or with individual hapū. Ward was certain it was the former. He argued that  

A core concept [of the declaration] was the subordination of the autonomy of the individual chiefs to the collective authority of the United Tribes, both in their legislative and executive capacity.  

Specifically,  

no function of government was to be exercised except under the authority of laws passed by the congress and by persons appointed under that authority.  

Ward also argued that he Whakaputanga proposed an ‘organisational’ form of alliance embracing all hapū whose rangatira had signed it, as distinct from traditional alliances which were most often created for purposes of ‘war and heke’, were based on whakapapa or marriage, and tended to be transient.  

Kawharu’s view, in contrast, was that rangatira were interested only in collective authority if it would complement, not compromise, existing hapū leadership. Where they acted collectively in their relations with Europeans, this was consistent with a tradition of autonomous hapū that would come together for ‘important events such as tangi or hahunga or large scale war’ but would also fight ‘one another in defence of their mana.’ ‘The Confederation,’ she said, ‘was not... a new system replacing the existing, hapu-centred form of leadership and control.’  

In Carpenter’s view,  

This new confederate state of the United Tribes was not intended to dissolve individual hapū and iwi structures, nor the individual authority of rangatira. Nevertheless, it was meant to unify their authority for the purpose of national government and dealings with foreign nations.  

Put another way, the declaration was intended to ensure that ‘state sovereignty was only possessed by the rangatira collectively (article two)’, but  

what the balance of power, or the differing functions, would be within the United Tribes – that is, between iwi and hapū and the collective power of Congress – was not... specified.  

4.7 The Tribunal’s Views on he Whakaputanga and the Declaration of Independence  
We now turn to our own views of he Whakaputanga and what it meant to those involved at the time it was declared. We think it is important to see the document as it would have been seen in 1835 (at least to the extent that that is possible now), rather than to interpret it in light of subsequent events, as has tended to be the case in mainstream scholarship.  

4.7.1 Questions of interpretation  
There were significant differences between the English and Māori texts of the declaration, as well as differences between claimants and Crown over how those texts should be interpreted. The claimants argued that the reo Māori text – he Whakaputanga – was the definitive document, and we agree. He Whakaputanga, as the Crown told us, was a unilateral declaration by its signatory rangatira;
it was not an agreement or treaty. Only he Whakaputanga was debated, and only he Whakaputanga was signed.

Busby may have brought the ideas to the table, and indeed drafted the original text. But it was ultimately not his declaration. The English text can therefore provide evidence about the meaning of he Whakaputanga but, where the two texts diverge, the Māori text must be seen as authoritative. In this respect, it is unfortunate that the English text has shaped New Zealanders’ understandings of he Whakaputanga for so long.

In arriving at this view, we are not dismissing the English text. First, it provides extremely valuable insights into what Busby thought he had induced rangatira to declare. Secondly, it provides some insight into what the rangatira themselves intended – although, for the reasons set out above, the English text clearly provides less insight on rangatira intentions than the Māori text. Nor are we elevating the texts above the circumstances in which they were produced. All of the witnesses who considered he Whakaputanga in any depth argued that it could not be separated from its context. That was the case even when there were differing views over what that context was – for example, over the nature and extent of Māori cultural change during the 1820s and 1830s, or the extent to which the Māori population was declining.

4.7.2 The meaning and effect of he Whakaputanga and the Declaration of Independence in 1835

When rangatira gathered at Busby’s house on 28 October 1835, they were responding to both an invitation and a warning. A foreigner, they had been told, wanted to be their King – to assert his mana over their lands. Busby’s question had been simple: would they agree to this intruder’s plans?

Many had been called to hui with Busby before: in 1833, when he arrived with a message from the King, offering friendship and protection against French threats and British crimes; and in 1834, when he had offered them the King’s flag so their ships could carry cargoes of food and kauri to Sydney. They had reason to see him as a friend, and as an adviser on how to negotiate the sometimes murky waters of colonial contact. This hui, though, was remarkable for the range of leaders who attended. Busby had invited people from further afield than before, and had presented the threat as immediate and genuine. The leading rangatira from both northern and southern alliances were there, along with those who were able to attend from the Hokianga and other districts.

After they had climbed the hill to Busby’s house, he offered blankets, pork, and a way of responding to this alleged foreign threat. Having determined that the rangatira rejected de Thierry’s claims both to land and to chiefly status, Busby addressed them on the importance of acting in a united manner in response to de Thierry’s claims. This notion of putting aside smaller rivalries in order to take on larger challenges would have seemed perfectly reasonable to rangatira in the 1830s. Indeed, as we have seen, the building of inter-hapū alliances to support common goals, such as the pursuit of mana through warfare or economic endeavour, was a key feature of political organisation among the descendants of Rāhiri, and was entirely consistent with his kawa.

Busby then proposed to the rangatira that their unified response to the French threat should take the form of a written declaration. What was required, he advised, was for the rangatira to affix their tohu (signatures) to a document declaring their rangatiratanga (their chiefly status and duties) in relation to their lands, along with their kingitanga and their mana i te whenua (the highest authority and status within their lands). Their lands were furthermore to be declared ‘wenua rangatira’ – chiefly lands, or lands at peace – another clear endorsement of their authority and their responsibilities as leaders. Their gathering would be referred to as ‘Te Wakaminenga o nga Hapu o Nu Tiredi’. To the rangatira, the transliteration ‘Nu Tiredi’ was probably seen as Britain’s way of referring to these islands, and it may also have implied an idea that they were a single country in the eyes of the outside world. As we have seen, Māori were already using the term in their dealings with Europeans. We do not think that rangatira saw he Whakaputanga as applying to the country as a whole; on the contrary, each would have seen his signature as applying only to the territories of his own hapū, while agreeing to act in concert when necessary.
Having declared their mana, rangatiratanga and kingitanga in very clear terms, the rangatira then also declared that no foreigner would be allowed to make ‘ture’ (usually translated as laws) within their territories, and nor would anyone have powers of ‘Kāwanatanga’ except under their authority. On this point, too, Busby’s proposals would have made perfect sense as a way of rejecting foreign authority within their territories, consistent with their clear assertion of their own authority. Through their contact with missionaries and colonial administrators, the rangatira would have had at least a cursory familiarity with the concept of ture and the role of kāwana. They might have understood ture as guidelines or rules for behaviour, reflecting the word’s meaning in a missionary context. They might also have understood ture simply as decisions. In either case, ture would have been seen as a European form of rule or decision, distinct from tikanga or ritera.

As well as rejecting foreigners’ ability to make ture, Busby proposed that all of the rangatira gather at Waitangi during each year’s harvest season to make their own ture, for the specific purposes of dispensing justice, ensuring peace, ending wrongdoing and ensuring fair trade and commerce. It is not clear from the wording of he Whakaputanga who these ture were to apply to, but it seems most likely that rangatira believed they would apply principally to Europeans and to difficulties arising in Māori-European relationships. The specific context – the threat from de Thierry – implies that ture would be aimed at the contact zones. So, too, do the purposes: peace, trade, justice, and order were all Māori concerns arising from contact with Europeans, as reflected in earlier Māori appeals to the British King. We do not think that rangatira saw the proposed gatherings as being concerned with the exclusively Māori world. That is, they did not see these gatherings as being concerned with intertribal and interhapū relations (except to the extent that it was necessary for them to deliberate and act in concert to control Europeans, as some of them had when they adopted the Hokianga liquor ban and as all of them were doing by debating and declaring he Whakaputanga). Nor did they see these gatherings as being concerned with making ture for whānau and hapū. Within these worlds, for the most part there were existing tikanga and ritera, and existing systems for making and enforcing decisions.

We know that Busby intended rangatira to give up their separate authority as leaders of their hapū, and instead make themselves subject to the ture they would agree at the proposed autumn gatherings. In this respect, the use of ‘in their collective capacity’ in the English text is significant, whereas the Māori text contains no equivalent phrase. Thirty years later, in his unpublished memoirs, Busby claimed to have told rangatira clearly that they would be giving up their individual authority if they signed he Whakaputanga. However, he made no reference to that point in his dispatches immediately after the signing. What is clear is that the rangatira rejected any suggestion that they could or would give up authority to a collective in the manner Busby intended. Indeed, it would have been inconceivable for them to relinquish mana in this way. As Busby said, they did not see how laws made by an assembly could be enforced against anyone inclined to break them, except through traditional sanctions such as warfare: there was no overarching authority, and no place for one in their world view. It is also clear that Busby agreed entirely with this assessment; as he made clear a month after the signing, he saw the declaration as premature, and had no intention of asking the assembly to make or enforce any law. By contrast, as we saw earlier, Patuone, Nene, Moetara, Taonui, and Mohi Tāwhai had been perfectly comfortable enacting and enforcing a local law, and also appeared to see no contradiction between local initiatives and the joint anti-Thierry action they subsequently signed up to in he Whakaputanga. Bourke, too, explicitly endorsed local lawmaking, so long as enforcement was in Māori hands. No one, in other words, actually believed that he Whakaputanga had created a supreme legislature with power over individual hapū.

We also know that Busby’s underlying reason for trying to establish a Māori legislature was so it could do his bidding and legitimise the establishment of an executive (including a military force) under his control. It seems very unlikely that he was so forthright in his explanations to the rangatira. Rather, he may have stuck more closely
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to what was expressed in the text of He Whakaputanga, which suggests only that rangatira held all authority, that no one else could pass laws, and no one else could govern unless authorised by 'to matou huihuinga' (our gathering). This was an explicit rejection of foreign authority, not an invitation for its establishment; and it said nothing at all about hapū relinquishing or transferring any authority. Busby's later claims that rangatira were explicitly asking for a British government to be established under an Ionian-style protectorate arrangement are, in our view, implausible. In summary, then, in assenting to the lawmaking and government functions of He Whakaputanga, rangatira were simply agreeing to meet and make decisions about the colonial frontier and the novel circumstances it had created.

As we have seen, many of the claimants saw He Whakaputanga as the culmination of a series of deliberate steps towards unification or nationhood among Bay of Islands and Hokianga Māori; and many also told us that Te Whakaminenga had existed for many years before He Whakaputanga was declared. It is clear that there were discussions about unification. It is also clear, both from the oral and written evidence, that rangatira met regularly and made decisions about important matters of the day, including their relationships with each other, with other Māori, and with Europeans. In these meetings, everybody knew the tikanga and ritenga: they knew how the debate would be conducted, how decisions would be made, and the values that would apply. The claimants gave evidence of major hui at Te Ngaere and other places, and we have no reason to doubt this evidence. We also have no doubt that one of those hui took place in 1808, though it may have been concerned with the previous year's defeat at Moremonui as much or more than the potential challenges and benefits of contact with Europeans. Most of the claimant evidence was consistent with subsequent meetings occurring at various times and places, involving various leaders, and being held for various purposes. We were not sure, for example, whether the meetings described by claimants typically involved participants from throughout the Bay of Islands, Hokianga, Whangaroa and Whāngārei, or rather were restricted to members of particular alliances or particular hapū. Overall, then, the claimant evidence did not seem to point to the existence of a single body with stable membership, meeting consistently over a period of years. Nor did the written evidence, which did however suggest that large regional hākari and hahunga were reasonably frequent and involved political functions, at least until 1835. It was unclear to us whether most of the claimants believed that the term 'Te Whakaminenga' was in use before 1835 as a term for a formal body of rangatira, or rather were saying that the body already existed and acquired a new name in 1835. It seems to us that the name might have been retrospectively applied since 1835 to oral traditions about major inter-hapū hui.

While there was differing evidence on many points concerning Te Whakaminenga, on one point there was unanimity among the claimants. Whatever political structures were in place before He Whakaputanga, and whatever systems He Whakaputanga purported to put in place, none of them diminished the mana of individual hapū, nor the responsibility of individual rangatira to act in accordance with that mana. Hapū remained the principal political unit, and also the principal unit of identification. Sometimes they acted alone, and sometimes through alliances, such as the kin-based northern and southern alliances that had existed for some time in the Bay of Islands. By all agreeing to meet annually and make decisions together, rangatira did not change that. Declaring mana and kingitanga of 'ngā hapū' reinforced it. In other words, we do not think that the rangatira who signed He Whakaputanga saw it as heralding any fundamental change to their existing forms of political organisation. On the contrary, he Whakaputanga simply reflected the reality that the signatories' hapū were wholly autonomous but were capable of deliberating and acting in concert when circumstances required, as reflected in their agreement to all meet annually at Waitangi, as well as in the many inter-hapū gatherings that took place before October 1835.

The final part of He Whakaputanga dealt with the relationship between Māori and Britain. It is clear that this relationship mattered to the rangatira, both on a personal level – in that friendship with the King could be seen as a reflection of their mana – and for other reasons such
as trade, security against foreign threat, and the ongoing hope that Britain would find a way of controlling its own people. In the context of a supposed foreign threat, and Busby’s help in responding to it, the rangatira were very willing to renew and deepen this friendship. It is clear in the text in both languages that they saw this as a two-way exchange, even if Busby and other officials saw it mainly in terms of Britain bestowing its protection on a weaker state. The Māori request for British protection specifically referred to threats against their rangatiratanga, and we think the reference to the King acting as ‘matua’ can be understood in exactly this sense – he was being asked to make sure that no self-proclaimed ‘Sovereign Chief’ could come in and usurp Māori authority. There is certainly nothing, in either the text itself or the surrounding events, to suggest that rangatira would have seen themselves as asking Britain to administer their territories under some kind of formal protectorate arrangement, as Busby seemingly envisaged.

Rather, to the rangatira, Britain’s role in the declaration can only have been seen as explicit recognition of their mana, and as evidence that Britain was willing actively to protect it. Busby – who had already assisted them by providing a flag – was now warning them of a foreign threat, and advising them how to respond in order to assert their independence and authority. Everything about these events would have served to reinforce in the minds of the rangatira the belief that the friendship initially forged between Hongi and King George endured.

Britain saw New Zealand as a useful but minor outpost in its vast empire. It did not see itself as bound by Busby’s actions, especially as he had sought no specific authorisation and Bourke quickly rebuked him. Britain’s official responses were carefully worded. Glenelg acknowledged receipt of the English text which declared the existence of a single, independent state, acknowledged the request by rangatira for British protection against attempts on their independence, and provided some very conditional assurances on the latter point. Bourke, in his official response to the declaration in February 1836, commended Busby for taking steps to thwart de Thierry, but rejected his attempts to establish a legislature based on the collective authority of all rangatira.\(^{369}\) In our view, these responses were consistent with earlier British acknowledgement of Māori independence, but did nothing to extend it. Indeed, Glenelg’s response raises the question of how Britain might act if it perceived Māori independence as in any way conflicting with ‘the just Rights of others and to the Interests of His Majesty’s Subjects’. In later chapters we will see how British policy towards New Zealand evolved as circumstances changed.

One question remains: did the assertion of mana, kingitanga, and rangatiratanga made by those rangatira who signed He Whakaputanga amount to a declaration of sovereignty as the British would have understood sovereignty at the time? We have saved that question until last because we have sought to understand He Whakaputanga, to the extent that we can, in terms that would have made sense to the rangatira who declared it. The question of what ‘sovereignty’ meant as an English-language legal term is not one that was likely to have occurred to the rangatira who signed He Whakaputanga, since they debated and signed it in their own language, and their concern was with asserting authority in their own terms. The question of whether Māori concepts of authority can be reconciled in any way with the British concept of sovereignty is a question that has arisen much more recently.

We have discussed British understandings of sovereignty in earlier chapters, and we have also discussed Māori concepts of authority both in chapter 2 and earlier in this chapter. As we have seen, mana and sovereignty are far from interchangeable. Each is a reflection of its own culture, and each carries with it certain assumptions about where authority derives from and how it can be exercised.

Nonetheless, when rangatira asserted their mana i te whenua, there can be no doubt that they intended this as an expression of the highest level of authority within their territories. They furthermore asserted their rangatiratanga – their rights as leaders subordinate to no one else within their territories. And they asserted their kingitanga, an assertion that their status was equivalent to that of the King, and that there could be no leaders above them.
Taken together, these assertions of mana, rangatiratanga and kīngitanga undoubtedly amounted to an assertion of their authority to make and enforce law, and therefore of their sovereignty. Indeed, both the claimants and the Crown recognised he Whakaputanga as a declaration of the sovereignty and independence of those who signed it. We agree that it was.

It is important to be clear that authority remained with hapū after he Whakaputanga as before. On that basis, we do not believe that any collective or confederate northern Māori sovereignty existed in 1835, or before. Nor do we believe that a single state existed in the Bay of Islands and Hokianga area or neighbouring districts prior to 1835, and nor was one created by he Whakaputanga. Indeed, had rangatira intended to make such a significant step as declaring their nationhood on a collective or confederate basis, we think they would have found their own occasion rather than waiting until a letter from Tahiti prompted the British Resident to action.

In summary, then, we do not think that he Whakaputanga heralded a radical change in political organisation among those hapū whose rangatira signed it. It was, rather, a pragmatic response, based on Busby’s advice, to a perceived foreign threat. Its principal significance was as a written assertion of the mana, rangatiratanga, and independence of those who signed, supported by a commitment to unify in the face of foreign threat, and to ensure that no foreign law or government could be imposed on them. It was also important as a renewed declaration of friendship with Britain and its King, based on mutual benefit through trade, mutual commitments of protection, and British recognition of rangatiratanga and mana i te whenua. In the remaining parts of he Whakaputanga, the rangatira accepted Busby’s invitation to hold further minenga each autumn where they would make decisions or rules for specific purposes. This lawmaking aspect was most likely aimed at managing the colonial frontier but perhaps was also intended as a way of managing relations with other tribes. This was not, however, a legislature with powers to make laws for all. Ultimate authority remained with hapū, whether expressed individually or in concert.

4.8 1836–37: The Impact of the Declaration

Having seen what he Whakaputanga and the Declaration meant in 1835, we now turn to consider how it operated in the following years. As we will see, Busby’s position as a host of hui was quickly compromised, in circumstances that left him once again fearing for his safety. He became increasingly despondent, and by the middle of 1837 had effectively given up on any prospect of a government being established under Māori authority. The claimants, however, told us that meetings of a joint decision-making body did occur – they just did not involve the Resident.

4.8.1 The residence loses its sacredness

Within months of the declaration being signed, a violent conflict broke out at Busby’s residence while he was mediating between two groups. One of those groups was Te Hikutū, led by Wharepoaka and Waikato – both of whom had been among the original signatories of the declaration. The other was led by Noa, a Ngāti Manu rangatira who apparently lived at Kawakawa. The dispute concerned a kauri forest at Whananaki. Waikato, who claimed a recent ancestral connection to the forest, had come to an arrangement with two European traders that allowed them to cut trees there; Noa’s people objected, claiming the land was theirs and that Waikato’s connection was remote. The CMS became involved, drawing up a deed of trust under which the consent of the missionary trustees was required before any transaction could go ahead. Henry Williams then wrote to the traders to warn them off, and Waikato – angered by this missionary interference in his commercial activities – asked Busby to mediate. ‘Mr Williams was not sent here to shew justice done, but you were,’ Waikato wrote to Busby, in a letter apparently composed on his behalf by one of the traders. ‘Therefore I apply to you as it is my full determination never to give up my claim to my own lawful property’. Waikato delivered the letter in person, also leaving the rifle he had received from King George IV, perhaps as a reminder of his friendship with Britain and Busby’s role in maintaining that friendship.

On 12 January 1836, the two rival groups gathered at
Waitangi. Te Hikutū brought between 35 and 40 men; Noa’s party comprised about 150 men, women, and children, and was largely unarmed. As Phillipson explained:

In the middle of the hui, when Noa’s people were tracing their ancestral rights in the area, a scuffle broke out and the Te Hikutū went for their guns, which they had secreted nearby, as well as a supply of ammunition and rocks for throwing.

Two of Noa’s people were killed, and others were injured. Most crowded into Busby’s residence, while Busby and the missionaries persuaded Waikato against further violence, partly by telling him that he had offended the King. “The floors were covered with blood of the wounded men,” the Resident reported.

The incident underlined Busby’s lack of power. Having called a hui, he could not then protect those who attended. Noa’s party included four rangatira ‘whose names are on my list as heads of Tribes’, and afterwards Busby urged them against immediate reprisals. He wanted the punishment to fall only on the guilty, but he also agreed with the rangatira that, because they had gathered under his protection, it was ‘in some measure’ up to Britain to carry out that punishment. He asked for time to seek British intervention, and said he would call the rangatira together as a group once he had heard Britain’s answer, for it was up to them collectively and not the injured tribe to see justice done. Remarkably, they agreed to leave any action up to Busby, though they made it clear it would be on his head – as well as theirs – if action was not taken. They also made it clear they would no longer meet at his residence, thus dealing a fatal blow to his ambition of establishing a congress of rangatira under his direct control:

They [said] that they had considered my 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 of its sanctity, and they did not know who would be murdered next.

In the days after, Busby was visited by many rangatira, all of them armed. Some, who were connected with Noa and therefore the southern alliance, now argued for quick reprisals and could not see why utu should be delayed. Others, including Titore, were indifferent to the killings or were prepared to ‘justify [them] according to native usages’ on grounds that Waikato had been provoked.

On 18 January, Busby wrote to Bourke, describing the incident and asking for military assistance so he could punish those responsible. He argued that if he left Noa’s people to respond, all-out war would result. On the other hand, he could not justify counselling Ngāti Manu to hold their peace if that would result in Waikato getting off scot-free. Furthermore, he argued, the incident was an insult to Britain’s honour, and it had been provoked by the actions of British traders. The only option, in his view, was for British intervention, in which Te Hikutū should be ‘thoroughly humbled’ and those who fired brought to justice.

Busby followed this appeal with an explanation of why the congress of rangatira – so recently declared on paper in he Whakaputanga – could not handle the matter. While he assured the Governor that he had not ‘lost sight of the duties which fall on the confederated Chiefs, by their late act of union’, those duties ‘exist as yet only in theory’. Waikato’s action had showed once again, he argued, that Māori were not yet capable of legislating, nor governing, since they had no concept of submission to legal authority. They might be led as ‘passive instruments’ to enact laws that Britain suggested to them, and eventually to establish British-style institutions of government. But until that occurred the ‘well disposed’ Māori – particularly those who had converted to Christianity, as Noa had – would be left exposed to the aggressive actions of others ‘whom the dread of vengeance alone will restrain’. If Busby did have to leave the matter to the congress of rangatira, he said, they might agree to sanction Waikato, but this would simply lead to war – and that war would endanger British subjects as well as Māori.

Over the following weeks, Busby was to write several more times to Bourke about this incident, setting out his fear of escalating conflict and his arguments for intervention. On 26 January, he told Bourke that Titore had offered to support Waikato in any conflict, while Pōmare would support Noa – reflecting the division of the Bay of
Islands between northern and southern alliances. Under the circumstances, Busby said, it would be impossible to call the tino rangatira together. Those who wanted peace would not attend, and the others would fight. British intervention, Busby argued, had now become ‘indispensable’ and ‘cannot be deferred’. To his concerns about conflict, Busby now added a range of other reasons for Britain to get involved: the British population in the north was growing; much of the land around the Bay of Islands and Hokianga had already passed into British hands; and there were ample resources and trading opportunities with which to fund a British government. New Zealand was ‘essentially British in all its interests’, and intervention was needed to protect those interests and British honour, as well as to further ‘justice and humanity’.

Busby also began to reinterpret the three-month-old declaration, turning it from an assertion of mana i te whenua into a request for Britain to establish a government. He wrote:

In their late declaration of Independence, the Chiefs prayed that their Country might be taken under the protection of the British Government. They are perfectly convinced of their incapacity to govern themselves, or to cope unaided with the novel circumstances to which they are constantly exposed by the encroachments of their civilised visitors – They have as yet confidence in the British Government, and if protected in their Landed property, and their personal rights: they would I am sure gladly become the subjects of the King of England; and yield up the Government of their Country to those who are more fitted to conduct it . . .

However, Busby continued, it was not necessary to go that far. A protectorate arrangement would suffice, he said, giving the example (referred to earlier) of the Ionian Islands, and describing an arrangement in which New Zealand remained nominally independent and had ‘a share in the Government of the Country’ while ‘ultimate authority’ was reserved for Britain. According to Parkinson, Busby’s advocacy for a protectorate meant that the ‘short-lived scheme for the “Confederation” was abandoned. As an indication of just how high tensions were, Busby revealed that Waikato had threatened to burn down his house with him in it. He also revealed that his Māori servants took the threat seriously, and so were no longer sleeping at his property. He told Bourke he had decided to send his family to Sydney for their protection. He asked for 100 British troops to be sent so that the ‘most guilty’ individuals involved in the ‘late insult upon the British Government’ should be punished. If they could be found, he said, the British response should be ‘complete dispersion and degradation’ of Te Hikutū. In late February, Busby wrote again to Bourke, noting that tensions remained high, with the rival alliances ‘under arms’ and building fortifications. Waikato, Busby said, was determined to press his claims to Whananaki by force and was seeking allies from other parts of the country, while Ngāti Manu and their southern alliance allies were determined to resist. Ultimately, Busby blamed the Pākehā timber traders, one of whom had also threatened to shoot an old Pākehā who was living on part of the Whananaki land. A military force was needed, he said, not only to punish Te Hikutū but also to control Pākehā ‘of such character’. Upon the arrival of troops, he suggested, Māori who ‘remain quiet in their Villages’ should be left untouched, but any who sided with Te Hikutū ‘should be considered as the enemies of the King’, and have their lands confiscated.

Alongside the tensions between Te Hikutū and Ngāti Manu, there were new flare-ups involving Europeans. Early in March, Busby was called to the Hokianga to mediate in a bitter dispute between McDonnell, who was using his official position to further his trading interests, and the Wesleyan missionary William White, who was threatening to draw up his own code of laws if Busby did not intervene. Busby’s response was to request an urgent printing of the declaration, which took place on 8 March. The Resident took the printed document to the Hokianga and showed to White, as a means of counselling against the ‘subversive’ act he had proposed. Busby removed Waikato’s name from the printed copy, while leaving that of his brother-in-law Wharepoaka in place. The names of Te Peha and Hōne Heke were also removed from the printings, for reasons unknown.
At around the same time, the missionaries heard again from de Thierry, who protested that he had been misunderstood and meant only to be a friend of both the chiefs and the British in New Zealand.\footnote{385} The missionaries passed this on to Busby, who in turn wrote to Bourke, warning him that the smallest spark from de Thierry could provoke war – not only in the Bay of Islands but also now in the Hokianga, since rangatira were taking sides in the dispute between McDonnell and White. Busby asked Bourke for permission to travel southwards to obtain more signatures for the declaration, with the specific intention of preventing de Thierry from gaining a foothold in any other part of the country.\footnote{386} As we mentioned earlier, he had continued to gather signatures during 1836. Although little is known about how they were obtained, their timing is intriguing. Kiwikiwi – Pōmare’s close ally, and a relative of Noa’s – signed a week after the skirmish at Busby’s residence, and two more had signed by the end of March.\footnote{387} The ship that carried Busby’s letter to Bourke also carried Busby’s family.\footnote{388}

Bourke gave his consent for the trip, though his reply did not arrive before winter rain made travel impossible.\footnote{389} However, he declined Busby’s request for a British armed force. Sending such a force under these circumstances, he said, would amount ‘to an invasion of an independent state’. Bourke indicated that this military interference would be justified if British interests or honour were genuinely at stake, but in his view they were not. Rather, this was a matter between Māori. Under those circumstances, it would be ‘wholly unjustifiable to take the lives of those People under colour of British Law to which they owe no obedience’. The Governor suggested that Busby persuade the rangatira to deal with Waikato as they had Rete, by banishing him and confiscating his property.\footnote{390} Such a response, Busby argued, would ‘occasion a general war’, as well as leaving Waikato free to take the disputed Whananaki land by force. Furthermore, leaving Waikato’s actions unpunished would send a signal to rangatira that they should pay no attention to British authority. Busby sought Bourke’s permission to travel to London to explain his difficulties, and make the case for armed intervention and the establishment of a protectorate. In the meantime, he considered his office ‘in abeyance’, for he could fulfil neither the general instruction to establish settled government nor the specific instructions Bourke was now sending him.\footnote{391} A few months later, the Colonial Office – which had grown tired of Busby’s complaints and regarded his office as a failure – sanctioned his removal. Bourke, for some reason, did not take any steps to remove Busby before his own resignation in 1837.\footnote{392}

4.8.2 War between the northern and southern alliances

Glenelg’s response to the Declaration, with its qualified offer of support and protection, finally reached Busby in January 1837.\footnote{393} It arrived, according to Busby, at a time when ‘the state of affairs here has been more unsettled than at any . . . period since the arrival of the Missionaries’. In the Hokianga, trade and land transactions had almost led to violence, with Moetara on one side, and Nene and Patuone on the other; each side was egged on by the rivals McDonnell and White, leading Nene to threaten McDonnell with deportation. More seriously, Waikato’s relative Kaitoke killed two Christian Māori during a church service at Mangamuka; Nene took vengeance, killing a dozen of Kaitoke’s kin. This conflict, according to Busby, had its origins in the previous year’s dispute over the Whananaki forest, though many observers saw religious overtones as Kaitoke and Waikato were followers of the Papahurihia faith.\footnote{394} There were also skirmishes in the Bay of Islands involving Rete and his relatives. Busby claimed that Rete’s brother had fired a gun towards one of his servants, and that Rete had threatened the life of the trader Gilbert Mair, holding an axe to the trader’s neck and saying ‘do not think . . . I am afraid, am I not the man who shot Mr Busby’. Busby also reported several acts of Māori violence towards traders and missionaries in the Bay of Plenty and Thames.\footnote{395} Under these circumstances, Busby continued to fear that any attempt to call the rangatira together would result either in them refusing to attend or in further bloodshed.\footnote{396} No meeting ever took place to hear Britain’s official response to the Whakaputanga. Although 100 copies of he Whakaputanga were printed on 27 April, we are not aware of any direct evidence that Glenelg’s letter was also circulated.\footnote{397} In particular, the
missionary printer William Colenso’s books contain no record of Glenelg’s letter being printed.\textsuperscript{398}

If skirmishes between Māori were a problem, disorder among Europeans was an arguably bigger one, and Busby was similarly helpless to prevent it. In March 1837, some 200 British settlers, apparently under missionary guidance, petitioned the King, calling for a British government to be established. The petitioners highlighted the supposed threat posed by de Thierry, but their real target appeared to be a ‘lawless band of Europeans’ responsible for ‘numberless robberies’. Busby, they complained, had no authority to respond to ‘acts of outrage’, and the confederation of rangatira supposedly established by the declaration was not capable of enacting laws to address these problems of European disorder as was ‘acknowledged by the chiefs themselves’. Either Britain must intervene, or the law-abiding British settlers and traders – not to mention Māori – would inevitably fall victim to ‘murders . . . and every kind of evil’. This petition appears to have been motivated by the robbery and attempted murder of a local trader, Captain John Wright, by four Pākehā men.\textsuperscript{399}

The following month, a larger conflict erupted between

\textbf{The Ōtuihu pā that Pōmare II established after his retreat from Kororāreka in 1830. In 1837, Pōmare’s forces – including more than 130 Europeans based at Ōtuihu – fought against the forces of the northern alliance in a conflict that some interpret as Pōmare’s attempt to retake Kororāreka.}
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the rival northern and southern alliances, led on one side by Titore and on the other by Pōmare. There are various accounts of the origins of and motivations for the war. According to contemporary observers, it was sparked by the disappearance of a woman relative of Pōmare, who then accused northern alliance rangatira of her murder (when in fact she had gone south to Cloudy Bay on a visiting ship). Some claimants told us an underlying cause was animosity between Te Māhurehure and Ngāti Hine dating back to the death of Whareumu in 1828. Historians have also seen the dispute as an attempt by Pōmare to retake Kororāreka, which the southern alliance had given up seven years earlier. According to Busby, Pōmare had about 200 warriors (of which the most active were members of Ngāti Kahungunu, who were related to Pōmare by marriage), while the northern alliance had about 800. A party of about 200 Te Rarawa arrived in May or June, and Busby feared they would join the conflict on the northern alliance side, though ultimately they did not.

Busby referred to the northern alliance alone as ‘Ngapuhi’. His account also gave an insight into his perception of the complexities of inter-hapū alliances. He referred, for example, to divisions between Pōmare and other southern alliance leaders: some were willing to make peace, but Pōmare was not, and as long as he kept fighting they were obliged by kinship to remain with him. Busby also said that kin relationships could draw in people from far and wide, since an attack on any one person could oblige relatives from throughout the north to respond. In this way, he argued, there were ‘few persons so insignificant as not to have it in their power at any time to involve the Country in war’ – though, in expressing these views, he seems to have missed the fact that kin-based alliances could be a source of peacemaking as well as war.

The fighting resulted in about 30–50 Māori deaths at most, including that of Te Māhurehure rangatira Pi. It was a war between close relatives and much of the fighting was deliberately restrained. Polack described warriors performing furious haka and sending off ‘hundreds of thousands’ of lead shots over the course of the conflict, but usually at a safe distance from enemy combatants. Busby was initially so fearful of British deaths that he persuaded Bourke to send a Royal Navy ship. In the event, Europeans were almost entirely left alone, though in a few instances goods were plundered. Indeed, when HMS Rattlesnake arrived in June as hostilities were dying down, its commander, William Hobson, reported that Busby had been entirely alone in his fears; ‘in one instance’, he reported, ‘the two parties, by mutual consent, removed the scene of action to a greater distance from our settlements, lest a white man should by accident be injured’. If there was danger to British subjects, it was from their own ‘abandoned ruffians’.

Erima Henare related Ngāti Hine’s version of events, describing the battle of Waikerepuru at Ōpua as one between Te Māhurehure on the one hand, and Ngāti Hine, Ngāti Manu and te Kapotai on the other, in which Pi was killed by Kawiti.

According to some accounts, the conflict ended in the wake of Titore’s death in battle in early June. However, Busby and Polack both suggested that he died from illness rather than battle wounds. Various missionaries tried to broker peace, as did Hobson and McDonnell. But according to Polack, it was Nene and other Hokianga rangatira who ended the conflict: being equally related to both sides, they were reluctant to join the fight. Hobson supported this view, and gave another reason: the death of a southern alliance rangatira had restored balance between the warring factions, allowing them to end the fighting with their mana intact.

For Busby, the significance of this skirmish was that it provided yet another example of the weakness of his role, and the inability (in his view) of the rangatira to establish order or government. As Phillipson put it:

Unable to assemble the chiefs, feeling under-confident in his personal status, and seeing his vision of confederacy collapsing as the war canoes fired at each other on the Bay, Busby became very discouraged and felt that his role was untenable.

In a long dispatch to Bourke on 16 June 1837, the Resident repeated his previous concerns about tribal warfare and control of Europeans, but added a new twist: Māori depopulation. So serious were the events he
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Described that ‘district after district has become void of its inhabitants’; before very long, he suggested, the entire country would be ‘destitute of a single aboriginal’. The only answer to this miserable state was for Britain to intervene and establish ‘absolute authority’. 

Busby then set out an elaborate proposal for the establishment of a protectorate government. In essence, this was consistent with his earlier vision of a British protectorate government in which rangatira would exercise nominal sovereignty, while he, supported by British troops, would run the executive government and decide what laws the rangatira should pass. Busby referred once again to the Ionian Islands example. He also explained how, in his view, the declaration could be used as a basis to establish such a protectorate:

The articles of Confederation having established and declared the basis of a Constitution of Government, it follows, I think, that the rights of a Sovereign power exist in the members of that Confederation, however limited the exercise of those rights has hitherto been.

On that basis, Busby argued,

the Chiefs are competent to become parties to a Treaty with a Foreign Government, and to avail themselves of Foreign assistance in reducing their Country to order.

The remaining details of Busby’s proposals matter little here – Bourke was to quickly dismiss them. What mattered were Busby’s descriptions of the miserable state of affairs in New Zealand, and the influence those descriptions would have on British policy – a matter we will discuss in detail in chapters 5 and 6.

4.8.3 A congress that never met?
In 1840, when Busby was called to appear before the New South Wales Legislative Council, he was asked whether Te Whakaminenga had ever met on its own initiative, or ever acted collectively in any way that could be seen as an act of sovereign power. Busby’s answer to both of these questions was that it had not. This view – that the chiefs never met as a formal assembly – has generally been accepted by European observers. The Crown, in its closing submissions, told us:

We have no evidence of the confederation meeting in congress each October to make laws. This appears to have been because subsequent unrest made it difficult to do so.

The claimants, however, said that gatherings of rangatira took place after 1835, in spite of the conflicts that erupted. Kiharoa Parker, for example, told us that rangatira continued to meet ‘in the harvest season’, but Busby and the missionaries either were not invited or chose not to attend. According to Parker, this was evidence of rangatira continuing to conduct their business according to their old ways, the way which suited themselves and not the Europeans.

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The Ariki and Rangatira were still in control of the country and continued to be in control after the Treaty was signed up, until the British troops came.

Erima Henare told us that ‘the burden of hosting the hui’ was ‘scattered around Ngāpuhi as opposed to . . . falling on Ngāti Rāhiri and Ngāti Kawa’ at Waitangi, who had by then ‘lost almost all of their lands’. Emma Gibbs-Smith said meetings were held at Waitangi, but not at Busby’s residence. She told us that, when he Whakaputanga was signed, Te Kēmara expressed his confidence in it by gifting a half-acre of land south of Busby’s residence, enabling ‘other rangatira of the motu and their hapū to erect a paremata [parliament]’. This was a few hundred metres south of Busby’s residence, and is known today as ‘Te Tou Rangatira’ (which Henare translated as ‘the meeting place of great leaders’). Gibbs-Smith said sacred stone markers were placed around the site, showing where manuhiri should base themselves during hui. ‘The placing of the stone confirmed the kaupapa was set,’ she said. ‘The
kaupapa being, the Whakaputanga.’ A stone seat was later built on the site.416

We heard little else about the origins of Te Tou Rangatira (as it is commonly spelled). Te Warihi Hetaraka said that rangatira were gathering there by the 1830s, but provided no other details.417 Gray Theodore told us:

that land of my father’s known as Te Tou Rangatira lies in the centre with the battlegrounds of Ohaewai and Omapere on either side and Ngapuhi would have defended that to the bitter end. Te Tou Rangatira, Seat of the Senate, home and land of our fathers from time immemorial has an honoured place in the hearts, mind, and memories of the Taiamai, Ngapuhi iwi.418

Kawharu, however, referred to an account in which Te Tou Rangatira was the location of a series of discussions leading to the signing of te Tiriti o Waitangi in 1840. The venue for these meetings ‘was adjacent to the Te Tii Marae [and] became known as Te Nohonga o Nga tou o Nga Rangatira, meaning the place at which the ancestors sat and pondered’.419

Counsel for Te Rūnanga o Ngāti Hine submitted that there was ‘a large gap’ between the Crown and claimant understandings of Te Whakaminenga after 1835:

It appears Busby and the Colonial officials expected the Chiefs to mimic British modes of governance and assemble in an orderly way at an appointed time each year in a kind of local Parliament. From the perspective of the rangatira they did not need to establish ‘a new form of government…’. They already had their own governance arrangements and they regarded He Whakaputanga as an explicit acknowledgement of that fact….

After the declaration the rangatira and their hapu continued to harvest, trade and fight. They welcomed or expelled foreigners and made peace under their own mana. Busby, the missionaries and other Pakeha had only such influence in any of these matters as the Chiefs allowed or considered appropriate.

On matters involving all of Ngapuhi the Chiefs continued to meet. This was the case before 1835, after 1835, after 1840 and right down to the present day.420

The meetings after 1835, counsel submitted, occurred ‘at various places in the North’. If Busby did not attend and was not aware of these meetings, ‘this shows nothing other than the fact that the rangatira did not wish to consult him on the matters under discussion’.421 However, if Busby wanted to introduce a policy affecting Māori, the rangatira would expect to be informed and give their consent.422 Counsel noted that

The fact that the Crown may have been excluded from or ignorant of Ngapuhi political arrangements and discussions in the 1830’s and 1840’s (and subsequently) does not mean (as the Crown implies) that there was no such political organisational structure. The Crown has difficulty understanding history through Māori eyes. Ngati Hine hope that the Tribunal will be better placed to hear and understand this history and thereby help bridge the misunderstandings and misrepresentations currently entrenched in the so called ‘mainstream’.423

Counsel for te Rūnanga a Iwi o Ngāti Kahu and claimants from Ngāti Kuta and hapū of Patukeha also challenged the view that Te Whakaminenga did not meet, and indeed questioned the relevance of the matter. In counsel’s submission, the belief that Te Whakaminenga did not meet was wholly based on British written evidence, and ignored the fact that Māori were unlikely to have kept written records of meetings.424 Meetings did occur, it was submitted, though they ‘may have taken the form of smaller, area-based hapu collectives’ (as distinct from annual hui of all signatory rangatira).425 Most likely, counsel argued, Busby was not aware of these meetings.426 More significantly, counsel submitted, ‘the frequency of Te Wakaminenga meeting is not indicative of the effectiveness of He Whakaputanga.’ The declaration established ‘an additional layer of inter-hapu communication and decision-making’, but this was not its main purpose:
He Whakaputanga was a declaration by the rangatira of Maori sovereignty and rights to govern Aotearoa in accordance with their tikanga. For Counsels’ claimants, this meant hapu were to remain independent and autonomous. The main aspect of he Whakaputanga was a declaration of a distinct Maori sovereignty, an enhancement of hapu and rangatira mana, and the added protection of the King as and when required.

Manuka Henare said that there were different understandings at the time about what constituted a parliament. It could be seen either as a formally constituted, elected body meeting regularly at a specific place, or it could be understood ‘not . . . as a building or a place but anywhere . . . people came together and made decisions for the common good’. Whether Te Whakaminenga actually met, he argued, depended on which definition was used.

Kawharu also discussed hapu and inter-hapu decision-making after 1835. In her view, Busby’s ideas for a supreme lawmaking body were not adopted because they were ‘foreign’ to Māori. After the declaration, the marae continued to be the ‘centre for debate and discussion’; the hapu remained the centre of political organisation; and inter-hapu disputes continued to be ‘worked out through war, utu or marriage’, just as they had been in preceding years. Māori did, however, ‘seek advice’ from Busby and missionaries, and asked them to mediate in disputes when it ‘made sense’ to do so.

Kawharu suggested Te Whakaminenga – meaning a meeting of senior rangatira from throughout the Bay of Islands, Hokianga, and neighbouring districts – may have met a handful of times. On other occasions, smaller groups of rangatira would also have met at a local level at places such as the Bay of Islands, Hokianga, and Waimate. If the full Whakaminenga did not meet more often, this was because there was ‘no great incentive’ for it to do so. After 1835, she suggested, matters continued to be worked out according to tikanga. Although there was inter-hapu conflict, this was ‘local and particular’, and could be resolved using ‘existing forms of authority and control.’

The Crown, in its closing submissions, argued that Britain continued to recognise Māori sovereignty after 1835, but that sovereignty was seen as resting with the hapu, not with any confederation. This was because Te Whakaminenga had never met. The claimant evidence, it was submitted, was that he Whakaputanga ‘had little effect on the political organisation of rangatira and hapu between 1835 and 1840’:

The claims do not appear to have asserted that He Whakaputanga/the Declaration amounted to a distinct change in tikanga: from hapu autonomy to the location of a supreme confederative form of sovereignty in one new entity, Te Whakaminenga, as proposed by the words of He Whakaputanga/the Declaration. Rather, their evidence is that the way of life for Northland Māori continued to be consistent with their pepeha, ‘Ngapuhi Kowhao-rau’, whereby hapu autonomy remained intact.

In the Crown’s view, therefore, the declaration ‘expressed the aspiration of rangatira to develop a functioning nation state’ without bringing that state into reality. Both before and after the declaration, northern Māori ‘exercised a form of sovereignty and independence that was consistent with hapu autonomy’ (emphasis added).

4.8.4 A failed experiment?
A few weeks after Busby had sent his 16 June 1837 dispatch, he was obtaining more signatures for he Whakaputanga – those of Parore, Kaha, Te Morenga, and possibly Mahia.

He also asked a committee of rangatira, whom he said had been appointed by Te Whakaminenga, to sign a warrant.
authorising the arrest and deportation to Sydney of two of the men accused of the attack on Captain Wright.436 Aside from the declaration itself, this was to become the only act of Te Whakaminenga for which there is written evidence.

The last two signatures – those of Te Hapuku in 1838, and Te Wherowhero in 1839 – had the effect of extending the declaration’s reach beyond northern New Zealand. Te Hapuku was a senior rangatira of Te Whatu-i-Apiti from the Hawke’s Bay.437 Te Wherowhero, a senior rangatira of Ngāti Mahuta, had achieved great prominence as a war leader during the 1820s.438

Manuka Henare noted that these leaders had kinship and political ties in the north. Te Wherowhero had made a peace pact with the northern alliance and Te Rarawa in the early 1820s, and his relative Kati had married Rewa’s daughter Toha. Te Hapuku was similarly aligned with Pōmare and Kawiti, and was a ‘frequent visitor to Waitangi’.439 These connections may have influenced those two rangatira to sign – indeed, it was during one of his visits to the Bay of Islands that Te Hapuku added his tohu.440

Very little is known about Busby’s motives for gathering further signatures after June 1837. Clearly, by that time he had given up hope of establishing a Māori legislature. He may have been responding to de Thierry, who was to arrive in New Zealand later that year and struggle to assert his land claim, let alone anything resembling sovereign power. Busby may also have been seeking more signatures as the basis for a treaty establishing a British protectorate government, as he had advocated in his 16 June 1837 dispatch to Busby.441

Little is known, also, about the reasons Te Hapuku and Te Wherowhero had for signing He Whakaputanga, other than the possible influence of kinship. Te Amohia McQueen, a descendant of Te Wherowhero, said the Waikato leader signed to affirm the mana tangata, mana whenua and mana atua, and to uphold tikanga. It was on this basis ‘that Kingitanga was reaffirmed in He Wakaputanga’. Te Wherowhero would also have understood He Whakaputanga as meaning that the Crown would extend a ‘hand of friendship’ to protect his independence – should it ever need protection.442

In spite of Busby’s efforts to gather further signatures, by mid-1837 many European observers saw the declaration as a failure, largely on the basis that there was no legislature or national government. When Hobson visited in 1837, he formed the view that,

notwithstanding their formal declaration of independence, they [rangatira] have not, in fact, any government whatsoever; nor could a meeting of the chiefs who profess to be the heads of the united tribes, take place at any time without danger of bloodshed.

There was, then, little prospect of laws being framed or order restored. Hobson recommended that Britain seek consent from Māori (through a treaty) to establish
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factories’ – small territories under British jurisdiction – in the Hokianga, in the Bay of Islands, and also at Cloudy Bay in the South Island. These factories would be dependencies of New South Wales, would be led by British magistrates, and would have their own prisons and powers to levy duties on British shipping and trade. We will consider Hobson’s proposal again in chapter 6.\(^{443}\)

In 1838, after Britain had decided on a more active path, the Permanent Under-Secretary of the Colonial Office, James Stephen, wrote that the declaration had ‘failed to answer the purposes contemplated in its adoption’, which were, he said, the unification of the tribes into an independent state under the designation ‘the Tribes of New Zealand’.\(^{444}\) The 1838 House of Lords select committee on New Zealand heard evidence that the declaration was an ‘attempt to establish a national government for New Zealand’ which ‘utterly failed, in consequence of the incapacity of the native chiefs to act either as a legislature or as an executive’\(^{445}\). The New Zealand Company expressed similar views in more scathing terms, describing the declaration as ‘a mere mockery of its ostensible purpose’, and made by a people ‘so utterly destitute of nationality’ as to have no name for their country, nor any word for nationhood or sovereignty.\(^{446}\) The British were not alone in dismissing the declaration. In 1838, a visiting French ship’s captain, Abel Du Petit-Thouars, reported – according to a translation provided by Parkinson – that the rangatira ‘are not united by any civil or political alliance; they are complete strangers one to another’, and the declaration was ‘pure fiction’.\(^{447}\) Petit-Thouars’ views may have been influenced by France’s political ambitions in the Pacific, in which he was playing an intimate role.\(^{448}\)

The declaration, in other words, was to be measured not by whether the rangatira who signed it retained authority in their own lands but by whether they had abandoned their own systems of law and government and adopted those of Europe (as Busby had intended). In the absence of those European institutions, and an identifiable nation-state under their authority, the declaration was seen as a failure. The British observers were interpreting the declaration through the English-language text, which emphasised statehood and the establishment of a legislature in ways that were not reflected in the Māori text. These observers were also interpreting the declaration through their own cultural lens, in which European ideas and institutions represented the pinnacle of civilisation.

The British view of the declaration was essentially influenced by its own colonial motivations. Just as Māori were seeking to control the colonial frontier in the 1830s, so also was Britain. Like Māori, it too sought to control resources and to determine the rules by which people should behave in this land. It had sought to achieve this by sending Busby, in the hope that he could achieve control by working through the indigenous elite – just as Britain had done elsewhere in its empire. But this approach failed, because Māori remained independent, and did not adopt British systems of law and government as readily as Busby had hoped. Britain wanted a single authority to deal with, and an orderly environment to extract resources from. Titore, Pōmare, Waikato, Nene, and others did not oblige. The declaration was a failure in British eyes because it did not meet British imperial ends.

These are the themes that British officials and commentators would return to over and over whenever the declaration was discussed, and that historians have by and large returned to since: the declaration was a failure, because it did not establish a legislature or a government, and did not establish order from a British perspective. By 1840, the declaration’s only purpose in British eyes would be to provide a basis for the establishment of British authority: if rangatira could get together and declare their sovereignty, they could also get together to cede it. Hobson, in January 1840, reported to Gipps that the rangatira ‘little understood’ the declaration and it had become ‘an experiment wh[ich] had failed.’\(^{449}\) Gipps, later that year, famously dismissed the declaration as ‘a silly, as well as an unauthorized act . . . a paper pellet fired off at the Baron de Thierry’; it was created entirely by Busby and not even understood by those who signed it. Without a ‘settled form of government’, Gipps argued, Māori could have only a ‘qualified dominion’ over New Zealand, or a mere right of occupation.\(^{450}\)
4.9 Concluding Remarks

James Busby arrived in New Zealand with an ambition to redefine Māori systems of law and government. He hoped to replace hapū authority with what he saw as a sovereignty based on the authority of all rangatira ‘in their collective capacity’. He hoped to establish a legislature made of those rangatira, acting under his influence. And he hoped to establish a government under British control, which would be legitimised by the congress of rangatira and would be able to regulate commerce and impose order on British subjects in New Zealand. In pursuing these plans, he had several motivations. Principally, he believed that Britain’s interests – mainly concerned with trade and the control of British subjects – could best be served by persuading Māori to enact the laws that Britain wanted. Busby was personally ambitious. And he was also on a civilising mission, believing quite sincerely that Māori interests would best be served through the establishment of British systems of law and government based on the collective authority of heads of tribes.

Busby encountered a people who had their own systems of law and government, which derived from whakapapa. His goal of establishing a legislature based on the collective authority of rangatira did not naturally align with existing forms of political organisation, in which ultimate authority resided in hapū rather than any larger grouping, and in which rangatira embodied the mana of their hapū rather than wielding power solely as individuals. Similarly, his notions of law and justice, based as they were on individual rights and responsibilities in relation to the state’s higher authority, did not fit well with the Māori concept of utu or balance in relationships between kin groups.

Nonetheless, in responding to de Thierry’s letter, Busby took an opportunity to press ahead with his vision for British-style legislature and executive government, even though he could see that Māori had little interest in adopting these institutions any time soon. Rangatira apparently told him that his proposed approach would not work, as none of them would (or could) set aside his own mana or rangatiratanga to bow to the majority will. In signing he Whakaputanga, we think that rangatira saw themselves as agreeing to attend further hui at which they would discuss and make decisions about outsiders who threatened their mana; we do not think they agreed to Busby’s plan for the establishment of a supreme legislature with power over all, even if that is what the English-language text says. Bourke, as we have seen, disagreed with Busby’s approach, and urged him to work with tribal leaders at a local level rather than persisting with his attempts to establish a national collective. In 1835, then, neither Māori nor Britain’s representatives in New South Wales or New Zealand believed that the declaration established a supreme legislature. Yet much of the discussion about the declaration in the 179 years since it was signed has concerned the perceived failure of that legislature to meet. In our view, the focus on that point wrongly elevates the English-language text above the text that was actually signed, as well as ignoring what those involved actually believed was occurring.

When rangatira gathered at Waitangi, they had been told that a foreigner was coming to be their King and to enslave them, and they were asked whether they would agree. Their answer was ‘no’. It was a ‘no’ that has continued to resonate loud and clear throughout the Māori world. In response to the question of whether they would take a foreign King, the rangatira declared their own status. They were the rangatira. Their lands were whenua rangatira. They would unite to see off this foreign threat. They furthermore embodied the kingitanga, and the mana i te whenua, of their territories. Their territories, in other words, were Māori land, and no foreigner would be permitted to come in to try to pass ture (foreign laws) or govern. The rangatira, and only the rangatira, would make the decisions about trade, peace, and wrong-doing. They would put aside their differences to do so, and invite other tribes, because – as Busby had said – a larger alliance would be needed to repel this foreign threat. Finally, they would appeal to the King to be their friend and guide in international waters and to help them see off threats to their mana – just as they would protect his subjects in their lands.

Having asserted their mana in such clear terms, they continued to act in ways that asserted that mana
– sometimes separately, sometimes through inter-hapū alliances. As they had before, leaders sometimes sought that mana through economic activity, and sometimes through conflict. It is not particularly surprising that there were outbreaks of violence. Warfare (as we saw in previous chapters) was an integral part of Māori society, just as peacemaking was – in fact, it was often through that cycle of making war and peace that larger alliances formed. In our view, neither the January 1836 conflict nor those in 1837 would have prevented a more unified response should it have been needed in response to a direct foreign threat. But such a threat did not exist at that time, and so Māori were free to fight and make peace according to traditional rules and values. By mid-1837, then, the hapū of the Bay of Islands and Hokianga were not politically unified, and nor did they yet all identify as ‘Ngāpuhi’. But lack of unity did not mean lack of mana; nor did it imply any failing on the part of rangatira or he Whakaputanga. It implied, simply, that authority continued to reside with hapū.

British understandings of the declaration were based on the English-language text, their own cultural perspectives, and on British imperial motivations and interests. The British perspective of the declaration as a failed attempt to establish a legislature and government based on British institutions has endured. We do not dismiss this perspective. However, as we have seen, the rangatira who actually signed he Whakaputanga had their own understandings and motivations, which had more to do with the mana of their people and lands than with the adoption of British systems of law and government. He Whakaputanga was a declaration that Māori authority would endure, and that foreigners would not be allowed to make laws. It is time for this perspective on he Whakaputanga to be heard, and its significance understood.

We will leave the final word to Rewa, a principal rangatira of the Bay of Islands, who was a signatory to both he Whakaputanga and the 1831 petition, and was also involved in many of the battles of the 1830s, both within the Bay and elsewhere. During the 1837 conflict, Thomas McDonnell sent letters to him and Pōmare II in an attempt to broker peace. ‘Friend Kapitana,’ Rewa replied, are the things (letters) which you sent to Pomare to make him a chief over us? Perhaps not – No – we will not have him for our chief. . . . We are not like the King of England – we are all chiefs here.451

Notes
1. Manuka Henare (doc A16, p 140) noted the use of the variant ‘Nu Tireni’ in a letter by Taiwhanga to Marsden in 1825, which presumably suggests earlier oral use. Another variant, ‘Niu Tireni’, was used in the 1831 petition to King William IV.
2. Document A21, p 37
3. Document A11(a), vol 4, pp 1306–1311; Busby to Bourke, 28 November 1834, qMS 0345, ATL, Wellington; see also doc A18, p 57.
4. Submission 3.1.142(a), p 572
5. Document A17, p 49
6. Submission 3.3.14, pp 6, 17; submission 3.3.2, pp 14, 16, 36, 42, 45, 48–49; submission 3.3.3, pp 7–10; submission 3.3.21, p 17; doc A25(b), p 12; doc A30(a), p 4; doc A32(c), pp 6–7; doc B10, pp 66–68; doc D4, p 42; doc D14(b), p 7
7. Submission 3.3.33, pp 5–13, 23–46


17. Ruatārata had seen the impacts of settlement on indigenous people in New South Wales, as discussed in chapter 3.


22. As discussed in chapter 3, Busby found that rangatira were willing to meet and discuss the Rete affair but were less willing to enforce punishment, especially not the capital punishment he would have preferred—reflecting the tensions between his own notions of justice and those of Māori: see doc A17, pp 20–22; doc A19, p 38; and doc A11, pp 248–249. Busby characterised this as a tension between British ‘abstract’ or ‘impartial’ justice and the Māori understanding of justice as a balance between affected parties. It is notable, however, that the matter was not merely one of principle—it was personal and it was also in his view a matter of British honour.
36. Document A21, p 40; doc A20, p 42; doc A18, pp 57–58; doc A19, p 39; doc A17, p 24; Jack Lee, Hokianga, pp 59–62; Jack Lee, *An Unholy Trinity: Three Hokianga Characters* (Russell: Northland Historical Publications Society, 1997), pp 43–44, 75–76. Busby was not consulted about McDonnell’s appointment as additional British resident, and in the following two years he and McDonnell were to frequently criticise each other in their letters to British colonial authorities. Lee noted that Bourke had not been consulted about Busby’s appointment, and that Bourke resented Busby and regarded him as a failure, just as Busby resented McDonnell: Lee, *Hokianga*, p 59.


39. Document A18(e), pp 833–836; Busby to Bourke, 10 October 1835 (no 67), qMS 0344, ATL, Wellington

40. Document A20, p 62

41. Document A17, p 24 n 76

42. As discussed in chapter 3, there is convincing evidence that de Thierry supplied arms to Hangi in 1821.

43. Document A18, pp 29–31, 63–64

44. Raeside, *Sovereign Chief*, pp 92–95, 106–107, 110

45. Document A17, p 25

46. Ibid


48. Document A11, p 244

49. Document A18(e), pp 837–840; Busby to Bourke, 10 October 1835 (no 68), qMS 0344, ATL, Wellington; doc A1, p 244; doc A18, p 65


51. Document A18(e), pp 837–840; Busby to Bourke, 10 October 1835 (no 68), qMS 0344, ATL, Wellington

52. Document A18(e), pp 837–840; Busby to Bourke, 10 October 1835 (no 68), qMS 0344, ATL, Wellington

53. Document A1, p 244. Phillipson relied on a translation provided in Ramsden, *Busby of Waitangi*, p 95. Parkinson (doc D1, pp 62–63) argued that a more accurate translation would be ‘servants’. According to the Crown (submission 3.3.1, p 26), Parkinson was not fluent in te reo but had ‘expertise in the written records that concern contemporary understandings of certain 19th century Māori words, particularly those associated with He Whakaputanga and Te Tiriti’, arising from his study of Māori-language documents for his 2004 co-authored book *Books in Māori 1815–1900: An Annotated Bibliography*, and his PhD thesis ‘Our Infant State’.


55. Document A11(a), vol 4, pp 1338–1343; Busby to Bourke, 31 October 1835, qMS 0345, ATL, Wellington; doc A17, p 72; doc A18, pp 66 n 199, 70


57. Document A11(a), vol 4, pp 1338–1343; Busby to Bourke, 31 October 1835, qMS 0345, ATL, Wellington; see also doc A1, p 245 and doc A18, p 65. Busby noted that he had ‘transmitted Letters to the Chiefs of more distant Tribes, than [he had] on former occasions’, presumably referring to his arrival and the flag hui.

58. ‘Declaration of Independence of New Zealand’; doc A16, p 200

59. Document A16, pp 107, 113, 179. As discussed in chapter 3, Henare gave evidence as a technical witness (doc 83); he also supplied his thesis (doc A16) as evidence and contributed to document A37.

60. Document A11(a), vol 4, pp 1338–1343; Busby to Bourke, 3 November 1835, qMS 0345, ATL, Wellington; doc A11, pp 21, 251; doc A18, p 70; see also doc A11(a), vol 4, pp 1338–1343; Busby to Bourke, 31 October 1835, qMS 0345, ATL, Wellington. After the declaration was signed, Busby asked for money to build a house of assembly: see doc A11, pp 21, 251; doc A18, p 70.

61. Henry Williams’s journal for this period is missing: Williams, *Early Journals*, p 7; doc A1, p 245; doc D1(e), p 33. As far as we are aware, neither Clendon nor Mair kept any record of the hui.

62. Patuone and Nene had been delayed. Busby said that Nene arrived the next day. Muriwai was dead, as was Hongi.

63. Document A11(a), vol 4, pp 1338–1343; Busby to Bourke, 31 October 1835, qMS 0345, ATL, Wellington; doc A1, p 245

64. Document A11(a), vol 4, pp 1338–1343; Busby to Bourke, 31 October 1835, qMS 0345, ATL, Wellington; doc A1, p 245; doc A18, pp 65–66

65. Document A11(a), vol 4, pp 1338–1343; Busby to Bourke, 31 October 1835, qMS 0345, ATL, Wellington; see also doc A1, p 245; doc A18, p 67. Busby had foreshadowed these three themes in his dispatch of 10 October (no 68).

66. Document A11(a), vol 4, pp 1338–1343; Busby to Bourke, 31 October 1835, qMS 0345, ATL, Wellington; doc A18, p 70

67. Document A11(a), vol 4, pp 1338–1343; Busby to Bourke, 31 October 1835, qMS 0345, ATL, Wellington; doc A18, p 70

68. Document A1, p 246; see also doc A18, p 67; doc A19, p 36; doc A20, p 63

69. Document A18, p 68. According to Busby’s biographer, Eric Ramsden, the manuscript was written in the 1860s: doc A18, p 190 n 536.
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HE WHAKAPUTANGA ME TE TIRITI
THE DECLARATION AND THE TREATY

70. Document A11(a), vol. 4, pp 1338–1343; Busby to Bourke, 31 October 1835, qMS 0345, ATL, Wellington
71. Document A17, p 72; doc A18, p 66 n 199
72. Document A18, p 66
73. Document D4, p 25; doc A16, pp 132, 138–139, 197. Pare (also known as Eruera Pare Hongi) had attended a mission school, was responsible for the first known example of Māori letter writing in 1825, and more recently had helped William Yate with the preparation of Māori biblical texts. In chapter 3, we discussed his role in relation to the 1831 petition to King William IV.
74. Submission 3.3.33, pp 10, 31; doc D1, pp 110, 130–131; doc D1(d), pp 3–4, 6
75. Submission 3.1.142(a), p 570
77. Document D4, p 25
78. Transcript 4.1.1, pp 118–119, 127; see also doc D4, pp 35–36, transcription 4.1.1, pp 244, 248
79. Document B10, p 67
80. Transcript 4.1.1, pp 244, 248
81. Document A30(c), para 145 (translation by Erima Henare); submission 3.3.23, pp 27–28
82. Document A11(a), vol. 4, pp 1376–1394; submission 3.1.142(a), pp 440–446; Busby to Bourke, 16 June 1837, qMS 0345, ATL, Wellington
83. Document A18, p 67 n 201
84. Document A17, p 47
86. Document A17, p 72
87. Document D1(e), p 22
88. Photocopy of Henry Williams’s Māori draft of he Wakaputanga, translated by Williams from the English text supplied by Busby. October 1835 (doc D1(b), tab 10); see also Parkinson, ‘Our Infant State’, pp 251–255
89. Document D1(d), p 6; Parkinson, ‘Our Infant State’, pp 251–252
90. Specifically: (i) in the draft the words ‘i te ra’ appear before ‘28 o Oketopa’, whereas in the signed text they did not; (ii) the word ‘te tahi’ was used in the draft whereas the signed text used ‘tetahi’; (iii) the phrase ‘Ko te Wakaminenga o Nga Hapu Nu Tireni’ was not underlined in the draft, but was underlined in the signed text. In each of these respects, the Williams text was identical to texts of he Whakaputanga that were printed by the missionary William Colenso in 1836 and 1837, but different from Pare’s signed text. In addition, in the third paragraph of the Williams draft, ‘Ngauru’ was used for autumn, whereas the signed text used ‘Ngahuru’. ‘Ngahuru’ was also used in Colenso’s 1836 printing.
91. The corrections in article 1 are: (i) ‘kei Waitangi’ and ‘kei Tokerau’ have been replaced with ‘i Waitangi’ and ‘i Tokerau’; (ii) the phrase ‘Ko te Wakaminenga o Nu Tireni’ has been replaced with ‘Ko te Wakaminenga o nga Hapu o Nu Tireni.’ The corrections in article 2 are: (iii) ‘nga wakaminenga o Nu Tireni’ has been replaced with ‘te wakaminenga o Nu Tireni’ (though in this case ‘o nga hapu’ was not inserted); and (iv) ‘e noho nei i uta e rere mai ki te hokohoko’ has been corrected to ‘e noho nei i uta e rere mai ana ki te hokohoko’. Each of these corrections appears in Pare’s handwritten text and in Colenso’s 1836 printing.
93. Document D1(d), p 6; Parkinson, ‘Our Infant State’, pp 251–252; doc B3, p 86
94. Document D1(d), p 6; Parkinson, ‘Our Infant State’, pp 251–252
95. Document B3, pp 83, 86
97. Document A11(a), vol. 4, pp 1338–1343; Busby to Bourke, 31 October 1835, qMS 0345, ATL, Wellington; see also doc A1, p 245 and doc A18, p 67
98. Busby reported ‘35 leading rangatira’ as attending the hui and said they unanimously assented to he Whakaputanga. However, as Pare signed as ‘kai tuituihu’ he has generally been excluded from the total number of rangatira considered to have signed. We have followed that convention here.
99. Document D1(b), tab 11 (facsimile of ‘He Wakaputanga o te Rangatiratanga o Nu Tireni’, in Eruera Pare’s handwriting, with signatures of rangatira). The original document did not record tribal affiliations, but these were later added in printed copies of the Declaration in 1836 (doc D1(b), tab 15) and (with corrections) in 1837 (doc D1(b), tab 16). Here, we have used the corrected names and tribal affiliations as they appeared in the 1837 reprint, but we have also included Waikato, Te Peha, and Heke, whose names appeared on the original signed declaration but were omitted from the printings. See also Parkinson, ‘Our Infant State’, app 3; doc A16, p 200; doc A20, p 51; and doc A1, p 248.
100. Document D1, pp 130–131
102. Document A16, pp 199, 201; doc A20, p 53 n 102. According to Henare, this may have been drafted by the missionary George Clark, who was listed as a witness. See also doc D1(b), tab 14 (facsimile of the original codicil with signatures added between 1836 and 1839).
103. Document A16, p 199
104. Photocopy (from 1877 facsimile) of the second version of the codicil to the ‘Wakaputanga o te rangatiratanga o Nu Tireni’ (in the script of James Busby), 1836–1839, ATL, Wellington (in doc D1(b), tab 14). Dates, names, tribal affiliations, spelling, capitalisation, and punctuation are all as they appear in that document, but the content has been tabulated for the sake of clarity. See also Parkinson, ‘Our Infant State’, app 3; and doc A16, p 200–201.
105. Photocopy of 1836 printing of ‘He Wakaputanga o te rangatiratanga o Nu Tireni (Declaration of Independence of New Zealand)’ by James Busby, 1836, MS Papers 0032–1009–01 (McLean Papers), ATL, Wellington (in doc D1(b), tab 15); Photocopy of ‘Wakaputanga o te rangatiratanga o Nu Tireni’, 1837 (second, reprinted and corrected edition), ATL, Wellington (in doc D1(b), tab 16). The prefix ‘Ko’ was added
before the names of Nene, Huhu, Tona, Panakareao, Kiwikiwi, and Te Tirarau in the 1836 and 1837 printings.

106. Document A11(a), vol 4, pp 1338–1433; Busby to Bourke, 31 October 1835, GMS 0345, ATL, Wellington; see also doc A1, p 245
107. Submission 3.1.142(a), p 571 n 24
109. Of those who signed the 1831 petition, Ripi and Hara do not appear to have signed he Whakaputanga (unless they used different names). The southern alliance leader Te Morenga is believed to have died in 1834, so it was probably his son who signed he Whakaputanga under the same name: see Orange, *The Treaty of Waitangi*, pp 23, 271 n 26. Of those who were known to be at the flag hui, Kiwikiwi, Moetara, Waikato, Heke, and Pōmare 11 signed he Whakaputanga. Te Morenga senior had also been at the flag hui: see doc A37, pp 437–438, 451–3. See chapter 3 for discussions of the 1831 petition and the flag hui.
110. We do not know where all of the signatories were from. Of those who are known, at least 18 of the initial 34 signatories were from the Bay of Islands: Wharepoaka, Titore, Moka, Wharerahi, Rewa, Atuahaere, Wiremu Taunui, Waikato, Tāreha, Kāwiti, Kēkeao, Te Kēmara, Pōmare, Marupō, Kōpiri, Hiamoe, Pukututu, and Heke. Awa, Kaua, Wiwi and Ngere may also have been from this district. Ururoa, Hare Hongi, Tupe and Tenana were from Whangaroa but the first three were affiliated to the Bay of Islands northern alliance. Pi, Moetara, and Pumuka were from Hokianga, and Paerata was from the Far North: doc A37, pp 451–452, 761–795. See also doc B1, pl 25.
113. Submission 3.3.14, pp 6, 17; submission 3.3.2, pp 14, 16, 36, 42, 45, 48–49; submission 3.3.3, pp 7–10; submission 3.3.21, pp 17; doc B10, pp 66–68; doc A32(c), p 7; doc D14(b), p 7; doc A30(a), p 4; doc A30(c), pp 6–7; doc D4, p 42; doc A25(b), p 12; doc A16, p 187
114. Document A16, p 193
115. Ibid
116. Document B3, p 56; see also doc A16, pp 187, 193–194; submission 3.3.3, p 9
117. Document D4, p 36
118. Document B10, p 31
119. Document A31, p 2
120. Document A23, pp 7–8
121. Submission 3.3.6(a), p 9; see also doc A22, throughout; doc B10, pp 70; doc A17, throughout, especially pp 77–80; doc D1, throughout; and doc B21(a), pp 3–4
122. Document B21(a), p 4
123. Document B10, p 67
124. Submission 3.3.14, p 6; submission 3.3.2, pp 61–62, 96–97; see also doc B3, pp 5, 8–9, 22–25
125. Document C9(b), p 3
127. Document D4, p 36
128. Document C33, part 1, pp 12–18
129. Submission 3.3.1, p 26; doc D1, pp 5–6; doc A17, pp ii–iii; transcript 4.1.3, pp 226–227
130. Submission 3.3.2, pp 16–17, 61–62; submission 3.3.14, p 6
131. Submission 3.3.14, p 17; submission 3.3.2, pp 49, 107–108
132. Submission 3.3.2, p 49
133. Submission 3.3.33, pp 9, 12–13, 32–33
135. Document C9(b), para 23
136. Ibid, para 17. Klarich wrote: ‘the land is the plaecenta for intergenerational hapu survival’.
137. Document C9(b), paras 5–11. Klarich illustrated his point by referring to Kawewhitiki Point on the Hokianga Harbour, where his tūpuna Moetara agreed with Te Karaka in 1833 that he would restrict his own trade to the south side of the harbour, thereby restoring peace while also allowing both parties to pursue commercial interests.
139. Document B3, pp 56–57; doc A16, p 115; doc D4, p 39; doc C33, part 1, p 14; doc A23, app 1
140. Document B21, pp 5–8, 9. Both Salmond (doc A22, p 25) and Parkinson (doc D1, pp 43, 57, 80–85) also noted ‘rangatiratanga’ as a synonym for ‘kingdom’ in religious texts of the time.
141. Document A17, pp 74, 77–79, 82
143. Document B10, pp 69–70
144. Ibid, p 47. Aldridge said that the word ‘Wakaminenga’ was built from the existing term ‘minenga’ and referred to ‘a group of people coming together to meet in an assembly more formal than huihuinga, where command decisions are made to affect the lives of people’.
145. Document B10, pp 5–7
146. Ibid, pp 46–49; transcript 4.1.2, pp 46, 49
147. Document B10, pp 46–48, 50, 67; transcript 4.1.2, p 46. Aldridge likened this alliance to the United Nations and said Waikato had been chosen as taiapuru, an equivalent of ‘general secretary’.
148. Document B10, pp 50–51
149. Ibid, pp 50–51; transcript 4.1.2, p 51
150. Document B10, p 65
151. Ibid, p 76
152. Ibid, p 67
153. Those to mention 1808 as an initial date included Ani Taniwha, Nuki Aldridge, Te Pania Kingi, Hori Temoanaroa Parata, and Pari
Walker: see respectively doc b4(a), p 6; doc b10, p 47; doc b37, p 3; doc c22, p 7; doc c34, p 4. Others mentioned non-specific dates in the first decade of the nineteenth century or earlier: see, for example, doc c7, p 21; doc c14, pp 3–5; doc c33, pt 1, p 13; doc d5, p 24. Haami Piripi mentioned 1814 as a start date, and Te Pania King mentioned 1816: doc b26(a), p 27; doc b37, p 3.

Document b10, pp 48–49; doc b37, p 4; doc c2, p 19; doc c22, p 10; doc c24, p 9; doc c32, p 12; doc c33, part 1, p 13; doc d11, p 5. Other rangatira mentioned by one witness only as having attended Te Whakaminenga included Hare Hongi, Hōne Heke, and Te Pona; Ruatara; Parore; Patuone; and Te Wherowhero: see respectively doc b4(a), pp 7–8; doc b10, p 47; doc b37, p 4; doc c2, p 19; doc d11, p 5.

Specifically, whanaminenga were said to have taken place at Whangaroa (Te Ngaere, Te Touwai, Motueka (Flat Island), Mahinepua) (doc b4(a), pp 6–7; doc b10, p 48; doc c34, p 5); Hokianga and inland (Whirinaki, Taheke, Mangatawa, Puhunga Titoroa) (doc c14, pp 4–5; doc c33, pt 1, p 13); the Bay of Islands and inland (Waitangi, Taiamai, Whaitama North) (doc b4(a), pp 6–8; doc c24, p 13); and at various Whāngārei locations (doc c24, pp 8–10). Others said meetings took place in various locations, but particularly in the Hokianga, Bay of Islands, and Whangaroa (for example, doc c22, p 7).

Document b10, p 48; doc b4(a), pp 6–8; doc b33, pp 2–3; doc c34, p 4.

Document b33, p 2.

Document b10, p 48.


Hongi Hika is believed to have lost his brother and sister at Moremonui, as well as his close relative and senior rangatira Pokaia (doc a36, pp 270–271; Ballara, Tāua, p 185). The defeat was not avenged until 1825 at Te Ika-a-Ranganui.

Document b4(a), pp 6–8.


Document c34, p 5.

Document a30(c), para 143; submission 3.3.23, pp 27 (translation by Erima Henare); transcript 4.1.2, pp 242, 290–291. He said the discussions took place at Pinia in Whangaroa and gave various dates, including 1816, 1818, and ‘when Hongi returned from England’.

Document b13(a), pp 13–14.

Document b26(a), pp 13–17, 22, 24, 27.

Document c14, p 4; doc c22, p 7; doc c32, p 12.

Concerning the flag, see doc b4(a), p 8; doc a35, p 3; doc b26(a), p 28. Concerning he Whakaputanga, see doc a34(a), p 6; doc b10, pp 46–47, 65; doc b37, pp 3–4; doc b3, pp 29–55.

Submission 3.3.33, pp 12, 40–41. 44


173. William Yate, An Account of New Zealand and of the Church Missionary Society’s Mission in the Northern Island (London: Seeley and Burnside, 1835), p 138; doc a37, p 310. Dr Manuka Henare, Dr Hazel Petrie, and Dr Adrienne Puckey explained the feasting that accompanied such rites as an opportunity to display wealth and accomplishments, to promote harmonious relations between groups and intensify reciprocal obligations: doc a37, p 307.

174. Ballara, ‘Warfare and Government’, fol 30–31, 40–42, 110–119; doc A1, p 79; Ormond Wilson, From Hongi Hika to Hone Heke, pp 171–174; doc a37, p 307. Jack Lee also described a meeting in November 1835 involving McDonnell; the northern alliance rangatira Titore, Tāreha, and Rewa; the Hokianga rangatira Taunui, Nene, and Moetara; and Te Tirarau of Kaiapara. The meeting concerned a proposal by McDonnell to cut kauri spars in the Kaiapara district. McDonnell had entered the transaction directly with Tirarau, but he also involved the Bay of Islands and Hokianga rangatira since he assumed that they had rights through conquest: Lee, An Unholy Trinity, pp 76–77.

175. Document A1, p 79; Ballara, ‘Warfare and Government’, fol 111. Phillipson quoted accounts of the last of these events, recorded by the missionary William Williams in his journal. Williams presented expense as the main reason for abandoning hahunga and also saw it as evidence of traditional Māori values giving way to Christian ones. Phillipson saw the question more as one of missionary-influenced social change than one with significance for political organisation. Williams reported that the last hahunga, held at Waimate in late May 1835, had a line of food some 300 yards long, including 2000 baskets of kumara and 50 to 60 pigs. Signs were attached asking the Hokianga leaders not to reciprocate.


178. Document c9, pp 22–24; doc a37, pp 622–623; doc a37(b), p 17; Patu Hohepa, transcript 4.1.1, p 133.

179. As an example of separate external campaigns, in 1832 Pukerangi and Te Tirarau (possibly joined by Kawiti and Pōmare) mounted a campaign in the Waikato, while northern alliance rangatira fought in Tauranga. In 1833, Rewa and others refused to join Titore in returning to Tauranga: see Shawcross, ‘Maoris of the Bay of Islands’, fig 21, fols 365–366; Ormond Wilson, Kororareka and Other Essays (Dunedin: John McIndoe Ltd, 1990), pp 84–85, 95; Crosby, Musket Wars, 220
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180. Document c22, pp 7–10. Much of the other claimant evidence also referred to origins before 1820 but then did not specifically mention any meetings in the 1820s.

181. Document A30(c), pp 90–91. Phillipson (doc A1, pp 39–40) also provided evidence of hapū being rivals internally (for example, Bay of Islands and Hokitika) but setting those rivalries aside to fight external battles (for example, taua against Ngāti Whātau), and of these complex relationships persisting right up to Northern Wars. He also noted that internal warfare was generally more restrained.

182. William Williams, Christianity among the New Zealanders (London: Seeley, Jackson, and Halliday, 1867), p 89

183. Hohepa rendered the phrase as 'The Kingdom, the mana within the land', and Aldridge rendered it as 'the authority of the lands' or 'the authority that comes from the land': doc D4, p 37; doc B10, p 70. Manuka Henare said that it meant 'sovereignty/kingship and the mana from the land': doc A16, p 198. Both Manuka Henare and Hohepa retained the word 'mana' in their translations, implying that there was no adequate English equivalent.

184. Document B10, p 70

185. Document B26(a), p 20

186. Document A16, p 113

187. Ibid


191. Document A17, pp 83–84, see also pp 175–176

192. Ibid, pp 84–85, 175–176; doc A22, p 17; doc A16, p 188; doc B10, pp 70–71; doc B21, pp 43, 55, 82, 89, 91

193. Document A17, pp 84–85, 175–176

194. Document B10, p 71; doc A22, pp 17–18


196. Ibid, p 71

197. Ibid, p 28

198. Transcript 4.1.2, pp 40–41

199. Document A22, p 25; see also doc A17, pp 83–86, 175–176; doc B21, pp 4–9; and doc B26(a), p 23


201. Document B26(a), p 23

202. Document A17, pp 83, 85–86. By ‘national’ government, Carpenter appears to have meant a government with power to legislate for hapū within its territories, not a government covering all of the territories of what is now known as New Zealand. He explicitly acknowledged that the rangatira only claimed mana and kingitanga in respect of the territories of Te Whakaminenga.

203. Document A22, p 24, see also p 28

204. The back-translations by Manuka Henare, Hohepa, and Wharetatao King all clearly referred to mana and kingitanga residing with the rangatira at the gathering, not the gathering itself: doc A16, pp 197–198; doc D4, p 37; doc C33, pt 1, pp 12–18.

205. Document A30(c), p 7; doc A25, pp 59–60. Klaricich said that the mana of rangatira derived not only from land and people but also the exercise of their ‘ancient customs and cultural practices’: doc C9, p 28. Bruce Gregory said that the ‘fundamental obligation of a Rangatira is to maintain the mana of the hapu’: doc B22, p 8. Manuka Henare said that the rangatira were stating that their collective mana was ‘located in the land (mana i te whenua) and its people, therefore they reject the English notion that sovereignty is vested in one person or a parliament’: doc A16, pp 114–115.

206. Document B26(a), pp 22–23


208. Specifically, Aldridge described whānau laws covering rights to carve or karanga, as well as occupations and social roles; hapū laws covering marriage and education; and intertribal laws covering access to land and resources: doc B10, pp 30–31.

209. Wilson, Kororareka, p 86


211. Transcript 4.1.2, pp 39, 41

212. Document B3, pp 26, 30–55; doc A16, in particular pp 160–199; see also doc B2(b), pp 7–10; doc B13(a), pp 12–14; doc B27, pp 2–4; doc C7, pp 4–11; doc C21, pp 7–14; doc C33, part 1, pp 11–12, 17–18; doc D4, pp 23–34

213. For example, see doc B10, p 107

214. Document A17, p 177

215. Transcript 4.1.1, p 42; doc B10, pp 62, 68, 72–73; see also doc C33, part 1, p 18; doc A16, pp 198–199

216. Transcript 4.1.1, pp 131, 137–138; doc D4, pp 38–39; see also doc A23, app 1

217. Document B26(a), pp 23–24

218. Document A11(a), vol 4, pp 1338–1343; Busby to Bourke, 31 October 1835, qMS 0345, ATL, Wellington. The letter to the Colonial Office was much briefer than Busby’s 31 October dispatch to Bourke. Busby enclosed the English-language text only and reported that it was a declaration by northern chiefs ‘of the independence of their country, and of their having united their tribes into one State’, as well as a request for protection against ‘all attempts upon [the new state’s] independence’: submission 3.1.142(a), p 572; see also doc A18, p 70; doc A1, p 245; doc A18, pp 60–61, 64, 69; doc A11, pp 250–251.


221. Document A18(e), pp 833–836; Busby to Bourke, 10 October 1835 (no 67), qms 0344, ATL, Wellington
222. Document A18(f), pp 854–862; Busby to Bourke, 30 November 1835 (no 73), qms 0344, ATL, Wellington; doc A18, pp 61–62
224. Document A18(f), pp 854–862; Busby to Bourke, 30 November 1835, no 73, qms 0344, ATL, Wellington; doc A18, pp 61–62. Busby once again asked to be given enforcement authority. He also repeated his assertion that there must be only one lawmaking authority in the country, but now also argued that British subjects should be exempted from ‘Native Laws’ unless the British government would accept their laws. He also referred to Ross in his evidence (doc D1) but in his doctoral thesis placed considerable weight on Ross’s analysis of Busby’s motivations.
225. Submission 3.1.142(a), pp 575–576
226. Submission 3.1.142(a), pp 575–576; see also submission 3.3.33, p 34; doc A20, p 48
227. Document A18, p 68; submission 3.1.142(a), p 576
228. Document B30, app B, p 13; Glenelg to Bourke, 25 May 1836; see also doc A1, p 249; doc A18, p 78; doc A20, pp 55–56; submission 3.1.142(a), p 573; submission 3.3.33, p 11; Parliament of Great Britain, Report from the Select Committee of the House of Lords Appointed to Inquire into the Present State of the Islands of New Zealand and the Expediency of Regulating the Settlement of British Subjects therein: With the Minutes of Evidence Taken before the Committee and an Index thereto (London: House of Commons, 1838), p 159
229. Document A17, pp 49–50
230. Document A17, p 51; see also pp 180–181
231. Document A21, pp 40–41; see also p 94
232. Document A18, p 78 n 233. According to Loveridge, the dispatch was sent on 19 November 1836 and received on 26 January 1837.
233. Glenelg to Bourke, 26 August 1836 (in doc A18(g), p 1197)
234. Submission 3.1.142(a), p 577
235. Document A1, p 249; doc A18, pp 68–69; Busby to Bourke, 16 March 1836, qms 0345, ATL, Wellington; submission 3.1.142(a), pp 573, 577
239. Document A18, p 62
240. Document A18(a), p 51
244. Joel Polack, New Zealand: Being a Narrative of Travels and Adventures during a Residence in that Country between the Years 1831 and 1837, 2 vols (London: Richard Bentley, 1838), vol 2, p 224; see also pp 428–429
245. Lee, Hokianga, pp 82–92 and elsewhere; Lee, An Unholy Trinity: Three Hokianga Characters, pp 72–80; Parkinson, ‘Our Infant State’, pp 275–276; Busby to Bourke, 30 January 1837, qms 0344, ATL, Wellington (doc A18(f), pp 917–926). According to Busby, McDonnell’s interference in Nene’s trading activities led several Hokianga rangatira to threaten his expulsion from the country. Lee (Hokianga, pp 83–84; An Unholy Trinity, pp 79–80) and Parkinson (p 276) described how McDonnell threatened to bring a British warship to the Kaipara to take kauri spars by force, against the opposition of the leading rangatira Tirarau. Lee (An Unholy Trinity, p 80) accused McDonnell of openly attempting to incite warfare between Tirarau and the northern alliance; and also noted (p 77) that Busby and McDonnell only met once, in November 1835.
246. Document D1, pp 117–118
247. Ibid. The Beagle was in the Bay of Islands from December 21–30:
250. Transcript 4.1.2, p 51; doc C34, p 3
251. Document C7, pp 7, 11; doc B8(a), p 3; doc D7, p 10; doc C9(b), p 2; doc C2, pp 11–12; doc C23, pp 11–12; doc B13(a), pp 13–14; doc A31, p 3; doc A28, pp 7–8; doc B10, pp 65–66
252. Document B26(a), pp 3, 24–25, 27–28; doc B12, p 3; doc B36, pp 2–3; doc B13(a), p 13; doc A30(c), pp 88–89; transcript 4.1.1, p 242; doc C34, p 5; doc D4, pp 40–42; doc D5, p 24; doc B22(b), pp 6–7
255. Document B10, pp 69, 72; doc C34, pp 5–6; doc C23, p 11; doc B36, pp 2–3
256. Document B10, p 68
257. Document B10, pp 8–9; submission 3.3.14, p 23
259. Doc B26(a), p 14
260. Document B26(a), pp 14, 21–22, 26–27
261. Document A16, throughout; doc B3 throughout
262. Document A16, pp 137, 156; doc B3, p 26

Downloaded from www.waitangitribunal.govt.nz
263. Document A16, pp 156–157; doc B3, p 26
264. Document A16, pp 159–200, summarised on p 159; doc B3, pp 28–64, summarised on pp 8–9, 29. Te Tiriti o Waitangi was to become the sixth event.
265. Document A16, pp 156, 195; doc B3, pp 26, 61
266. Document B3, p 62; see also doc A16, p 189
269. For example, see submission 3.3.2, pp 100–106; submission 3.3.30, pp 37–49; submission 3.3.14, pp 9–14; submission 3.3.21, pp 14–16; submission 3.3.3, pp 13–23; and submission 3.3.6, pp 24–25. See also doc B26(a), pp 3, 14–15, 22–25, 27–28; doc B12, p 3; doc B36, pp 2–3; doc D4, pp 34–35; and doc B26(a), pp 26–27.
270. Document C9(b), p 3
271. Document D4, pp 34
272. Transcript 4.1.4, pp 50–51 (Tribunal’s translation)
273. For example, see submission 3.3.2, pp 99, 105–106; submission 3.3.30, pp 50, 61; submission 3.3.14, pp 18–21; submission 3.3.21, p 19; submission 3.3.23, pp 24–25; and submission 3.3.6, p 26. See also doc D4, pp 34–35; and doc B26(a), pp 26–27.
275. Submission 3.3.30, pp 50, 73–74
276. Document B26(a), p 20
277. Ibid, p 26
278. Ibid, p 27
279. Ibid, p 26
280. Document D4, pp 41–42
281. Document B26(a), pp 26–27
282. Transcript 4.1.1, p 310; submission 3.3.2, pp 99, 111–112. Edwards described his evidence as information he learned in Te Wharewananga o te Ngakahi o Ngapuhi, of which he was a teacher, having inherited the position from his father, who passed away in 1982.
283. Transcript 4.1.1, p 310; submission 3.3.2, p 99
284. Transcript 4.1.4, pp 36, 42–43.
285. Document A34(a), p 6; see also doc B37, p 3
286. Document B18, pp 13–14
287. Ibid, p 14
288. Ibid, p 16
289. Ibid
291. Document B26(a), p 3
292. Document A30(c), pp 88–89; doc C29(a), pp 7–8, among others.
293. Aldridge reinforced this point under cross-examination by Crown counsel (transcript 4.1.2, pp 49–50).
294. Specifically, Aldridge described whānau laws covering rights to carve or karanga, as well as occupations and social roles; hapū laws covering marriage and education; and intertribal laws covering access to land and resources (doc B10, pp 30–31).
295. Submission 3.3.30, pp 62, 71
296. Ibid, pp 71–72
297. Submission 3.3.14, p 21; see also submission 3.3.21, p 4; submission 3.3.23, p 31.
298. Transcript 4.1.1, pp 136–137. In his written evidence, Hohepa described he Whakaputanga as a ‘Rangatira Collective representing hapū’; doc D4, p 34.
299. Document B22, pp 6–7
300. Ibid, p 7
301. Submission 3.3.23, pp 30–31
302. Submission 3.3.21, pp 15–16
303. Document D2, p 16
305. Document B3, p 83
306. Document C9(b), pp 1–2; see also Patu Hohepa, transcript of evidence, 4.1.1, p 133.
307. Submission 3.3.23, pp 21, 23–25; submission 3.3.2, pp 106, 111; submission 3.3.30, pp 6–7, 50–52, 72, 76; submission 3.3.21, pp 3–4, 19; submission 3.3.14, pp 22–24, 33, 92; submission 3.3.49, p 2; doc B26(a), pp 23–24; doc C23, pp 10–11; doc C24, p 12
308. Submission 3.3.2, p 100
309. Ibid, pp 102, 105
310. Submission 3.3.21, p 19; submission 3.3.23, pp 23–24; see also doc D2, pp 15–16
311. Submission 3.3.30, pp 52–53
312. Ibid, p 53
313. Document B3, pp 77–78, see also pp 50, 61, 80–81; doc A16, pp 141, 219, 221–222, app VIII; submission 3.3.23, pp 22–23, 63–64
314. Submission 3.3.21, p 19; submission 3.3.30, pp 76; submission 3.3.14, p 21
315. Submission 3.3.30, p 76
316. Submission 3.3.14, pp 21–22
317. Tribunal’s translation, transcript 4.1.4, pp 46, 51
318. Document B8(a), p 3
319. Submission 3.3.33, pp 5, 10, 45
320. Ibid, pp 10, 45, see also p 12
321. Ibid, p 38; see also p 10
322. Ibid, p 45
323. Ibid, pp 5, 12, 40–41
324. Ibid, p 5
325. Ibid, pp 12, 40–41
326. Ibid, p 5
327. Ibid, pp 5, 11–12, 45
328. Ibid, p 31
329. Ibid, p 40, see also p 45
330. Ibid, pp 23–26, 30
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336. Paul Moon, *Fatal Frontiers: A New History of New Zealand in the Decade before the Treaty* (Auckland: Penguin Group (NZ), 2006), pp.112–114; see also Paul Moon, *Te Ara ki te Tiriti: The Path to the Treaty of Waitangi* (Auckland: David Ling Publishing Ltd, 2002), pp.65–66. We are also aware of errors in the historical record, such as general histories of New Zealand which have misreported the date on which He Whakaputanga was first signed and the number of rangatira who signed it.


339. Document A16, p.115

340. Ibid, p.242

341. Ibid, pp.15–16

342. Document C11(a), p.3, app.1; doc A25(a), p.43; doc A35, p.3; submission 3.3.30, p.73; submission 3.3.2, pp.14, 34–36, 49–52, 95–98, 107–108; doc B10, p.68; submission 3.3.23, pp.21, 27; submission 3.3.37, pp.11–12, 18–19; submission 3.3.14, p.36; submission 3.3.21, pp.7–8


344. Ibid, p.249

345. Ibid

346. Ibid, p.246

347. Document A20, pp.47, 54–56

348. Ibid, p.55

349. Ibid, p.56

350. Ibid, p.57

351. Document A5, pp.34–35, see also pp.30–32, 35–36

352. Ibid, pp.33–35

353. Document A19, p.35; doc A18(a), p.52; doc A21, p.37

354. Document A21, p.37

355. Document A19, pp.20–21

356. Document A17, pp.27–29

357. Ibid, p.48

358. Ibid, pp.16, 26

359. Document D1(b) tab 4; doc A18(g), p.1191; doc A18(a), pp.52, quoting Busby’s ‘Address delivered to the Chiefs and people of New Zealand, after the reading of the King’s letter’, 17 May 1833: copied in *Sydney Gazette*, 2 July 1833, p.2; Lord Viscount Goderich, one of the Principal Secretaries of State to His Majesty the King of Great Britain, to the Chiefs of New Zealand, 14 June 1832, CO 209/1, pp.104–105, Archives New Zealand, Wellington

360. Document A18(a), p.52; Busby to Earl of Haddington (draft), 28 October 1836, QMS 0352, ATL, Wellington

361. Document A19, p.35

362. Ibid, pp.35–36

363. Document A20, p.59

364. Ibid, pp.47, 58

365. Ibid, p.47

366. Document A17, p.42

367. Ibid

368. Document A18(f), pp.854–862; Busby to Bourke, 30 November 1835, N0.73, QMS 0344, ATL, Wellington; doc A18, pp.61–62

369. Submission 3.1.142(a), pp.575–576

370. Parkinson, ‘Our Infant State’, p.269. The events are described in doc A11(a), vol.4, pp.1346–1356; Busby to Bourke, 18 January 1836, QMS 0345, ATL, Wellington; Lee, *Bay of Islands*, vol.192; doc A1, p.252; doc A19, pp.41–42; doc A17, pp.54–55, 60–61; doc A18, pp.72–73; doc A20, pp.65–66; and Polack, *New Zealand*, vol.2, pp.222–223; Rowan Tautari, ‘Attachment and Belonging: Nineteenth-Century Whananaki’ (MA thesis, Massey University, 2009), pp.20–25. Polack asserted that Whananaki had been unpopulated for many years and characterised the dispute as one between rival northern and southern alliance conquerors. He named Pōmare II, not Noa, as leading opposition to Waikato’s actions. Busby, on the other hand, said that those opposing the transaction actually lived in Whananaki but had appealed to their connections in the Bay of Islands.

371. Doc A11(a), vol.4, pp.1346–1356; Busby to Bourke, 18 January 1836, QMS 0345, ATL, Wellington; doc A1, p.252

372. Document A1, p.252

373. Doc A11(a), vol.4, pp.1346–1356; Busby to Bourke, 18 January 1836, QMS 0345, ATL, Wellington; doc A1, p.252; doc A17, pp.54–55, 60; doc D1, pp.130–131; doc A11, pp.247


376. Document A11(a), vol.4, pp.1346–1356; Busby to Bourke, 18 January 1836 and 26 January 1836, QMS 0345, ATL, Wellington; doc A17, pp.59–61


378. Document A11(a), vol.4, pp.1356–1362; Busby to Bourke, 26 January 1836, QMS 0345, ATL, Wellington

379. Document A11(a), vol.4, pp.1356–1362; Busby to Bourke, 26 January 1836, QMS 0345, ATL, Wellington; doc A19, pp.45–46; doc A17, pp.60–61

380. Document D1, pp.131–132

381. Document A11(a), vol.4, pp.1356–1362; Busby to Bourke, 26 January 1836, QMS 0345, ATL, Wellington
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382. Document A11(a), vol 4, pp 1362–1367; Busby to Bourke, 20 February 1836, qms 0345, ATL, Wellington


384. Photocopy of 1836 printing of Wakaputanga o te rangatiratanga o Nu Terei (Declaration of Independence of New Zealand) by James Busby (doc D1(b), tab 15); Parkinson, 'Our Infant State', pp 277, 497–499. Busby crossed Waikato's name off the copy he gave to Colenso for printing. The names of Heke and Te Peha were on Busby’s list but did not appear on the copy that Colenso printed.

385. Raeside, Sovereign Chief, pp 122–123

386. Document A18(f), pp 898–902; Busby to Bourke, 12 March 1836, qms 0344, ATL, Wellington; doc A18, p 75

387. Te Tirarau (Te Parawhau) signed on 9 February and Haimona Pita-Matangi (Te Pōpoto) signed on 29 March. According to Lee (Hokianga, pp 83–84), Tirarau had complained to Busby early in 1836 about McDonnell, who had tried to bully the chief into letting him cut kauri spars around Kaipara. This may have at least opened the door for Busby to ask Tirarau to sign, but we cannot know for sure.

388. Document A18(f), pp 898–902; Busby to Bourke, 12 March 1836, qms 0344, ATL, Wellington

389. Document A18(f), pp 913–916; Busby to Bourke, 18 June 1836, qms 0344, ATL, Wellington; doc A18, p 75; doc A18, p 75 n 222

390. Document A17, p 55 n 154. As discussed in chapter 3, Bourke had been willing to send a ship of war to Taranaki the previous year when it was constituted, and said the only occasion was when it met Whakaminenga had ever met at all except on 28 October 1835, proposals, see doc A18, pp 79–82; doc A17, pp 63–66; doc A19, pp 46–47.

391. Document A18(f), pp 903–912; Busby to Bourke, 18 May 1836, qms 0344, ATL, Wellington; doc A18, p 76; doc A17, p 55 n 154

392. Document D1, p 126; doc A17, p 114 n 350

393. Document A18, p 78; doc A1, p 249

394. Document A18(f), pp 917–926; Busby to Bourke, 30 January 1837, qms 0345, ATL, Wellington; doc A11(a), vol 4, pp 1368–1372; Busby to Bourke, 28 March 1837, qms 0345, ATL, Wellington; Lee, Hokianga, pp 88–89; doc A21, p 42 n 93; Davis, The Life and Times of Patuone, pp 27–28


396. Document A18, p 78; doc A1, p 249; see also doc A21, p 42 n 93


398. Parkinson, 'Our Infant State', apps 1, 11, pp 432–497


401. Document A11(a), vol 4, pp 1376–1394; submission 3.1.142(a), pp 440–446; Busby to Bourke, 16 June 1837, qms 0345, ATL, Wellington

402. Document A18(e), pp 630–632; Hobson to Bourke, 8 August 1837, BPP, 1840, vol 238, pp 9–11; doc A11(a), vol 4, pp 1368–1372; Busby to Bourke, 28 March 1837, qms 0345, ATL, Wellington; Williams, Christianity Among the New Zealanders, pp 249–250; Polack, New Zealand, vol 2, pp 40–43, 204–205

403. Erima Henare, transcript of evidence, 4.1.1, pp 253, 261–262. Henare gives the date as 1838 not 1837, though the latter is confirmed by documentary sources, as is PI’s death. See also document D5, p 40, which gives the date as 1818.


405. Document A1, p 252

406. Document A11(a), vol 4, pp 1368–1372; Busby to Bourke, 16 June 1837, qms 0345, ATL, Wellington

407. Document A11(a), vol 4, pp 1368–1372; Busby to Bourke, 16 June 1837, qms 0345, ATL, Wellington

408. Document A11(a), vol 4, pp 1368–1372; Busby to Bourke, 16 June 1837, qms 0345, ATL, Wellington

409. Document A17, pp 113–114. For detailed descriptions of Busby’s proposals, see doc A18, pp 79–82; doc A17, pp 63–66; doc A19, pp 46–47

410. Submission 3.1.142(a), p 574. Busby was asked if Te Whakaminenga had ever met at all other than on 28 October 1835, when it was constituted, and said the only occasion was when it met Hobson for the signing of Te Tiriti.
411. Submission 3.3.33, p 36
412. Those to express this view included Ani Taniwha, Kiharoa Parker, Nuki Aldridge, and Erima Henare: doc B4(a), p 6; doc A34(a), p 7; doc B10, pp 65, 77; transcript 4.1.1, p 294.
413. Document A34(a), p 7
414. Transcript 4.1.1, p 294
415. Document A30(a), p 1
416. Document B18, pp 17–18
417. Document C19, p 7
418. Document B34, p 30
419. Document A20, p 102
420. Submission 3.3.23, pp 30–31
421. Ibid, p 31
422. Ibid
423. Ibid, pp 33–34
424. Submission 3.3.14, pp 36–37
425. Ibid, p 37
426. Ibid
427. Ibid, p 38
428. Document B3, pp 83–84. In his doctoral thesis, Henare had written that a ‘Rangatira Executive Council’ was established with Busby as an adviser and that it functioned until 1840, although his source for that statement was unclear. He also said that there was ‘little available evidence, which describes in any way a parliament actually working’: doc A16, pp 191, 223–224.
429. Document A20, pp 63–64, 66–68
430. Ibid, p 63
431. Ibid, pp 63–64
432. Ibid, p 67
433. Submission 3.3.33, pp 38–39
435. Te Morenga was listed on the declaration as ‘Timorenga’
440. Ballara, ‘Te Hapuku’
441. There is also very little evidence about how these additional signatures were gathered: see doc A18, p 80 n 237.
442. Document D12, p 2
443. Hobson to Bourke, 8 August 1837, BPP, 1840, vol 238, pp 9–11 (doc A18(e), pp 630–632)
444. Stephen to Backhouse, 12 December 1838, BPP, 1840, vol 238, pp 3–4 (doc A18(e), pp 621–622)
445. ‘Report of the Select Committee Appointed to Inquire into the Petition of Merchants, Bankers and Shipowners of the City of London respecting the Colonisation of New Zealand’, app 1 (doc A18(e), p 681)
446. Somes to Lord Viscount Palmerston, 7 November 1839, BPP, 1840, vol 238, pp 66–68 (doc A18(e), pp 662–664)
448. Document A19(a), pp 86–87
449. Submission 3.1.142(a), p 579
450. Document D1, pp 118–119; see also doc A18(e), p 713

Page 167: Signatories added below the codicil
2. Whereas other signatories to the codicil used moko, signatures, or crosses to indicate their assent, Te Wherowhero did not; rather, Kahawai’s name appears beside his as ‘kai tuhihi’. Parkinson speculated that Te Wherowhero may not have been present during the signing and indeed may not have known that the document was being signed for him: doc D1, p 111; see also ‘Our Infant State’, app 3, fol 504 n 53; doc A18(h), p 1281. However, Te Wherowhero’s descendant Te Amohia McQueen gave evidence that he intended to sign as a means of declaring kingitanga: doc D12, p 2.
Page 168: He Wakaputanga o te Rangatiratanga o Nu Tireni
1. Transcript of the 1877 facsimile of ‘He Wakaputanga o te Rangatiratanga o Nu Tireni’, in the script of Edward Parry (Eruera Pare Hongi), with tohu of chiefs as it was signed by rangatira on 28 October 1835, ATL, Wellington (doc D1(b), tab 11). He Whakaputanga was printed twice, in 1836 (doc D1(b), tab 16) and 1837 (doc D1(b), tab 15). See also doc A1, p 247; doc A18, p 242; and doc A16, pp 199–200.

Page 169: Declaration of the Independence of New Zealand
1. ‘Declaration of Independence of New Zealand’, in Facsimiles of the Declaration of Independence and the Treaty of Waitangi. This is a transcript of the English text of he Whakaputanga, which Busby sent to the New South Wales Government and the Colonial Office for response: see doc A1, p 248; doc A18, p 243; submission 3.1.142(a), pp 571–572.

Page 170: Principal residences of he Whakaputanga signatories
The names in the map reflect the 1837 printing of he Whakaputanga, except that the spellings of Te Morenga and Te Kemara have been corrected. Three rangatira were omitted from the 1837 printing, and their names are spelled as they appeared on the original text signed on 28 October 1835. The map does not show Awa, Kaua, Tona, Kaha, Te Hapuku (Hawke’s Bay), or Te Wherowhero (Waikato).


Page 174: Modern-day back-translations of he Whakaputanga
1. Document D4, pp 36–39
2. Document B10, pp 68–74. We have removed Māori text and explanatory asides from the translation.
4. Document A23, app 1
5.1 Introduction

The 1830s was a decade of rapidly growing contact between Māori and Europeans in the Bay of Islands, Hokianga, and other parts of the north. Traders, whalers, missionaries, land speculators and many others arrived in increasing numbers, staying for days, weeks or permanently, whether to seek fortunes for themselves or others, proselytise, get drunk, or run away from the law.

This influx coincided with significant change in Māori life within those areas. The economy continued to be reshaped as Māori sought access to European goods such as muskets, blankets, iron tools, clothing and tobacco, and correspondingly sought to meet European demand for food, timber, flax, sex, and labour. Introduced diseases affected Māori populations. Warfare declined, though muskets continued to be a significant import. Increasing numbers of Māori engaged with European ideas and customs, particularly those concerning religion. Many also embraced European technologies, in particular those concerned with agriculture and literacy. Some traditional practices became less common while others fell away almost completely. Towards the end of the decade there was significant growth in the number and size of land transactions between Māori and Europeans. None of these changes was uniform in terms of timing, location or people affected. In general, however, it is clear that contact with Europeans profoundly influenced Māori lives, and that the effects of contact increased towards the end of the decade.

In this chapter, what concerns us is the impact of these changes on Māori systems of authority. As the 1830s drew to a close, did Māori remain wholly in control of their lives, and did they perceive their existing systems of authority as adequate in light of new circumstances? Or did they perceive those systems as needing adjustment? Or as breaking down in ways that would in 1840 make them willing to consent to some expanded form of British authority within their territories?

Among European observers in the Bay of Islands and Hokianga, the commonly expressed view was that Māori leaders were losing control to a catastrophic degree. In the last few years of the 1830s, Busby and the missionaries wrote frequently to their masters in New South Wales and Britain, claiming that the Māori population was in terminal decline as a result of intertribal warfare and introduced disease; that Māori were losing control of their lands; and that they were increasingly incapable of rising to the challenge of imposing order on a rapidly growing European population, and therefore the colonial frontier as a whole. The only solution, these observers argued, was for Britain to establish order in ways that (in their view) Māori themselves could not. The Crown, in its
closing submissions, referred to the ‘increasingly dire situation in New Zealand’ described in these dispatches from Busby and the missionaries – a situation characterised by a ‘rapid rise in immigration’, ‘unconstrained lawlessness’, ‘land-grabbing’, an ‘upsurge in tribal fighting’, and ‘escalating depopulation’, giving rise to a ‘genuine fear . . . that the [Māori] race would disappear’. In chapter 6, we will consider how Busby and the missionaries influenced British policy towards New Zealand. In this chapter, what concerns us is whether their perceptions reflected what was actually occurring.

Among the claimants, many acknowledged that contact with Europeans wrought dramatic changes to the lives of their tūpuna, and that contact also brought challenges arising from Pākehā disorder and violations of tikanga (including tikanga concerning land), and Pākehā challenges to Māori authority. The claimants also acknowledged that the pace of change accelerated during the 1830s. What was strongly contested, however, was the view – which Busby and the missionaries had presented to Britain – that the Māori population and Māori systems of authority had collapsed to such an extent that they would
be willing to relinquish authority to Britain. These claimants emphasised the comparative dominance of Māori over Europeans in terms of population and military capability, and argued that their tūpuna remained in control of their territories at the end of the 1830s just as they had when the decade began. Erima Henare argued that Pākehā remained ‘hopelessly outnumbered’ by Māori in 1840 and noted that Māori leaders were hardened in battle. He also argued that the scale of tribal hākari (ceremonial feasts) and Māori food exports to Australian settlements were evidence of Māori economic strength. Hirini Henare, Hōne Sadler, and others stressed, too, the experiences of northern rangatira through trade and travel, arguing that Māori decision-making of the time was both informed and considered.

Among historians and other technical witnesses in this inquiry, most saw clear evidence of profound change in Māori society in the districts we are concerned with, but few saw this as threatening Māori systems of authority. Dr Grant Phillipson, for example, emphasised the resilience of Māori culture up to and indeed well beyond 1840, and suggested that ‘modifications were deliberate and
Maori-controlled’ and occurred in a context where Māori retained ‘political control of Pakeha and their ways’. Dr Vincent O’Malley and John Hutton also saw Māori in the 1830s as embracing change willingly, for their own purposes (in particular, the enhancement of mana), in an environment of overall Māori dominance. Dr Manuka Henare described rangatira as ‘agents of change’ who deliberately adapted as ‘new technologies and methods of commerce and governance presented themselves’. Moana Jackson said that contact did indeed challenge the certainties of tikanga and mana but did not fundamentally alter Māori legal and political life. Alan Ward warned against the trap of ‘read[ing] history backwards’, and expecting people in the 1830s ‘to have understandings . . . that are only available to us with hindsight’. He said that British observers in the 1830s genuinely believed that Māori had sold most of their land, were dying out, and were incapable of resisting British settlement. Nonetheless, Ward referred to ‘economic penetration’ by European interests, social dislocation caused by war, experimentation with Christianity, and the land rush of the late 1830s, concluding: ‘It is not mere hindsight to argue that by the late 1830s New Zealand was already caught in a vast tide of expanding European empire.’

In Dr Donald Loveridge’s view:

The missionaries arrived at the beginning of, and contributed to, a period of rapid and extensive change for Māori. European weapons and pathogens brought war and disease, and other European goods and technologies brought changes in lifestyles, while European ideas, notably to do with religion and government, posed major challenges to the traditional Māori world-view. ‘The sheer pace and magnitude of European intrusion left little time for coming to terms with these new developments, a difficulty compounded by the turmoil which they generated.’

In the following sections, we will consider these issues in more depth. Specifically, we will consider changes in Māori population, economy, religious and cultural practices, literacy, warfare, systems of law and leadership, and finally relationships with land – all with a focus on how these changes affected Māori systems of authority.

5.2 The Question of Depopulation
On 16 June 1837, while the northern and southern alliances were fighting in the Bay of Islands, James Busby wrote to Governor Bourke in New South Wales, referring to Māori warfare leaving ‘district after district . . . void of its inhabitants’ and the Māori population ‘only a remnant of what it was in the memory of some European Residents’. Māori approaches to conflict, the Resident argued, meant that even the most trivial of disputes could escalate into open warfare by drawing in relatives; once begun, every conflict had the potential to inflame the whole country. However, warfare alone was not enough to explain the ‘rapid disappearance’ of the Māori people. Rather, he said, depopulation was also caused by contact with Europeans and the various vices they had introduced. These vices included muskets, liquor, tobacco, the sex trade with its consequent venereal diseases and infanticide, and numerous other diseases through which Māori were being ‘swept off in a ratio which promises at no very distinct day to leave the country destitute of a single aboriginal inhabitant’. The only answer, in Busby’s view, was for Britain to take control and impose order, albeit under the nominal authority of Māori rangatira. Indeed, as Busby reported it, this was not only his opinion but also that of Māori. They were, he said, ‘perfectly sensible’ of the decline in their population, and had contrasted their own relatively low birth rates with those of British families, leading them to ‘conclude that the God of the English is removing the aboriginal inhabitants to make way for them.’

The view that Māori were dying out also pervaded many other dispatches from European observers in the late 1830s. The Royal Navy Captain William Hobson, who visited the Bay of Islands during the 1837 war, reported that intertribal wars were ‘fast depopulating this beautiful country’ and that without government there could be no permanent peace – though he also indicated that the establishment of order among Britain’s ‘abandoned ruffians’
Contested Ground

was a greater concern. Missions in 1838 and 1839 wrote in similar terms about catastrophic depopulation, though they were equally concerned about land-grabbing and French influence. In May 1838, the Waimate missionary Richard Davis reported to the Church Missionary Society (CMS) that the Māori population of the Bay of Islands was half of what it had been 14 years earlier. In the Hokianga, the Wesleyan missionary Nathaniel Turner wrote that nothing but a ‘new & special interference of divine providence’ could prevent the ‘entire extinction of the Aboriginal race.’ The following year, the CMS missionary John King reported that ‘The Māori population is greatly reduced by disease & death, war and bloodshed,’ and ‘The most promising young men & women who were brought up and instructed in the [mission] school I am sorry to say are dead.’

In recent decades, many scholars have challenged these accounts of catastrophic Māori depopulation. Peter Adams wrote in 1977 that missionary accounts of the impact of warfare were exaggerated, and indeed ‘the missionaries generally mentioned war as the major reason for population decline, even when the Bay of Islands was at peace.’ John Owens in 1981 questioned whether the overall Māori population declined at all in the decades from 1769 to 1840, though he conceded that there were localised reductions resulting from disease and war, especially in areas of most significant European contact. Owens also noted that missionaries were reporting a recovery in Māori health by 1839. The demographer Ian Pool noted in 1991 the unreliability of many nineteenth-century Māori population estimates, and sought to address this by working backwards from the first reliable count, Francis Dart Fenton’s 1858 census. Pool estimated that the overall Māori population of New Zealand declined by about 0.3 percent annually between 1769 and 1840, and attributed that almost entirely to introduced disease. Tribal warfare, in contrast, ‘was a dramatic element of the socio-political life of the period, but its impact demographically may have been more in terms of internal migration than of deaths.’ James Belich, writing in 1996, argued that overall Māori population decline in the decades up to 1840 ‘was not huge,’ though he acknowledged that some communities had indeed been devastated by war and disease.

The question for us is what the local population impacts were in the Bay of Islands and Hokianga.

5.2.1 The population impacts of warfare

Undoubtedly, the wars of the 1820s had a marked impact on the Māori population throughout New Zealand. The decade was one of brutal violence and dislocation, embroiling many tribal groups. Belich estimated the total number of Māori killed during this period at ‘perhaps about 20,000’ – more than the number of New Zealanders killed in the First World War. In the north, whole communities were displaced from parts of Kaipara and Whangārei, and much of Mahurangi, driven out either by the southward raids of Bay of Islands and Hokianga Māori or by retaliatory attacks from Ngāti Whātua and Waikato. Some of these areas remained sparsely populated until the 1830s or 1840s. There were also local conflicts in the Bay of Islands and Whangaroa as northern alliance hapū extended their influence in those areas in the latter part of the decade. However, according to Drs Manuka Henare, Hazel Petrie, and Adrienne Puckey, ‘kinship discouraged killing in large numbers in local feuds.’ Indeed, they argued, the northern alliance did not so much conquer as absorb Ngare Raumati during its 1826 push into the eastern Bay of Islands. By far the most significant 1820s conflicts involving Bay of Islands and Hokianga Māori occurred during their long-range taua against rivals from Ngāti Whātua, Ngāti Paoa, Waikato, and other tribes further south. In these, superior firepower generally resulted in the northern invaders losing far fewer warriors than the southern tribes. As Henare, Petrie and Puckey put it, ‘population losses from muskets were far greater outside the north than within it.’

The northern alliance’s last major external taua took place in 1833 and resulted in comparatively few casualties. Five years later, Pōmare II of the southern alliance led some 120 warriors in an unsuccessful campaign against Ngāti Manu on Great Barrier Island. Among internal conflicts, the Girls’ War claimed about 30 lives,
while casualty estimates vary widely for the 1833 Hokianga conflict involving Moetara and Ngāti Manawa, Te Hikutū, and Te Rarawa. The 1837 conflict, which prompted Busby’s dispatch, appears to have resulted in no more than 50 deaths among the 1,000 or more warriors taking part. As was generally the case for conflicts among kin, it was a controlled affair. The account given by Polack and others (section 4.8.2) suggests that the competing parties went to some lengths to display their military strength, but generally avoided direct engagement. It was Busby’s first direct experience of Māori warfare, and from the outset he expected the worst and was consistently surprised when it did not occur. In May, he predicted that Europeans would inevitably become victims in the conflict; in fact, the combatants took very deliberate steps to keep Pākehā safe. In June, Busby could see no end to the conflict, and predicted it would escalate to involve the whole of the north, ultimately wiping everyone out; in fact, there had been few significant engagements in the weeks before his dispatch. Furthermore, peace was only a month away, and was concluded soon after the arrival of Patuone and Nene.

Henare, Petrie and Puckey argued that overall ‘the impact of the Musket Wars on the northern population is likely to have been slight’, and other historians also viewed 1830s missionary accounts as exaggerated or as failing to take account of the declining incidence of warfare. In our view, while there were some deaths from warfare
among Bay of Islands Māori during the late 1830s, their numbers in no way justified the claims made by Busby and others that warfare was leaving whole districts without inhabitants and leading Māori rapidly towards extinction. Indeed, as Phillipson has pointed out, the late 1830s was in fact the most peaceable period for Māori within those districts in several decades.33

5.2.2 The population impacts of introduced diseases
If war was not a major source of fatalities in the Bay of Islands and Hokianga at this time, could disease have been responsible for the accounts of catastrophic population decline and potential extinction? Certainly, these areas were affected by introduced diseases. Samuel Marsden, on his second visit to the Bay of Islands in 1814, was told of an illness that ‘slew a great many’ Māori,44 and 16 years later Henry Williams wrote of the ‘great mortality which has long prevailed in the land’.35 In the late 1820s, there were epidemics of whooping cough and influenza in the Bay.36 There were further influenza epidemics in the Hokianga in 1836, 1837, and 1838; in the Bay in 1837.37 According to missionary accounts in the late 1830s, the most common diseases afflicting Māori in these areas were scrofula (a form of tuberculosis causing swollen lymph nodes) and influenza, along with measles and erysipelas. (We note that such diagnoses were not always reliable.)38 In the Bay of Islands, venereal diseases had been known since the arrival of Cook (see chapter 3), and according to some accounts were common among Māori women by the late 1830s (see section 5.2.3).39

It is generally acknowledged that the overall Māori population declined as a result of these diseases. What is less clear is the scale of the decline, the local effects in the areas that concern us, and the extent to which the decline was continuing during the late 1830s. Some historians have pointed out that the epidemics of the late 1830s appear to have afflicted many but killed few: the 1837 influenza epidemic, for example, was reported to have affected 800 Māori in the Bay of Islands but killed only 19.40 Similarly, 200 Māori contracted the illness in Kaitaia in 1838 but only three or four died.41 Harrison Wright, Adams, and Phillipson all referred to growing immunity among Bay of Islands Māori to influenza and other introduced diseases, with influenza by the late 1830s tending to weaken rather than kill.42

Polack, who lived in the Bay of Islands for six years up to 1837, witnessed a single case of scrofula, and overall reported that ‘the constitution of the native is the healthiest in nature’ – so healthy, he claimed, that Māori showed a remarkable ability to recover from gunshot wounds.43 The ship’s doctor John Watkins, who visited the Bay of Islands from 1833 to 1834, later told the House of Lords select committee on New Zealand that sores were common among Māori, scrofula was ‘perhaps more abundant’ than in Britain, and almost all of the Māori women in Kororāreka had venereal diseases. Smallpox and measles, however, were unknown, and in general northern Māori were otherwise ‘very fine stout healthy Men’.44 Another doctor who visited the Hokianga in 1837 reported seeing only five or six cases of venereal disease.45 The c.m.s’s lay secretary Dandeson Coates meanwhile told the committee that the scale of depopulation was ‘probably not so considerable as has been lately represented’.46 Rather, he thought that the extent of internal migration had probably been underestimated, explaining that villages might be populated at one time and then unpopulated at another time solely for this reason.

Henare, Petrie, and Puckey argued that in the late 1830s some northern Māori had left behind lands they had previously taken by conquest and returned to ancestral territories, perhaps creating a false impression of depopulation.47 Some witnesses also argued that Busby and the missionaries had failed to account for the large-scale release of war captives which occurred in the later part of the decade as Māori adopted Christian values and made peace with former enemies (see section 5.6).48 According to Angela Ballara, Bay of Islands Māori had returned from their southern raids in the early 1820s with some 2,000 captives.49 These captives played a range of social roles: most would have been taurekareka (people without tapu who did menial tasks such as cooking and gathering food), some would have been pononga (personal servants); some high-ranking captives were treated well and
integrated into their captors’ hapū. How captives were treated, and the roles they played, might depend on their status within their own tribe, the manner of their capture, their usefulness to their captors (for example through acquisition of skills), and other factors.\textsuperscript{50}

It is helpful to put the number of captives brought back to the Bay of Islands in context of that district’s overall Māori population at the time. While there is no definitive figure, Ian Pool’s estimates suggest that the entire Māori population north of Tāmaki-makau-rau well exceeded 12,000 in 1840. Some missionaries estimated much higher numbers, and referred to the population being concentrated in the Bay of Islands, in the Hokianga, and further north. William Williams in 1835 said that the Bay of Islands alone had a Māori population of 12,000, with another 6,000 in Hokianga and 4,000 in Kaitaia.\textsuperscript{51} Based on Pool’s work, we think these are most likely overestimates. Nonetheless, the arrival of 2,000 war captives must have increased the Bay population very significantly during the 1820s, and the departure of many of them in the late 1830s must have also made a significant difference. According to O’Malley and Hutton, the release of captives was the main cause of apparent depopulation in the Bay of Islands during the 1830s, whereas

the apocalyptic levels of population loss by other means described by the missionaries simply do not appear capable of being substantiated on the basis of the meagre (and tendentious) evidence available.\textsuperscript{52}

5.2.3 The population impacts of tobacco, alcohol, sex, and changing labour patterns

Along with disease and warfare, Busby’s 1837 dispatch cited alcohol, tobacco, and the sex trade as possible sources of depopulation. The Resident conceded that the direct influence of tobacco and alcohol ‘cannot be stated as at all remarkable,’ but he nevertheless claimed that ‘they are in all probability the original cause of diseases with which their immediate connection is not apparent.’ The sex trade gave him more concern, both because of venereal diseases ‘undermining the constitution’ of those affected and so reducing childbearing rates and because of the infanticide of children born as a result of the trade – a practice that in Busby’s view was ‘of very frequent occurrence’.\textsuperscript{53}

As we noted in chapter 4, Māori showed very little enthusiasm for alcohol in the first decades following contact. During the 1830s, however, missionaries and others were noting instances of drunkenness among Māori in Kororāreka and the Hokianga. In January 1834, for example, Henry Williams wrote in his journal that it ‘is grievous to see their growing propensity for spirits, and the pains our countrymen take to shew them their delight in this intoxicating draught’. Around the same time, the CMS’s Missionary Register reported that a church service in Kororāreka had been disturbed by the intoxicated sons of Rewa and Wharerahi.\textsuperscript{54} In general, however, drunkenness was seen as a European problem.\textsuperscript{55} Busby’s own dispatches confirmed this. In September 1835 he had referred to frequent scenes of ‘riot and disorder’ among drunken Europeans, whereas use of liquor among Māori was – aside from some isolated instances – ‘far from’ widespread.\textsuperscript{56}

The use of tobacco was much more extensive. By the mid-1830s it was in such strong demand among Māori that it became a form of currency and was used along with other goods as payment in land transactions.\textsuperscript{57} But while Busby was probably right in saying that it had an impact on Māori health, its effect on mortality rates would not have been immediate.

There are various accounts of how the sex trade evolved in the decades after the crews of both Captain James Cook and Marion du Fresne were offered liaisons with Māori women. Some European observers in the 1820s and 1830s reported that unmarried Māori women willingly took part in sexual liaisons with sailors and other visitors in return for material benefits (especially muskets and blankets) far greater than any they could obtain from missionaries. These liaisons often lasted for the entire time a ship was ashore, and might be seen more as temporary relationships than simple prostitution. Married women were almost never involved (breaches of the marital bond being punishable by death), and the involvement of higher-ranking women was also uncommon. However, in the Bay
of Islands, especially, Māori men commonly prostituted female war captives (and occasionally their own sisters and daughters) and kept the proceeds for themselves. Some of these were girls as young as 10 or 11.\textsuperscript{58} As Belich has noted, those women who were involved in this trade ‘were being exploited as much by their menfolk or masters as by Europeans’.\textsuperscript{59}

Venereal diseases as a result of these encounters appear to have been relatively commonplace at Kororāreka, and may have both increased vulnerability to other diseases and decreased fertility, though this alone would not support a claim of catastrophic population decline.\textsuperscript{60} Busby also cited ‘very frequent’ infanticide of children fathered by sailors as a possible source of depopulation, though for this the evidence is far from conclusive.\textsuperscript{61} Some Europeans during the late 1830s claimed that infanticide was widespread;\textsuperscript{62} some argued that it did not occur at all, at least in the Hokianga.\textsuperscript{63} There is also evidence that it was declining during the 1830s, at least partly because girls (who had been victims more than boys) were now seen as having greater economic value since they could work in the sex trade.\textsuperscript{64} Overall, we see no evidence that infanticide was common enough to have been a major cause of population decline.

There is another possible source of population decline. During the 1830s, many of the whalers who left the Bay of Islands took with them as crew a handful of young Māori men, who travelled as far afield as London and New York, gaining adventure and experience as well as wages. Polack estimated that, by 1837, ‘some hundreds’ of Māori men were employed in this way. One, known as Baily, had risen to the rank of first officer on the whaler \textit{Earl Stanhope} and according to Polack could have been made captain if he had been British. Some of those who travelled returned home with gifts and a wealth of new experiences; others, however, did not return.\textsuperscript{65} The American historian David Chappell has suggested that young men ‘shipping out’ in this manner exacerbated depopulation in some Pacific Islands during the nineteenth century, and this seems an intriguing possibility for the Bay of Islands and possibly neighbouring areas. Certainly, if Polack’s estimate was correct, a substantial proportion of the young men of the Bay of Islands were labouring on whalers instead of remaining at home.\textsuperscript{66}

\section*{5.2.4 Conclusions on Māori population decline}
Overall, we think there was a great deal of exaggeration or misreading in European accounts of population decline in the Bay of Islands and the Hokianga during the late 1830s. The introduction of muskets had a clear impact on Māori methods of warfare and contributed to population decline in some parts of the country, but those effects were mainly felt elsewhere, and earlier. Undoubtedly, the arrival of Europeans had a significant impact on Māori health. The effects of influenza, scrofula, venereal diseases, and other introduced ailments cannot be dismissed as trivial, but neither should they be exaggerated beyond what the evidence can bear. The major effects of disease also appear to have been felt earlier, and by the late 1830s introduced diseases appear to have debilitated Bay of Islands and Hokianga Māori rather than killing them. We accept that the Māori population in the Bay of Islands, and possibly the Hokianga, probably did decline in the 1830s, but not nearly to the extent that Busby and the missionaries claimed and not solely for the reasons they gave. rather, while much of the evidence is anecdotal or speculative, it seems that disease continued to play some role, but internal migration and the release of war captives were at least equally significant factors. The departure of young men to labour on ships may also have played a part.

Why, then, did Busby and the missionaries refer to Māori depopulation in such catastrophic terms? Ward referred to a widespread assumption by Europeans in the 1830s that any contact with indigenous peoples would result in ‘decline and ultimate destruction’. The colonial experience in North America and elsewhere, he pointed out, ‘seemed to lead to no other conclusion’.\textsuperscript{67} Other historians have argued that there were political reasons. Both Busby and the missionaries were trying to harness British humanitarian concerns and encourage British intervention because it suited their own purposes: Busby wanted Britain to support his plan for the establishment of a government under nominal Māori authority but his own effective control; and the missionaries wanted
protection from unfettered private settlement and growing French influence which would tend to dilute their own influence. Belich in 1996 argued that ‘fatal impact’ mythology was a factor: Europeans saw it as an ‘immutable Law . . . of Nature’ that indigenous people would either die out altogether or decline, thereby making way for the expansion of empire. In Belich’s view, this ‘powerful myth made European observers see what they expected to see’, exaggerating both the pre-contact indigenous population and the scale of decline. The other possibility, referred to above, is simply that Europeans failed to accurately observe and account for all factors leading to local population change, such as migration. All of these explanations have merit.

There is one further issue to address, which concerns the balance between Māori and non-Māori populations. Was a shrinking Māori population being replaced or threatened by a growing British one? Or did Māori remain in a clear majority?

Based on the accounts given above, the Māori population of the Bay of Islands and Hokianga appears to have numbered many thousands. The non-Māori population grew rapidly during the 1830s, especially in the second half of the decade, but from a very small base. According to Peter Adams, who considered the evidence in some detail, the resident European population of the Bay of Islands totalled between 100 and 130 in the early years of the 1830s, while the Hokianga population was probably just over 50. Missionaries and their families made up the majority of these, though they were joined by others such...
as escaped convicts, traders, ship repairers and builders, sawyers and blacksmiths. Together, these Bay of Islands and Hokianga residents comprised the majority of a total New Zealand resident European population of around 300 to 330. In addition, Adams noted, in the first few months of each year visiting whalers would have brought a ‘floating’ population perhaps numbering as much as 1,000, of whom some 200 to 300 might visit shore on Sundays. By 1839, Adams estimated, New Zealand’s total European population had probably grown to about 2,000, of whom some 500 to 600 lived in the Bay of Islands, and some 200 lived in Hokianga. Much of the Bay of Islands’ European population, he noted, was scattered among various small trading and mission enclaves around the Bay of Islands coast. Kathleen Shawcross gave figures of 600 adult resident Europeans in the Bay of Islands in 1839, comprising about 30 to 35 missionaries, 400 ‘respectable’ settlers such as merchants and traders, and 150 or so runaways. According to the Muriwhenua Land Tribunal, James Busby in 1839 recorded a count of 494 people of European or mixed Māori–European extraction in the Bay of Islands, 185 in Hokianga, 63 in Whangaroa, and 37 in Mangonui. The numerical supremacy of Māori was not under threat in any of these territories.

5.3 Economy and Material Culture

Trade had been the crux of the relationship between northern Māori and Europeans from the time of earliest contact, and by the 1830s had already contributed to significant changes in Māori life. What had once been a subsistence economy had, by the turn of the decade, become focused on the production of pork, potatoes, and corn, which were traded for muskets and the iron tools needed to run an agricultural economy. Along the way, many Māori and Europeans had adapted their behaviour in contact situations to ensure that trading relationships were smooth and peaceful.

The pace of change accelerated during the 1830s as contact intensified. The focus of Māori activity turned increasingly from warfare to economic activity, leading to growing levels of prosperity which allowed Māori to support enormous hākari and the adoption of new European goods. Of those, the musket was the dominant import throughout the 1820s and up to the mid-1830s, and remained a significant import for some years after that. Axes and other iron tools were also adopted during the 1820s. In the Bay of Islands, from the late 1820s blankets began to replace woven mats as the garment of choice, and western clothing also became more common during the 1830s. Tobacco was also in growing demand during the 1830s, as were iron pots for cooking.

In Phillipson’s view, the growth in demand for goods other than muskets after the late 1820s simply reflected the very large number already in Māori hands. By 1830, according to one missionary source, Bay of Islands Māori were already in possession of several thousand muskets. Ballara, however, said that muskets were often of poor quality and needed regular replacement. She estimated that, prior to the 1840s, the number of muskets in the Bay of Islands most likely ‘never rose much higher than one musket for two out of three fighting men’ – hence the ongoing demand even as Māori also became more interested in other goods.

Agriculture during the 1830s remained a mainstay of the new economy, with existing cultivations being enlarged and new areas being opened up. While pigs and potatoes remained predominant, there was also limited experimentation, under missionary influence, with beef and dairy farming and with chickens and various new fruit and vegetable crops. In 1839, according to Phillipson, 34 cargoes of food were exported to New South Wales. But there were other exports. From the early 1830s, timber became the principal export as shipbuilders sought kauri spars for use as masts. Dressed flax, which had been a major export in the 1820s, continued to flourish only briefly during the first few years of the following decade. Rangatira such as Titore, Patuone, and Pi formed close relationships with traders, often exploiting lands that their hapū had taken by conquest a decade or two earlier. By 1839, exports of timber, flax, and kauri gum were worth more than £72,000, much of it leaving from the Bay. The goods that rangatira received in return for their trade in kauri spars give some indication of their priorities, and
the continued importance of warfare as a source of mana. In 1834, Titore received the following from the Royal Navy ship *HMS Buffalo* as payment for kauri spars from Whangaroa:

| two blankets, two muskets, a bayonet, a scabbard, a cartouche box, 20 pounds of powder, eighteen musket balls, along with some fish hooks, pipes and four pounds worth of tobacco for each spar supplied. |

The arrival of increasing numbers of whalers and other ships in the Bay of Islands – more than 170 in total in 1839 – brought demand for other goods and services. As we saw above, sex and labour were in high demand. So, too, were liquor and gambling, both available in liberal quantities at Pōmare 11’s pā at Ōtuhi and from Pākehā traders at Kororārea.84

There is no doubt that these changes in the Māori economy were significant. Indeed, as Phillipson has said, what had already occurred in agriculture between 1810 and 1830 amounted to ‘something of a revolution’ – albeit in his view a revolution in the scale of cultivation, the adoption of some European tools, and the introduction of pigs and potatoes, rather than in Māori social structures.85 During the 1830s, as trade increased, this economic and material ‘revolution’ reached further into northern Māori culture. We turn now to explore the extent to which Māori drove economic transformation for their own purposes and in accordance with their own systems of law and authority, and the extent to which change was imposed on them as an inevitable by-product of British expansion.

### 5.3.1 Rules of exchange

As discussed in chapter 3, early trading exchanges between Māori and Europeans were fraught with misunderstanding, some of which led to conflict. Europeans did not understand the Māori system of reciprocal gift exchange, let alone its foundation in the law of utu. Māori, for their part, did not initially grasp the European notion of market exchange. More or less from first contact with Cook’s crew, however, northern Māori began to make accommodations. What quickly emerged, at least in some
circumstances, was a form of barter, in which there was explicit negotiation over price, followed by immediate exchange of goods or services.\textsuperscript{86}

Whether these were fundamental changes to Māori ways of doing things is open to debate. Many of the historians who gave evidence to this inquiry suggested that they were not; rather, they were outward modifications of behaviour that did not disturb the underlying values and social structures. Relying on the work of Raymond Firth, O’Malley and Hutton suggested that Māori had always distinguished between pragmatic economic exchanges (such as trade in food) and political or ceremonial exchanges aimed at cementing long-term relationships. In the case of economic transactions, there were pragmatic reasons for adopting the Pākehā system of immediate exchange, at least when dealing with ships that might leave at any time and not return. Furthermore, as discussed in chapter 3, Māori had also learned in Cook’s time that failure to make an immediate exchange could lead to violence. The adoption of direct haggling over price was ‘perhaps a more significant change’, but again there was precedent in the pre-contact practice of rangatira admiring goods ‘as a broad hint that they might like to receive these as a present.’\textsuperscript{87} The Muriwhenua Land Tribunal also addressed this issue, noting that immediate exchange was not unknown before contact with Europeans and indeed was typical in cases where people were meeting for the first time or fleetingly.\textsuperscript{88}

From the mid-1830s, a further modification occurred in the form of economic exchange. In the Bay of Islands and some other locations, it became relatively common for Māori to take cash payments in preference to payment in muskets, blankets, or other goods.\textsuperscript{89} As the missionary William Yate noted in 1835:

   Barter, of every description, is now gradually giving way, to the introduction of British coin and dollars. The natives are aware that they can, for money, procure almost anything they want.\textsuperscript{90}

The use of cash marked a new approach to economic exchange, though it is important not to overstate how widespread it was during this decade. According to Phillipson, the most common medium of exchange in the 1830s was not money but tobacco.\textsuperscript{91} To the Muriwhenua Land Tribunal, the important point was that even as Māori began to use currency they continued to see themselves as retaining control of trading relationships, both with resident traders and with visiting ships.\textsuperscript{92}

It is also important to recognise that the adoption first of a barter system and then of a cash economy did not replace traditional gift-giving, but rather existed alongside it in ways that suggest the two systems were closely related. Missionaries and other Europeans gave numerous accounts of Māori drawing them into cycles of giving and receiving gifts, a practice that Māori used both to obtain material benefits and to reinforce relationships.\textsuperscript{93} For example, when HMS \textit{Buffalo} visited the north during the 1830s to gather kauri spars for the Royal Navy, its officers engaged in commercial transactions with Māori (hiring labour and purchasing spars) but also gave and received gifts ‘as an important symbol of . . . friendship’.\textsuperscript{94} When the \textit{Buffalo} sailed for Britain in 1834, Titore and Patuone sent mere pounamu and kahuwai (feather cloaks) to King William IV, and received suits of armour in return – an exchange that would have symbolised to the rangatira commercial, political and possibly also military alliance.\textsuperscript{95} Busby also gave out blankets at important hui. In this way, Europeans adapted to Māori ways of doing things, just as Māori adapted by adopting barter and then cash for commercial exchanges. Significantly, as far as we are aware, these adaptations were confined to contact situations. Within their own world, Māori continued to live by their own rules.

It is also notable that Europeans continued to be drawn into this cycle of reciprocal giving during the 1830s and beyond, even when they clearly preferred not to be. As they had quickly discovered, any gift they received carried with it an obligation to give something of greater value in return at some future date. Though Europeans were generally resistant to this system, they were often powerless to avoid it without making themselves victims of taua muru.\textsuperscript{96} Even Henry Williams, whose mission had achieved a reasonable degree of economic self-sufficiency,
and who declared in 1831 that the practice of giving axes to visiting rangatira was 'now abolished', found it necessary to keep giving gifts when circumstances demanded. As time went by, Phillipson concluded, both sides modified their customs and behaviour . . . in order to keep the relationship a successful and mutually beneficial one. The values of each, however . . . persisted.

5.3.2 Rangatira as entrepreneurs

It is important to remember that these mutual accommodations occurred at a time of continued Māori numerical and military dominance. From early contact, northern Māori leaders had welcomed Europeans as potential sources of goods and technology, and so had competed to have Europeans living among them. That continued during the 1830s, even as contact increased. Since Te Pahi’s visit to New South Wales in 1805 and 1806 (see chapter 3), they had also looked outward, seeking to forge direct relationships with traders from New South Wales and even London. To a significant degree their entrepreneurial activities centred on the felling of timber, a trade that was dominated by leading Bay of Islands and Hokianga rangatira who had tasted military success during the 1820s and so were able to assert their authority over resources outside their traditional home territories.

Hokianga rangatira Te Taonui, Moetara, and the brothers Patuone and Nene were among the leading examples of this entrepreneurial spirit. In 1826 and again in 1830, Patuone travelled to Sydney to establish relationships with traders. These relationships, along with the establishment of the Wesleyan mission at Mangungu under the brothers’ protection, allowed timber and shipbuilding trades to open up in the Hokianga.

The Bay of Islands rangatira Titore meanwhile controlled trading activities at Whangaroa, and at Kororareka where he had lived since 1830. As well as his arrangement with the Buffalo allowing timber to be taken from Whangaroa, in 1834 he joined Patuone in a partnership which provided for the exploitation of timber resources.
A kauri felling camp near the Wairou River in the Kaipara district, 1839
in Mahurangi. Te Māhurehure rangatira Pī meanwhile entered a contract to buy the schooner Emma in 1831. The vessel then became one of the few trading ships that Titore allowed to move freely into Whangaraoa Harbour, until its former owner – who had claimed not to have been paid, and who had retained the registration papers – then sold it to another European. Titore and Pōmare II took more direct approaches to ship ownership by seizing Pākehā boats as they were needed.

Entrepreneurial rangatira were able to accumulate considerable wealth or quantities of goods. We have already mentioned Titore’s payment in goods for the Whangaraoa timber. Titore, Rangatira (Moetara’s brother), and other leaders were also reported to have shared the extraordinary sum of £3000 between them for an arrangement over kauri at Waihou. Returns such as these prompted the missionary George Clarke to note in 1835 that several chiefs were ‘turning Merchants [and] have a good deal of Money and other description of property.’

Rangatira who did not involve themselves in timber trading and shipbuilding found other ways to acquire prosperity. As noted above, Pōmare 11’s pā at Ōtuihu rivalled Kororāreka as a haven for drunken sailors and runaway convicts, leaving Pōmare to profit from their demands for alcohol, sex, food, and gambling, as well as from the levies he extracted on their ships. Polack in 1838 described a meeting of rangatira in Hokianga held ‘some time back’ to debate the question of anchorage fees there. The result, he reported, was that they instead charged visiting ships a highly inflated price for water. Other rangatira such as Te Ripi and Taiwhanga sought prosperity by taking up farming, as we will discuss further below.

It is clear that rangatira embraced new economic realities with considerable enthusiasm. However, as many witnesses to this inquiry pointed out, they did so for reasons that were essentially Māori. According to Manuka Henare, one of the principal responsibilities of rangatira was to manage relationships with others in order to enhance the material wellbeing of their hapū. Trade with Europeans provided an unprecedented opportunity to fulfil this duty and, for that reason, in the 1830s ‘the emphasis on a performing economy . . . was the fundamental preoccupation of the rangatira and tohunga.’ John Klaricich was another who referred to this role, describing how Moetara ‘seized upon’ opportunities to trade in kauri spars and supply the visiting ships.

As Manuka Henare’s views suggest, economic success obtained through trade could be a considerable source of mana for rangatira and their hapū. The huge hākari that emerged during the 1830s were examples of this. In 1831 at Ōhaeawai, for example, some 5,000 bushels of kūmara (about 17 cubic metres) and 290 pigs were either consumed or distributed among the 5,000 assembled.

5.3.3 Implications for political structures
While Māori entrepreneurship may have occurred for traditional reasons, it does not necessarily follow that the culture was left untouched. The expansion of agriculture, the cutting and dressed of flax, and the cutting of kauri spars all required a substantial labour force, high levels of organisation, and an ability to secure interests in the land.

Both Ballara and Phillipson referred to the role of war captives as a source of labour allowing Bay of Islands and Hokianga Māori to expand their agricultural output from the 1820s onwards. Both also detected a cycle in which the introduction of muskets brought military success which in turn brought economic success and opportunities to purchase more muskets. Phillipson argued that the large-scale taking of captives was not new in Māori society, giving the example that in Hauraki in the late eighteenth century there were ‘enough displaced people and slaves to form their own hapū.’ He acknowledged, however, that the scale of capture in the 1820s was ‘unprecedented.’ The Bay of Islands captives, he said, were mainly women and children, who provided a labour force working in gardens alongside women and children from the Bay hapū. In Phillipson’s view, even when the significant step was taken of allowing captives to return to their home territories, there would have been a corresponding increase in available labour provided by men who were no longer required for major external campaigns.

Nor, in Phillipson’s view, were significant technological changes required for the adoption of larger-scale
horticulture. Rather, potatoes were grown using similar methods to those used for kūmara. Certainly, the keeping of pigs was new, but again, Māori did not usually follow the European practice of keeping stock in fenced enclosures; rather, they were watched constantly. A few Māori under missionary influence tried cattle farming, but this was not widespread during the 1830s. Perhaps most significantly, both livestock and produce ‘were communally farmed and harvested by whanau and hapu’, the traditional units of economic and political organisation.\footnote{113}

Like agriculture, the timber trade created major demands on Māori labour. The work of cutting the spars and transporting them to waiting ships was back-breaking and took place in all kinds of weather. The missionary Nathaniel Turner thought it was a major source of illness and had ‘been the cause of the death of not a few in Hokianga’; he reported that some rangatira agreed.\footnote{114} But while the work was gruelling, it does not appear to have caused any change in traditional political structures. On the contrary, labour was provided by hapū or larger groups working under the guidance of their rangatira. Generally, the extraction of spars was one aspect of a larger arrangement which included the supply of food and other services to European traders and sawyers, and
often also the marriage of sawyers into the community. Rangatira appear to have seen these timber arrangements in terms of ongoing relationships, rather than mere commercial transactions. If neither food production nor the timber trade directly challenged pre-existing political structures, the practice of Māori labouring on ships arguably did – at least in some circumstances. As O’Malley and Hutton saw it, Māori who joined ships’ crews were engaging in ‘a purer form of capitalism – the sale of individual labour beyond the control of the hapu or chiefs’. While some may initially have been sent by rangatira, others made their own choice to seek money and adventure, and in this way tensions were created between ‘the individual ethic which underpinned the capitalist order and the communal nature of much Māori economic enterprise’. However, those tensions were ‘not unmanageable or significantly destabilising ones in the period to 1840’.

The new economic order did not substantially alter existing political structures, but it did create new grounds for dispute between competing groups. Pigs (or sometimes cows) wandering into the cultivations of neighbouring hapū, or their wāhi tapu, could provoke tensions and sometimes lead to violence. In the absence of rules to manage such occurrences, some rangatira developed an interest in Pākehā approaches to dispute resolution, as we will discuss in section 5.7.

As far as we are aware, the disputes caused by pigs were relatively minor. The same cannot be said for a number of conflicts over the extraction of timber. In section 4.8.1, we discussed the clash over Te Hikutū’s attempt to allow traders to remove kauri spars at Whananaki early in 1836, which the following year (according to Busby’s interpretation) spread into the Hokianga and led to more deaths. There were also disputes in the Hokianga when neighbouring groups either competed for trade or became embroiled in the conflicts of their Pākehā clients. Minor skirmishes occurred as well over the extraction of spars from Mahurangi, where rangatira asserting rights as a result of 1820s conquests clashed with others who had formerly occupied the land or had whakapapa to it.

5.3.4 Economic change and the question of control
Direct bargaining, the adoption of cash, and the other changes we referred to above suggest that by the end of the 1830s Māori in the Bay of Islands and Hokianga had joined a market economy geared towards the production or extraction of goods for profit. The question, therefore, is not whether there was cultural change, but how significant it was, and whether it reflected voluntary adaptation or any loss of Māori authority over their lives or territories.

Raymond Firth, in his seminal study of Māori economics, said that the acquisition of new goods – muskets, blankets, European clothing – ‘to some extent’ caused change in Māori society, ‘but on the whole the organisation of economic activity remained singularly unimpaired’. Firth argued that commodities such as flax and timber had not traditionally been exploited on a major scale, and so the amount of labour required for their extraction tended to ‘throw the economic machinery out of gear’. On the other hand, these commodities were ‘still produced by ordinary native methods’ using traditional technology; the organisation of activity was ‘carried out on the usual lines’ (that is, by whānau or hapū under the direction of their rangatira, who then distributed the proceeds); and, furthermore, Māori systems for determining the ownership of resources remained untouched. ‘In brief, Firth concluded, ‘the normal economic structure of the people was preserved’ and would not begin to fundamentally change until after 1840.

Belich argued that there was ‘no doubting the length and breadth of Māori economic engagement with Europe, nor that it substantially changed traditional society’. In his view, in most respects these changes were voluntary as Māori selected what they wanted of European material culture. Angela Ballara saw trade as ‘the first lever that forced actual differences in [Māori] behaviour’, since it was quickly discovered that violent responses to breaches of tapu would lead to retaliation and loss of trade. This was significant because it opened up the possibility of there being ‘one set of rules for Maori and another for dealing with Europeans’. However, the changes in Māori material culture were ‘accretions, added on to Maori culture rather
than displacing it’. She made the particular point that, in themselves, these changes ‘were not sufficient to disrupt the Maori lifestyle, nor to replace their system of tikanga and ritenga’.124

Phillipson’s view was that Māori economic changes were ‘large and significant, but not necessarily of the type that led to a major reorganisation of society or revision of its values.’125 While the scale of production was new, it continued to be a communal effort under the direction of chiefs. Crops and other resources were protected by tapu and planted with karakia, and traditional motivations remained at play. Furthermore, the developments of the 1830s merely intensified what was already happening: ‘More ships, more acres planted, more pigs herded, more food exchanged for goods, but no revolutionary changes.’126

In general terms, we agree with these views. The enthusiasm with which Māori embraced this new economy, the uses that goods were put to, the way in which effort was organised – all suggest that economic change was voluntary, occurred for Māori purposes and in accordance with Māori laws, and occurred in ways that were consistent with the traditional system of political authority based on autonomous hapū represented and guided by rangatira. As contact increased throughout the 1830s, Māori enthusiasm for Europe and its goods persisted, and in most areas Māori continued to encourage Pākehā to settle among them in the hope of gaining greater access to goods.

5.4 Māori Engagement with Christianity
During the late 1820s significant numbers of Māori children had begun to attend mission schools in the Bay of Islands and Hokianga, apparently attracted by opportunities to learn European skills (carpentry, tailoring, farming, medicine, and above all literacy) and also by gifts of fish hooks, food, and other items.127 The first Christian baptisms also occurred in the 1820s, though they were very few in number and for most Māori the Christian message was not a significant attraction.128 In the 1830s, that would change.129 Early in 1830, the Ngāti Tautahi rangatira Taiwhanga was baptised into the Church of England, and a handful of others followed throughout the year.130 What began as a trickle eventually became a river. In 1832, after 18 years of CMS activity, fewer than 50 Māori had been baptised. Three years later, according to CMS missionaries, the number had jumped to 300. By 1838, the number of Māori baptised into the Church of England was said to exceed 800, and by 1840 the number was said to be ‘not fewer than 2000’. Many more Māori were going to missionary services or incorporating Christian karakia into their own ceremonies.131 In Kathleen Shawcross’s view, ‘Perhaps about half of the total Bay [of Islands] Māori population had gone mihanere [missionary] by 1840.’ By ‘gone mihanere’, she meant ‘converted’, though she did not say whether conversion referred to baptism or some lesser level of commitment.132 The Wesleyan mission (which began in 1822) and the Catholic mission (which began in 1838) were less methodical in their record-keeping; however, they too reported rapid increases in the number of baptisms, albeit on a smaller scale than the CMS. Throughout the island, the Wesleyan missionary James Buller wrote in 1839, there had been ‘a great and mighty change’ in which recently heathen Māori, in great numbers, were now bringing themselves ‘under the saving influence of this blessed Gospel’.133

There are many varying accounts of the reasons for this apparent rush towards Christianity and of its overall significance to Māori.134 To some historians, Māori interest in and adoption of Christianity was both symptom and symbol of a ‘cultural confusion’ or malaise. As Harrison Wright argued in 1959, Māori turned to the Christian God in a state of bewilderment: the impact of disease and the loss of military superiority over southern tribes as access to muskets spread during the 1830s having left them with a ‘dawning realization of their inability to regulate their own lives’.135 One of the significant factors in this ‘conversion’, Wright suggested, was the Māori perception of disease as a spiritual condition which reflected ‘some evil-doing on the part of the sufferer’. Noticing that they were falling ill at a greater rate than Europeans, and that tohunga seemed powerless to cure them, Māori concluded that they were
victims of a stronger and more punitive European atua. This, at least, is what the missionaries reported during the 1820s and 1830s, and it is also what the missionaries wanted Māori to believe.  

Judith Binney, writing a decade after Wright, attributed the adoption of Christianity to ‘a new mood of despair’ as a result of disease, the loss of their decisive military advantage, and (late in the 1830s) to uncertainty about land transactions. This mood, she suggested, was a dramatic turnaround from the previous decade when Christian ideas had seemed ‘totally irrelevant’ to most Māori. Like Wright, Binney argued that Māori had initially been in control of their contact with Europeans to a point where Christianity seemed ‘totally irrelevant’ to them, but by the 1830s the balance had tipped. More recently, Lyndsay Head also viewed the loss of military superiority as a catalyst for Māori embracing missionary ideas of law and government, as we will discuss below.

Many historians have partially or wholly rejected this ‘cultural confusion’ argument for Māori engagement with Christianity, viewing the idea of a sudden shift from Māori dominance in the 1820s to Māori bewilderment in the 1830s as unconvincing. John Owens in 1968 argued that changing missionary methods – including a focus on literacy, and greater use of the Māori language and Māori teachers – were more plausible explanations for Māori interest in Christianity. More significantly, he rejected the view that there was any mass ‘Māori conversion’ at all during the 1830s, arguing that the number of genuine converts – those who had been ‘made over in mind and spirit’, as he put it – remained very small prior to 1840. Kerry Howe, in 1973, questioned the legitimacy of linking the acceptance of new beliefs with either social dislocation or cultural dissatisfaction, instancing the enthusiastic response to Christianity in areas largely untouched by European contact.

Belich argued that Māori were not passive recipients of European culture, but rather ‘actively engaged with it’, choosing those aspects that suited them and making adjustments as needed. The view that Māori culture collapsed in the 1830s, he said, was as suspect as the theories of catastrophic population decline. Both he and Ballara pointed to the open nature of the Māori religious system, and its inherent capacity to add new deities and beliefs in response to changing circumstances, just as had occurred in the period between the arrival of their tūpuna on these shores and first contact with Europeans. As Belich put it, Māori ‘conversion’ to Christianity was ‘better defined as the Māori incorporation of Christianity’ – the new, evidently powerful and certainly useful Pākehā God taking his place among the existing pantheon of atua. Belich suggested that the salient question was not why Māori in the Bay and neighbouring areas turned towards the Christian God, but why it took nearly 20 years for significant numbers to do so. Belich also questioned the reliability of the figures, noting that missionaries had to satisfy their masters in London, and suggesting that from the late 1830s the different denominations engaged in a ‘soul race’ in which they ‘were not inclined to be excessively rigorous about their own scores, though they constantly criticised the laxity of their rivals.’

This, then, is a general picture of Māori ‘conversion’ as historians have seen it. It is important in this inquiry to consider the north specifically. Was there a wholesale conversion to Christianity among Bay of Islands and Hokianga Māori, as Wright alleged? Was Owens right that Māori adoption of Christianity occurred on a much smaller scale and in a more superficial way? Did Māori in effect colonise the Pākehā religion for their own purposes, as Belich argued? It is to these questions we turn now.

5.4.1 Which Māori became Christian?  
Most historians have seen Christianity as a phenomenon that first took off among less powerful northern Māori – war captives, the ill, younger people, and women. Rangatira and tohunga, on the other hand, were seen as either resisting Christianity (since missionary influence threatened their own power) or using missionaries for their own ends while allowing captives and children to acquire literacy and other skills at mission schools. Ballara, for example, said that rangatira resisted Christianity – at least initially – because it threatened
their mana. She quoted a missionary account in 1832 of the Bay of Islands rangatira and tohunga Tohitapu refusing to go to a church service in the Bay of Islands 'because he would have to mix with the Slaves and he is of great consequence'. Shawcross, however, argued that the commonly voiced notion that slaves were often the first persons to be converted to Christianity and chiefs and tohungas usually the last could not be more contrary to the actual facts.

Rather, Shawcross argued, in the most densely populated parts of the Bay of Islands,

the missionaries very soon after 1830 established a particularly strong influence over a number of leading chiefs who quickly joined the ranks of pioneer Maori converts.

This occurred, in particular, in inland regions which were closer to mission stations and further from the influence of ruffian sailors who laughed at the missionaries and spent their Sundays drinking.

Taiwhanga, a rangatira who was baptised early in 1830, was a renowned warrior who had fought in several of the northern alliance's major external campaigns. From the early 1820s, he had also been interested in missionary ways, in particular their agricultural methods. In 1825, he returned from Te Ika-a-Ranganui (the famous battle avenging the 1807 defeat to Ngāti Whatua at Moremonui) set on peace, and thereafter refused many invitations to join military campaigns. A rangatira of Ngāti Tautahi and Te Uri o te Ahu, Taiwhanga lived with the missionaries at Paihia during the late 1820s, and his children were baptised there in 1829, preceding his baptism by six months. Taiwhanga's decision to adopt Christianity, William Williams wrote, had been made 'after long deliberation and in the face of much opposition', and his baptism was an occasion that would 'call for joy among the angels in heaven.'

Two years later, Te Ripi, principal rangatira of Te Mawhe (Pukututu), was baptised and took the name Paratene after William Broughton, the head of the Anglican Church in New South Wales. According to Williams, Te Ripi, a signatory to the 1831 letter to King William, was 'the first person of high rank who had ventured to stand forth on the side of Christianity', Taiwhanga being a rangatira of lesser standing. Other leading rangatira mentioned by Shawcross as early Bay of Islands converts included Te Kekeao, of Pukenui, who also took the name Paratene; and Atuahaere, of Kaikohe, who was baptised as an old man in 1834 and took the name Te Reweti (Davis).

Taiwhanga, Te Ripi, Te Kekeao, and Atuahaere were all from the Bay of Islands interior. So, too, were two other rangatira of (in Shawcross's view) lesser standing, who were baptised in the early 1830s: Hōne Heke of Kaikohe, and Wiremu Hau of Waimate.

Closer to the Bay of Islands coast, the young rangatira Matiu (his only known name) and Tamati Pukututu, both of Kawakawa, were also baptised in the early 1830s; as was Hemi Tautahi of Paihia. In Hokianga, Aperahama, the son of Te Taonui, was baptised in 1833. Judging by the transliterated English names they used when they signed he Whakaputanga, Hemi Kepa Tupe, Wiremu Taunui, and Haimona Pita Matangi would also appear to have been under missionary influence.

During the second half of the decade, more rangatira were baptised and the rate at which they adopted Christianity increased. In 1836, the leading Te Rarawa rangatira Panakareao was baptised, taking the name Nopera (Noble), and several other Te Rarawa leaders appear to have followed him. The Ngāti Korokoro rangatira Moetara was baptised in 1838 as he was dying of influenza. The following year, the Hokianga leader Nene was baptised into the Wesleyan Church, with which he had long-standing ties, taking the name Tamati Waka (Thomas Walker, a patron of the CMS). On 26 January 1840, his brother Patuone was baptised into the Anglican Church at Paihia, taking the names Eruera Maihi (Edward Marsh, the name of one of Henry Williams's sons).

Perhaps equally remarkable is the number of leading rangatira who did not formally enter Christian churches during the 1830s, at a time when mass 'conversion' was allegedly occurring. Titore, Tārehā, and Rewa – leading northern alliance rangatira after Hongi's death – are
notable absentees, as are the southern alliance leaders Pōmare II and Kawiti. In the Hokianga, the leading rangatira Te Taonui never converted. Waikato, after his experiences over Whananaki, became an implacable opponent of the CMS. Te Morenga was regarded as friendly towards the missionaries but does not appear to have converted before his death in 1834. Overall, of the 52 leaders who signed he Whakaputanga, fewer than one-third had been baptised by 1840.

Furthermore, the motives of the rangatira who did engage with Christianity during the 1830s were often complex. From the beginning, rangatira had supported missions in order to gain access to trade: that had clearly been the case for Ruatura and Hongi at the Bay of Islands, and also for Patuone and Nene when they sponsored the Wesleyan mission at Mangungu from 1828, though what prompted their specific decision to be baptised is less clear. Trade was also a motivation for Panakareao, who enticed the CMS to establish a mission in Kaitaia in 1834 before his baptism two years later. The Muriwhenua Land Tribunal in 1997 described Christianity as being ‘associated with good business’, adding ‘While traders gave goods, missionaries gave the means of production’.
all interested in missionary farming techniques, and this interest may have played as significant a part in their engagement with Christianity as the Christian message itself – especially as they lived in the interior and so had fewer opportunities to engage in trade. While they played active roles in spreading Christianity and literacy within the Bay of Islands and elsewhere, they also pioneered cattle farming in the interior. Indeed, Claudia Orange described Taiwhanga, who sold butter to Bay of Islands merchants, as New Zealand’s first commercial dairy farmer.

5.4.2 The Christian challenge to Māori values

‘Conversion,’ as Owens and others suggested, can have a multitude of meanings. It can refer to changes in outward behaviour; and it can also refer to changes in belief or spiritual experience. Assessing changes of fundamental belief is difficult. Though there are some accounts of some Māori, such as Te Ripi, debating their beliefs with others, there is no record of what conversion really meant to most Māori. Such records as there are were written by missionaries and so clouded by their perspectives.

The missionaries themselves relied on outward actions as a sign of inner change. For the CMS, candidates for baptism were expected to abandon warfare, violent dispute resolution, cannibalism, and polygamy – as well as to sincerely profess their faith in the Christian God. They were told that Sunday was to be a day of rest; that ‘killing and even owning slaves was cruel’; and that customs such as hahunga, hākari, tā moko, and haka were wrong, ‘wasteful’, or both. Adoption of Christianity furthermore implied the abandonment of traditional Māori methods and rules for governing behaviour, in favour of the ture (law) of the Christian God: tapu, utu, and muru would give way to the Ten Commandments and the threat of hell-fire; and rongoā (medicine) and karakia would give way to European medicine and prayer. As Ballara put it, the aim was to turn a person’s ‘whole personality away from his “ngākau Māori” to a new personality informed and infused by Christian (and nineteenth-century European) values. These would include not only Gospel values but also British mercantile ones, since from the beginning the missionaries had taught trade and farming skills as part of their conversion strategy (as discussed in chapter 3).

The Catholics, by contrast, were apparently more open to traditional practices such as tā moko and haka. They allowed Māori to wear traditional garments and carry guns in church, and were willing to respect the personal tapu of rangatira, though they did condemn ‘unjust wars, cannibalism, and all breaches of the Ten Commandments’. O’Malley and Hutton saw this ‘more relaxed’ approach as reflecting a ‘basic need to compete with the Protestant missionaries for converts, and to do so after entering the field more than 20 years after their rivals’. In this, the ritual of the Catholic Church and the ‘aristocratic bearings’ of the Catholic Bishop Jean Baptiste Pompallier also added to the church’s appeal. Overall, O’Malley and Hutton said, the Catholics mainly won followers among those who wanted to show opposition to the British, and were ‘never really in the game in terms of . . . total numbers of converts’.

There is no doubt that many of the changes that missionaries (in particular the Protestant ones) demanded did in fact occur during the 1830s. There is also considerable evidence of old customs either declining or being abandoned during the 1830s, including cannibalism, tā moko, polygamy (at least among Christians), the keeping of war captives, hahunga, and more. However, such changes cannot be attributed solely to Māori adoption of Christian values.

Cannibalism, for example, was more or less abandoned during the 1830s. However, it was pointed out to us that both Christians and non-Christians gave up the practice, and this may have been motivated largely by a desire to maintain valued relationships with Europeans, who were close to unanimous in condemning the practice. Another possible factor in the decline of cannibalism was the decline in warfare during the 1830s (which we discussed in chapter 4 and consider in more detail below). That, too, was a significant development; however, once again, the reasons cannot be simply attributed to missionary influence. Furthermore, warfare declined but did not end. While some Christian rangatira did indeed turn their backs on it, others with close ties to the missionaries
continued to fight when their mana was at stake. We will return to this subject below.

Another significant change was the release of war captives, many of whom went on to play important roles in spreading both Christianity and literacy into their own districts after their release. Again, the missionaries were not slow to claim credit for this development, but there are other explanations which we will also consider below.

Many other changes also occurred:
- Sunday was often observed from relatively early times as a day of rest, ‘at least when Europeans were present’ – though it appears that one reason this occurred was because Māori wished to avoid offending valued European missionaries.\textsuperscript{181}
- Tā moko became less common (although it enjoyed a revival during the 1840s).\textsuperscript{182}
- Hahunga were abandoned in the Bay of Islands and Hokianga from 1835, as discussed in chapter 4.\textsuperscript{183}
- Likewise, European burial rites became more common, and the traditional practice of newly widowed women slashing or killing themselves declined significantly, as did the practice of killing war captives.\textsuperscript{184}
- Rangatira who were baptised gave up polygamy, though this caused considerable anguish when it
required them to abandon their existing wives. Among those who were not baptised, polygamy remained the norm.

Another significant change concerned the enforcement of tapu. As discussed in chapter 3, early violations of tapu by Cook’s crew and by Marion du Fresne met with violent responses, in accordance with Māori law. But over time accommodations occurred on both sides. In European contexts, such as aboard ship, Māori became willing to suspend enforcement of personal tapu. Richard Cruise in 1824 wrote that,

Though all their superstitions were inviolably respected by themselves, when on shore, the moment a New Zealander came on board, he considered himself absolved from them, and he at once conformed to our manners and customs.

Nonetheless, even shipboard violations of tapu could still lead to tension. In 1834, when the young daughter of the trader Ralph Dacre pulled Patuone’s hair, this caused considerable disquiet among his followers, who ‘debated the issue for three days and were all for cutting Dacre off completely’. Patuone, however, argued that the incident could be dismissed on grounds that the girl was ‘porangi’ (crazy), so allowing a lucrative trade to continue. In Māori contexts, Europeans were generally expected to respect personal as well as environmental tapu, or suffer consequences. For example, in 1829, Waikato informed missionaries who passed too close to a tapu fishing ground that Māori had a right to enforce what they saw as sacred, just as the missionaries attempted to enforce observation of the Sabbath.

Over time, then, the trend was for Māori to become increasingly tolerant of European breaches while still enforcing the law within their own communities. There were several factors at play. Some missionaries such as Henry Williams made a point of challenging tapu if they felt they could get away with it, and this may have had some effect, though it probably just reinforced the notion that Europe’s atua followed different rules. Similarly, Māori who spent time on ships might have found their belief in the spiritual power of tapu undermined, since breaches could occur without consequence. But the most convincing explanation for this accommodation is that modified enforcement of tapu occurred pragmatically, to avoid conflict or offence, and to maintain relationships that were valued for other reasons such as access to trade. In a sense, one source of mana was being traded against another.

It is important, however, not to overstate the degree to which enforcement of tapu was relaxed, nor to confuse changes in enforcement with changes in underlying tikanga. For every example of tapu being enforced more leniently, there are others showing that it continued to hold considerable power in Māori minds, and continued to be enforced against Pākehā as well as Māori up to and well beyond the end of the decade. What sometimes changed during the 1830s was not the law of tapu itself, but the circumstances in which it was applied and enforced. As we will see below, even those who were baptised did not give up their adherence to tapu, but rather transferred it to a new context in which new atua were involved.

### 5.4.3 The creation of a Māori Christianity

Continued application of tapu during the 1830s suggested that underlying Māori laws were enduring in a time of ‘supposed missionary triumph’ and that Māori were incorporating Christianity into their own belief systems at least as much as they were being converted by it. Not only was it the nature of Māori religious system to adopt new atua, as Belich suggested, but Christianity was also presented in a way that (presumably unintentionally) encouraged that to occur. As several witnesses pointed out, the missionary use of ‘atua’ for ‘god’, ‘tapu’ for holiness, and ‘karakia’ for prayer led Māori to understand the new religion on their own terms.

While there is considerable debate about the underlying reasons for Māori interest in Christianity during the 1830s, there is near consensus that what emerged was substantially new. Even those who embraced Christianity regarded the Christian God as ‘merely another atua’ and Christian rules as a new form of tapu, Wright wrote in 1959; and what emerged was ‘not Christianity as the missionaries understood it, but as the Maoris misunderstood it’. Binney referred to the ‘partial . . . and uniquely...
Contested Ground

modified’ adoption of Christianity, even among those who converted. Ballara concluded that Māori adoption of Christianity was ‘not so much a cultural change as the inclusion of the new god in the existing Māori spiritual order’. In this inquiry, Phillipson noted that at least some Māori adopted ‘belief in the Christian heaven and hell, and the need for a new “heart” and forms of behaviour’; however, overall, ‘the new Christian religion was adopted in ways that served Maori needs in the 1830s and afterwards, and modified or discarded where it did not’, resulting in the creation of ‘an indigenised religion that remained Maori in many of its customs and values.’

As we related in chapter 3, Hongi’s death in 1828 was a catalyst for the spread of missionary influence within the north and ultimately to the rest of the island: according to Belich, as long as Hongi lived, he controlled missionary activity for his own purposes and prevented its influence from spreading. What occurred after 1828, Belich said, was competition among various hapū for missionaries and for the knowledge (including literacy) and material advantages they might bring. As a result, more missions could open, and rangatira were generally more accommodating towards the missionaries. This meant, among other things, that

More slaves and young people were allowed freer access to the mission schools and services, to keep the missionaries happy as well as to gain new knowledge for their hapu.

In terms of timing, this is far more plausible than ‘cultural confusion’ as an explanation for the sudden interest in Christianity among Māori from the late 1820s onwards. Tellingly, it is a theory that places responsibility for the spread of Christianity in the hands of rangatira and their quest for mana through economic advantage. It is, in other words, a theory that relies on Māori values and power structures remaining in force.

Historians have noted the importance of Māori teachers in spreading both Christianity and literacy throughout the North Island during the 1830s. Whether they were Christian rangatira operating within the north, or freed war captives returning to their homelands, these teachers explained the new religion in ways that made sense to Māori. As a result, both literacy and Christian rituals began to appear in settlements that no European missionary had set foot in. For example, both gained their first foothold on the East Coast through the agency of Taumata-a-kura, a former war captive returned from the Bay of Islands, who had attended a mission school but never shown any interest in baptism. He joined a taua in 1836 only on condition that the party did not eat their victims, then ‘led the attack, with his book [Bible] in one hand and his musket in the other’. When he emerged without a scar, his fellow warriors credited the European atua and its pukapuka. This was not Christianity as the missionaries were preaching it, but Christianity as Māori interpreted it.

Many other Māori who either had been baptised or were sympathetic to Christianity continued to fight or take part in taua muru. As discussed in chapter 4, Patuone and Nene – not yet baptised but certainly friends of the Wesleyans – sought utu when Kaitoke killed two of their Christian kin in 1837. Panakareao was still taking part in taua muru and warfare years after his conversion. Likewise, many Christian Māori joined the 1837 Bay of Islands conflict – a fact that, according to Ward, ‘particularly disheartened the missionaries.’

Christian Māori acted in other ways that were more consistent with Māori laws and values than with the missionary message. The missionaries’ usually inflexible views on sexual propriety were challenged, for example, when baptised rangatira returned to polygamy or engaged in extramarital sex. The missionaries were particularly anguished when, following the death of his wife, the pioneering convert Taiwhanga got one of his war captives pregnant. ‘They were married directly,’ wrote William Williams. ‘But it has brought great disgrace upon our infant church.’ Taiwhanga seems to have spent more time farming and less time preaching after that.

Even Māori experience of illness, cited by Wright as the main reason for Māori adoption of Christianity, provides evidence that fundamental Māori values endured. We have seen that the missionaries often told sick Māori that conversion would save them. When Māori then expressed

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interest in baptism, the missionaries assumed that they had been believed. But in fact Māori beliefs about illness endured beyond the 1830s,206 and remain influential to this day. The claimant Emma Gibbs-Smith told us how she learned about rongoā as she was growing up at Waitangi: ‘they believe a lot of the ailments suffered by Māori were as a result of spiritual imbalances and thus the healing process had to be spiritually based.’207 Mason Durie has set out to show how breaches of tapu can contribute to mental or physical suffering, and how, in customary Māori healing, an illness may be treated by identifying and remedying the breach of tapu that was perceived to have caused it.208 For Māori to acknowledge a new atua in response to new illnesses, therefore, was not necessarily evidence of fundamental change, but rather that the law of tapu endured and was applied to new events and circumstances. Indeed, Wright came close to recognising this when he wrote of Māori turning towards Christianity so as to appease atua.209

It is hardly surprising, then, that for all of their trumpeting of success, the missionaries themselves sometimes expressed considerable misgivings about what Christianity really meant to Māori. John King, the longest-serving CMS missionary, lamented in 1836 that ‘even . . . those who are baptized have [not] taken up all the customs & manners of the english.’210 Three years later, he added:

‘The number of Natives under Christian Instruction, and favoured with the means of grace, is very large; but the number of those only who are, in my opinion, decidedly Christian, is small.’211

Another CMS missionary, Benjamin Ashwell, accused the Wesleyans of baptising Māori ‘who are ignorant of the first principles’ of Christianity – a charge that missionaries of all denominations commonly levelled at each other.212 According to Wright, the missionaries saw that Māori ‘often progressed enthusiastically until they were baptized and then stopped, satisfied’, believing they had freed themselves from the anger of the Christian atua while gaining themselves some mana along the way. ‘The difficulty,’ Wright concluded, ‘was that the Maoris thought of the Christian religion in terms of their own.’213 The Muriwhenua Land Tribunal in 1997 similarly concluded: ‘Christianity had been made indigenous, just as, presumably, it had earlier been Romanised or Anglicised.’214 We see no reason to differ from its view.

5.4.4 The emergence of Papahurihia
John Klaricich told us that Moetara, who sponsored the Wesleyan mission at Pākanae from 1836, was the only Ngāti Korokoro rangatira who favoured Christianity. After his death in December 1838, his younger brother Rangatira took over both the mantle of leadership and his brother’s name. He asked his people whether he should adopt the new religion, and the answer was that he should not. As Klaricich put it, the principal Te Wahapū rangatira declared ‘there would be no more Sabbath at Pakanae.’215

There was other evidence of communities rejecting Christianity outright.216 In 1833, for example, both Titore and Tāreha banned preaching from Kororāreka, though they later relented. Some of their anger concerned missionary interference in their planned taua to Tauranga; some, apparently, concerned fears about land (see section 5.9). Claimants also told us about the dislike that rangatira such as Te Kēmara and Pororua had for the missionaries.217 Instead of adopting Christianity, these rangatira and others such as Waikato became followers of the syncretic Christian faith developed by the prophet Papahurihia.218

Papahurihia emerged around 1833 with a teaching that brought together aspects of Māori and Christian beliefs. He regarded the Scriptures as true but claimed that the Anglican missionaries had corrupted their meaning. There was a Heaven, but it was one that spoke to 1830s Māori concerns, offering ‘flour, sugar, guns [and] ships’ in plentiful quantities, while Hell was reserved for the missionaries and other opponents of the new faith. Papahurihia was the first to identify Māori as ‘Hūrae’ (Jews), and his faith also identified with the Nakahi, the serpent from Genesis. While many features were Biblical adaptations – Papahurihia was literate and may have attended CMS services – others were ‘identifiably Maori in origin.’219
The legacy of Papahurihia among Ngāpuhi is enduring, not least because the wānanga he established, Te Wharewānanga o Te Ngākahi o Ngāpuhi, has ensured the preservation of tribal knowledge, including the prophecies of the spiritual leader himself. According to Rima Edwards, after the Northern War of 1845 to 1846 many leading rangatira from both sides entered this wānanga, and at Te Raupo, Hokianga, Aperahama Te Taonui inherited Papahurihia's prophetic powers. On that occasion, Aperahama is said to have bound Jesus Christ to Tangaroa through prayer: 'Na tenei karakia i herea ai nga whakapiruhia o Te Ao ki Hokianga / By this prayer the beliefs of the World were bound together in Hokianga.' This was done, Edwards maintained,

Kia u ki nga tikanga whakapiruhia o a tatu Matua Tupuna whakapiruhia ki nga karaipiture kia tu kotahi ai / to uphold the custom faith of our Ancestors [and] Bind them with the Holy Scriptures so that they stand together.

Nuki Aldridge also rejected the notion that Christian influences undermined 1830s Māori society:

now historians talk about the introduced religion in terms of a loss of our people's culture and social structures. I don't recall any of the elders talking about a conflict in the power of the tribe.

Nor, Aldridge argued, did biblical teachings replace existing beliefs. He argued that there were many parallels between Christianity and Māori belief systems: both, for example, believed that all of life had a single, divine source even if they used different names, and missionary rules for behaviour also had parallels in the Māori world. 'Maoridom was very religious,' he pointed out, 'and Māori already knew about all these things.'

The great conversion of the 1830s, in other words, was not as complete as some accounts have made it seem. Māori interest in Christianity and its ways certainly grew tremendously during the decade. But, if the CMS figures are reliable, only a minority of Māori in the Bay of Islands and Hokianga were attending church services by the end of the decade, and still fewer had been baptised. Even among those who did profess themselves mihinare Māori, the 'conversion' seems often to have been incomplete. Māori continued to live according to the requirements of mana, tapu and utu even as the European atua took its place among others in Māori whakapapa. There was also backsliding, as Christian Māori – either as individuals or as communities – experimented with and then rejected Christian ways. Overall, Christianity was adapted to Māori purposes. As Belich suggested, Māori converted it as much as it converted Māori.

5.5 Mana Pukapuka: The Pursuit of Literacy

To 'learn the book' was a phenomenon of the 1830s at least as much as Christianity. The two went hand in hand, since – initially at least – it was the missionaries who spread this new form of communication through their schools and then through translations of their books. In the second half of the 1820s, according to the missionary accounts, some hundreds of northern Māori children went through mission schools in the Bay and Hokianga, learning to read and write along the way. The first letter known to have been written by a Māori was from one of these students, Eruera Pare, to 'te tini rangatira o ropi' ('the many chiefs of Europe'), asking for writing paper and an invitation to visit. As noted in previous chapters, Pare would go on to become the kai tuhituhi (scribe) for the 1831 petition to King William IV, and he Whakaputanga. For many Māori during the 1820s, literacy was initially seen as 'more of a novelty than a benefit.' Late in that decade, however, attitudes began to change. There is debate about exactly what caused this shift, and indeed about how genuine it was. Missionary accounts tended to suggest that Māori had suddenly acquired a hunger for the words of the European God, reflecting the missionaries' perception of themselves as messengers of a superior culture. To many historians, however, the situation was the opposite: it was the hunger for literacy, seen as the 'magical keys to European knowledge', that created
interest in Christianity, or at least provided the vehicle for its spread. Whatever the underlying reason, it is clear that interest in literacy was growing during the late 1820s, and that growth continued throughout the following decade.

The first CMS translation of Scripture into Māori appeared in 1827, comprising excerpts from the books of Genesis and Exodus, and the gospels of Matthew and John. Further translations of hymns, prayers, and excerpts from Scripture appeared in 1830 and 1833; and missionary accounts are filled with references to Māori asking for these books and reading them. The missionaries claimed also that children attending mission schools learned to read and write (in Māori) with considerable ease, often with minimal instruction. One visitor to the Paihia school in 1833 commented that “The writing of the senior classes was really better than that of most school-boys in England,” while missionaries also noted that books were considered so valuable that Māori would pay for them with pigs or – in one case – a hoe and axe.

According to William Colenso, so enthusiastic were Bay of Islands Māori for ‘the book’ that in 1834 when he arrived with his printing press, they ‘danced, shouted and capered about . . . giving vent to the wildest effusions of joy.’ He set to work on what has been called ‘the first great book printed in New Zealand,’ a Māori translation of the New Testament, 5,000 copies of which became available early in 1838. Demand, Colenso later recalled, was ‘great beyond expression, from all parts of New Zealand’; Panakareao sent a messenger from Kaitaia asking for a single copy and offering a gold sovereign as payment. By 1845, after further printings, it was said that one copy of the New Testament existed for every two Māori in the country.

Estimates of how many Māori actually learned to read and write vary widely. William Yate, in 1833, estimated ‘some hundreds’ in the north; the following year, the adventurer Edward Markham rather fancifully put the number as ‘not less than ten Thousand.’ The Anglican missionary George Clarke in 1833 wrote that ‘in every village’ there were Māori who could read and write, and in many villages there were schools run entirely by Māori who showed ‘considerable proficiency.’ By 1839, however, the Wesleyan James Buller was still counting literate Māori in the hundreds.

There is no doubt that some Māori could indeed read and write, but Donald McKenzie argued that many others achieved only ‘minimal competence’ or simply repeated from memory what had been read to them. McKenzie gave examples of Māori demanding new reading material because they had ‘committed to memory’ or knew ‘by heart’ all that had been printed. There is compelling evidence of this memorisation process in the experience of Kuri, a close relative of Te Morenga, who was fully blind and yet was able to repeat the Gospel of Matthew word for word.

McKenzie also questioned whether Māori may have been interested in books as objects at least as much as in literacy itself. Taumata-a-kura’s decision to take a copy of the Bible into battle is one example. McKenzie referred to other instances in which books were credited with the power to protect against either enemies or ‘evil spirits.’ Overall, in McKenzie’s view, the missionary accounts of Māori literacy during the 1830s amounted to little more than ‘expressions . . . of wishful thinking’, or perhaps of politics: ‘Victims of their own myths, the missionaries found what they wanted to find, and reported what they believed their London committee wished to hear.’

McKenzie’s intention was not to dismiss the achievements of those Māori who did become literate. Rather, he was responding to the perception, suggested by missionary accounts, that northern Māori within a single generation had made the transition from oral to literate culture. As he put it, this implied not only a widespread ability to read and write fluently but also a readiness to shift from memory to written record, to accept a signature as a sign of full comprehension and legal commitment, to surrender the relativities of time, place and person in an oral culture to the presumed fixities of the written or printed word.

McKenzie was referring here to binding contracts or treaties, and so his point is of obvious significance to this
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inquiry. In chapter 4, we recorded Manuka Henare’s view that Māori culture remained an oral culture in 1835, and that signing texts such as he Whakaputanga was merely ‘a way of concluding substantive agreements reached orally.’ Similar arguments were made in respect of te Tiriti, as we will discuss in chapter 8.

There are some writers, however, who saw significance in one aspect of this new form of communication: that of letter writing. Following Pare’s example, other Māori either wrote or dictated letters during the 1830s, sometimes requesting baptism, sometimes for political purposes. Some of these letters referred to ‘Nu Tireni’ or similar variants, and to ‘tangata Maori’, suggesting to Manuka Henare a growing sense of shared identity and national consciousness. At least one letter writer in the later 1830s made reference to ideas about law or government, as we will discuss in section 5.7. To Ballara, as well as to many other historians, the use of letters for political purposes was significant:

To a chief . . . [it] meant that his words, even long messages, could be sent accurately and unaltered to a recipient hundreds of miles away; this was a spatial extension of his mana.

Ballara noted, however, that these letters were most often written on behalf of rangatira by missionaries or Māori who were mission-educated. As she put it, even by 1840 ‘literacy and chieftainship were not always combined in the same person’, and letters sent on behalf of rangatira were furthermore ‘still rare enough to cause comment by observers each time they encountered evidence that it had happened’. In McKenzie’s view, rangatira saw letters as extending their mana to whichever part of the country they were sent to, but not as binding for all time. He also questioned the extent to which letter writing provided evidence of literacy, noting that even among the younger generation of Māori who had been educated at mission schools and wrote their own letters, there was considerable diffidence and insecurity in the language and tone they adopted.

Some later writers have challenged aspects of McKenzie’s analysis; few, however, have questioned his overall conclusion that Māori culture by 1840 was ‘still primarily oral’. Belich, in Making Peoples, saw considerable evidence of Māori interest in reading, writing, and books themselves, but concluded that ‘Māori literacy in the 1830s has been exaggerated somewhat by writers overeager to praise the Māori for being like “Us”’. Both Ballara and Owens argued that the true expansion of Māori literacy occurred in the 1840s and 1850s, rather than earlier.

Those who gave evidence to this inquiry similarly emphasised the continued dominance of the spoken word in 1830s Māori society. Merata Kawharu commented that ‘literacy was still in its infancy at 1840 and oral communication was . . . primary’. Phillipson said that the use of written deeds for land transactions (discussed in section 5.9), growing attendance at mission schools, the ‘craze for having bibles and public readings of them’, and the growing use of letters were all evidence of Māori recognition of written documents as important:

This did not necessarily mean lots of Māori could read and write, but that the written word had assumed significance in the Bay of Islands by 1840, especially for those hapu who had become Christians.

Henare, Petrie, and Puckey also concluded that ‘the spoken word and art forms’ remained the principal forms of communication among Māori in the 1830s, although there was ‘willingness to utilise new means and tools of communications when it suited Māori purposes’. In our view, there can be no doubt that the spoken word retained primacy among Bay of Islands and Hokianga Māori throughout the 1830s. Relatively few rangatira could read and write fluently, and for those who could there is no evidence that the written word suddenly assumed greater weight or importance than what was said face to face. Indeed, the emphasis placed on oral tradition by many of the claimants in this inquiry is an indication of the extent to which the power of the spoken word, handed down from generation to generation, remains a central feature of the culture. According to Haami Piripi, what continues to matter to the claimants is not what is written down, but ‘the orally transmitted stories about
expectations, deeds, aspirations and strategic objectives of our Tupuna.\textsuperscript{262}

It remains only to add one final perspective, that of Nuki Aldridge, whose detailed evidence about the Whakaputanga we discussed in chapter 4. In Aldridge’s view, although their communication was principally oral, Māori were interested in writing as a means to ‘transfer their own culture into the future’, and also because it allowed them to bind Pākehā. Māori, he said, ‘were of the opinion that the English couldn’t keep the spoken word, they could only keep the written word. The written word was a new thing to Maori.’\textsuperscript{265}

5.6 Warfare and Peacemaking

The 1830s, as we have seen, were years of relative but not absolute peace for Bay of Islands and Hokianga Māori. Of the conflicts that occurred, the most significant internally were those between the northern and southern alliances over Kororārea in 1830 and 1837; and the 1833 sparring between Moetara and Ngāti Manawa, Te Hikutū, and Te Rarawa. All of these conflicts were to a considerable extent motivated by the desire to acquire mana by controlling trade (concerning the 1830 and 1837 conflicts, see chapters 3 and 4). There were also external taua: Titore and others went to Tauranga in 1832 and again in 1833;\textsuperscript{264} and Pukerangi and Te Tirarau, as well as Kawiti and Pōmare II, mounted campaigns in the Waikato in 1832.\textsuperscript{265} The last external taua was Pōmare II’s expedition to Great Barrier Island in 1838.\textsuperscript{266}

The relative peace of the 1830s emerged around the same time as Māori were experimenting with western economic systems, and with Christianity and literacy. This confluence of timing has given rise to various theories in which western influence has been credited as bringing peace to a society that had no effective indigenous methods for conflict resolution, and so was mired in cycles of virtually endless warfare. Initially, the missionaries cast themselves in this role: their dispatches and journals contain numerous stories of their feats of peacemaking, both as individuals and as heralds of the Christian God and law. Their stories won some converts among earlier generations of historians, including Wright, who concluded that, having lost their military superiority around the end of the 1820s, Bay of Islands Māori ‘no longer wanted to keep fighting wars, but knew of no obvious formula for stopping them,’ and so turned to Christianity.\textsuperscript{267} More recently, Lyndsay Head has argued that, as a result of the one-sided and catastrophic (for the victims) external taua of the 1820s, warfare began to lose its meaning in the Māori world, prompting a search for new values which she argued were to be found in the possession of material wealth and the adoption of missionary ideas of law and government. She put it that

God’s law was efficacious in the area where traditional society had nothing to say: it dispensed utu without war. Christianity offered a model of governance where peace was protected by law, and where revenge was the responsibility of the state.\textsuperscript{268}

The most detailed analysis of Māori warfare and peacemaking during the early nineteenth century is Angela Ballara’s \textit{Taupō}, in which she dissected not only the military campaigns of the period but also the social changes that occurred around them. To Ballara, the introduction of muskets affected military tactics as well as, briefly, the scale of killing. However, throughout these decades warfare occurred for customary Māori reasons – to repair or neutralise damage to tapu or mana. It occurred, furthermore, only where other traditional methods of dispute resolution were inadequate or had failed, and it continued to be governed by tikanga, including the use of ritual to constrain conflict, especially between kin. While she acknowledged changes such as the decline of cannibalism and the release of captives, in Ballara’s view ‘the nature of Māori warfare remained essentially the same in 1845 as it had been in 1800’.\textsuperscript{269}

Ballara’s interpretations were consistent with those of Belich, who had argued in \textit{The New Zealand Wars} that Māori systems of warfare remained ‘essentially indigenous’ even after 1840.\textsuperscript{270} Phillipson also emphasised the continuity of Māori motivations and tikanga. He noted also that the main period of conflict around the Bay of
Islands had been towards the end of the eighteenth century – far too early for the musket or any other form of European intervention to have brought about significant social change.

If warfare continued during the 1830s to be conducted for Māori purposes and using Māori methods, what of peace and peacemaking? There are many theories about why there was less conflict during this decade. It is undeniable that the missionaries contributed, both through their ideas and through their direct interventions as mediators. Peace was certainly recognised as an integral part of the Christian message, and there is clear evidence of Christians sometimes refusing to fight or join taua muru. Indeed, as already noted, the association was so close that it deterred some rangatira from conversion – either because they wanted to keep fighting or because they feared conversion would leave them unable to defend themselves against aggression. “There are many,” wrote the Paihia missionary Charles Baker, ‘who are exceedingly desirous to live a life of industry & quietude,’ but in doing so would ‘render themselves liable to every encroachment & insult their heathen neighbours may be disposed to occasion them.” As discussed above, there were also Māori who adopted Christianity – or at least showed considerable sympathy towards missionary ideas – but still engaged in warfare or taua muru. There were others who converted but remained unsure about when they should fight, as the example of Wiremu Hau shows (see section 5.7).

The role that missionaries such as Henry Williams played as mediators was also significant. Sometimes, as Ballara noted, missionaries ‘risked bullets in attempts to make peace,’ and in doing so won respect among Māori leaders and a willingness to seek their counsel. But there is also an element of myth-making in stories of missionary peacemaking. Long before the missionaries had appeared, Māori had a tradition of using neutral peacemakers – men or women of rank who were related to both warring parties. What occurred from the late 1820s was that missionaries were co-opted into this role, allowing warring parties to achieve peace without loss of mana. Most often, the missionaries were not so much peacemakers themselves as assistants to the Māori peacemakers. There is clear evidence of this in the Bay of Islands and Hokianga conflicts of the 1830s which were all resolved through the mediation of senior rangatira. In 1830, according to Ballara, it was the leading rangatira of the warring parties who arranged peace, with missionary assistance. In 1833, conflict between Moetara and Ngāti Manawa, Te Hikutū, and Te Rarawa eased when reinforcements joined both sides, before lasting peace was negotiated by Tāwhai. In 1837, the second Bay of Islands conflict was, according to both Hobson and Polack, resolved partly because utu was achieved and partly through the intervention of Patuone and Nene (see section 4.8.2). One of the most telling comments about that conflict was made by Busby himself: ‘No influence had any effect with the contending parties,’ he wrote to Governor Bourke, ‘until it suited their purpose.’

Peacemaking during the 1830s was also achieved using other Māori methods. Intermarriage, gifts, land, feasts, and the return of war captives were all traditional methods of securing peace that remained in use during this period. The 1837 conflict, for example, was resolved when Pōmare II, having accused the northern alliance of murdering a missing female relative, promised to give land as reparation should she turn up alive. Patuone’s 1833 marriage to a high-ranking Ngāti Paoa woman concluded peace with that tribe and also extended Patuone’s influence into the Hauraki. Earlier, as we described in chapter 4, peace with Waikato had been secured through marriage between Rewa’s daughter and Te Wherowhero’s son.

Furthermore, as historians as diverse as Wright and Belich have said, the idea of the missionary peacemaker faces a problem of timing: declining warfare came first; large-scale interest in Christianity followed. To Wright, it was ‘quite clear’ that Christianity did not cause the decline. To Belich, ‘peace . . . made Christianity more than Christianity . . . made peace.’

Clearly, then, missionary influence was not the main reason for the relative peace of the 1830s, even if the missionaries made some contribution. Another explanation is that warfare no longer served its former purposes: that
is, it no longer provided Māori with a means of acquiring mana or extracting utu for past events. This, it has been suggested, occurred largely because the spread of muskets had made military victories harder to achieve; in particular, there was much less prospect of success for long-distance taua, since they were more frequently encountering opponents with firearms. According to some historians, weariness with war following the intense campaigns of the 1820s was also a factor.  

Another possible reason for Bay of Islands Māori undertaking fewer external campaigns in the 1830s is that the victories of the previous decade may have already achieved the balance that they had been seeking. Te Ika-a-Ranganui, for example, had avenged long-standing grievances against Ngāti Whātua. After that and other victories, there may simply have been less need for major external taua. Indeed, the claimants told us how Te Ika-a-Ranganui extended the mana of Ngāpuhi, and how deliberate efforts followed to achieve peace between the neighbouring tribes. Where there were outstanding take, such as in 1832 and 1833, when Titore and others were seeking utu for the previous battle deaths of high-ranking people, fighting continued.  

Yet another explanation for declining warfare, put forward by Ballara, was that increasing European settlement in the Bay in the 1830s acted as a brake on conflict between neighbouring Māori. This was not through any civilising effect, but because European settlements provided a buffer between rival groups, and because as more Europeans settled among them Māori tended to migrate less often – in particular, she said, they left some of their coastal settlements and remained on ancestral lands in the interior. Increasing contact and settlement may also have meant there was less competition and conflict over access to Pākehā and their goods. It is important to remember, too, that warfare did not stop all at once as the result of a single, region-wide decision; it declined slowly over a period of time, with some individuals and communities continuing to fight while others made deliberate decisions to stop.  

We return now to the argument that declining warfare was motivated by Māori adoption of European economic values and that it was achieved through Māori turning towards Western ideas of law and government and away from the imperatives that had traditionally underpinned intertribal warfare. We have already said that the focus of Māori activity during the 1830s was turning towards economic gain, which would suggest that warfare may have declined in relative importance as a source of mana. We also agree that there was interest among some Māori in experimenting with ture as a means of resolving conflicts, as we will discuss below; however, we are not convinced that the second of these developments was general among Māori in the Bay of Islands and Hokianga or in other parts of the north. Nor do we believe Head’s assertion that the taua of the 1820s were mere ‘predatory larks’ conducted for non-traditional reasons; rather, we are convinced by Ballara’s view that they were fought for traditional reasons concerned with utu and mana, albeit using new technology.  

We furthermore cannot see that there was a clear chain of cause and effect, from the growing desire for material goods to the desire for peace through to the adoption of European ideas of law and government, as Head appeared to suggest. First, as discussed above, the decline in warfare began before there was significant engagement with missionary ideas. Secondly, the relationship between declining warfare and trading relationships was not a simple one. Undoubtedly, there were times when warfare disrupted trade. There were also times when warfare occurred precisely because of trade, as in the battles over Kororāreka in the 1830s. Often, trade happened because of warfare: that is, Māori sold produce to gain weapons, which were then used to enhance mana and achieve utu. As noted above, the musket remained the dominant import up to the mid-1830s and a significant import for some years after that. Under these circumstances, a simple cause-and-effect link cannot be drawn between trade and peacemaking. Finally, as we have discussed extensively in this report, senior rangatira such as Titore, Patuone, Moetara, Pi, Pōmare II, and many others were engaging intensively in trading relationships, and in political relationships with Britain, while at the same time applying distinctly Māori values to warfare and peacemaking.
Just as traditional motivations for warfare endured during the 1830s, so did traditional political structures: wars were still conducted by autonomous but related hapū, who could act in concert or separately. Ballara gives some very clear examples from the 1832 campaign to Tauranga. The decision to go to war, she said, followed a ‘series of long debates held between the chiefs of different communities and hapū at Kororāreka and elsewhere before each decided for himself whether to go or stay’. Pressure was brought to bear on those who did not want to go, but they could not be compelled to. Once each rangatira had committed to join, ‘he led his group separately’, each leaving on different dates and travelling by different routes. Even in battle, hapū acted independently and made ‘independent moves’ without consulting each other. Ballara reported that Henry Williams asked Rewa why the parties did not travel together, and ‘Rewa replied that it was their usual way for each party to go where they liked, that everyone was his own chief’. Overall, Ballara concluded that there was no ‘central war command’, nor even a common plan:

It was regarded as Titore’s taua, at least by the missionaries, because he had initiated it and because he had stayed out the longest and brought back the most heads, but in reality it was as much Ururoa’s . . . or Te Wharerahi’s or Tohitapu’s.

Busby gave a contrasting example of the complex interplay of autonomy and kinship in his account of the 1837 conflict between the northern and southern alliances. Describing missionary efforts to mediate in the dispute, he reported that there were rangatira fighting with Pōmare who were ‘unfriendly’ to his actions and were willing to negotiate with the northern alliance with the intention of concluding peace. They were, however, ‘constrained to take part with him [Pōmare]’ so long as he was unwilling to listen to the peace overtures. This brief dispatch, we think, shows that southern alliance rangatira, like their northern alliance counterparts, were autonomous (they were able to take part in talks with the missionaries against Pōmare’s will) but nonetheless in a time of war they had obligations, owing to kinship or some other imperative, which they could not ignore.

One final aspect of warfare and peacemaking that deserves consideration is the release of war captives in the late 1830s. Both Ballara and Phillipson thought that Christian influence was probably a factor in this, though both also saw evidence that the releases took place as part of traditional peace-making techniques. Ballara said that some high-ranking captives had been taken for the specific purpose, giving the example of Kawepō of Ngāti Kahungungu, who was captured and taken to the Bay of Islands in the early 1820s, but ‘was always treated as a person of rank, was tattooed as a chief while in the north, and was later released and restored with honour to his people’.

5.7 Tikanga and Ture

In chapter 2, we described the Māori system of law, based on tapu and utu, enforced through well understood mechanisms such as rāhui and muru. During the 1830s, as British involvement in New Zealand intensified, the missionaries and Busby made concerted efforts to persuade Māori to adopt British or missionary approaches to law and its enforcement, at least in contexts where Māori and Europeans were in conflict. It became increasingly common for Māori to approach the missionaries or Busby to intervene in disputes with Europeans, in circumstances where they might previously have sought satisfaction through taua muru. Busby and the missionaries encouraged this, casting themselves as kaiwhakarite (variously translated as mediators or judges). However, we suspect that rangatira did not see them as impartial intermediaries, but rather as people they could task with sorting out wayward Europeans. Certainly, when the Europeans complained to Busby about the actions of rangatira, the rangatira saw little need to respond, let alone submit to his intervention.

Another example of missionary intervention was the ‘kooti whakawā’ or ‘court of enquiry’, which came into use in the early 1830s at CMS mission stations in the Bay of Islands to deal with disputes or breaches of mission rules. In one case, a kooti was held to determine punishment for a man who had inadvertently cursed a young relative; in
another, one was convened over an accusation of theft. By 1835, kooti were occasionally held outside of the mission to resolve disputes between Māori and Europeans, such as when two Māori were accused of burning down a European’s house. It was not until after 1840 that these kooti spread beyond the Bay of Islands, and even within the Bay they only occasionally replaced more traditional forms of dispute resolution such as taua muru.

A related development was the use of ‘komiti’ – another initiative that took place within mission stations and involved kōrero to solve a problem or dispute. According to O’Malley and Hutton, these meetings were modelled on committees the missionaries themselves held to manage their affairs, though there was also strong Māori precedent in the gatherings that hapū held to discuss matters of significance. As with kooti, komiti were relatively rare before 1840. One example of the limits of these initiatives was provided by the missionary Charles Baker, who described a komiti concerning an attempted abduction in 1833:

The natives had much to say in committee but to little purpose nor was it necessary to examine the propriety of their proceeding inasmuch as they have all law in their own hands & where that is the case it is but of little use to hold a Committee.

Clearly, Māori were taking part in these initiatives voluntarily, on their own terms, and only in very limited circumstances. The significance of kooti and komiti was not that they had replaced traditional forms of dispute resolution, but simply that some Māori were willing to entertain the idea that there were different ways of doing things. The best-known example of this was a letter from the Christian convert Wiremu Hau to Samuel Marsden in 1837. We have only an English translation, which was made by a CMS missionary in 1837:

Sir, – Will you give us a Law? This is the Purport of my Address to you. 1st, If we say let the Cultivations be fenced, and a Man through Laziness does not fence, should Pigs get into his Plantation, is it right for him to kill them? Do you give us a Law in this Matter. 2d, Again – should Pigs get into fenced Land, is it right to kill or rather to tie them till the Damage they have done is paid for? Will you give us a Law in this? 3rd, Again – should the Husband of a Woman die, and she afterwards wishes to be married to another, should the Natives of unchanged Heart bring a Fight against us, would it be right for us to stand up to resist them on account of their wrongful Interference? Will you give us a Law in this also? 4th, Again – in our Wickedness, One Man has Two Wives, but after he has listened to Christ he puts away one of them, and gives her to another Man to Wife. Now, should a Fight be brought against us, and are we, in this Case, to stand up to fight? Give us a Law in this. 5th, Again, – should Two Men strive one with the other. Give me a Law in this. My (Ritenga) Law is, to collect all the People together and judge them for their unlawful fighting, and also for wrongfully killing Pigs. Therefore I say, that the Man who kills Pigs for trespassing on the Plantation, having neglected to fence, had rather pay for the Pigs so killed. Will you give us a Law in this? Fenced Cultivations, when trespassed on, should be paid for. These only are the Things which cause us to err; Women, Pigs, and fighting one with another. 6th, But here is another, – should a Man who is in the Church come in a Fight against us? Give us a Law in this. Another Thing which we are afraid of, and which also degrades us, is this, Slaves exalting themselves above their Masters. Will you give us a Law in this also?

The following year, according to one account, Hau told Bishop Broughton that all rangatira wanted a code of laws, and would willingly submit to them. The CMS used Hau’s letter in an attempt to persuade the 1838 House of Lords select committee that Māori lacked any government of their own and wanted Britain to provide one. To historians in this inquiry, however, the letter’s significance was less clear. Certainly, they told us, it showed evidence of change in Māori society: first, new farming methods were giving rise to new sources of conflict, for which new rules were sought; second, and more significantly, Christianity was challenging social hierarchies by giving slaves confidence to challenge their rangatira (a matter we will return to below); third, Hau’s request for a law had been made using a new form of technology: writing. On the other hand, a careful reading of the letter also
showed considerable evidence of continuity. It confirmed that taua muru were still a dominant form of dispute resolution, and that the use of force had not been set aside even among Christian Māori. It confirmed the traditional principle that balance should be restored through direct compensation of the wronged parties, rather than through recourse to a higher authority. It also made clear Hau’s position as rangatira and therefore as leader and mediator within his community. Most significantly, a careful reading of Hau’s letter confirms that he was not proposing that anyone else should make decisions for him. Rather, he was seeking advice: for each of the issues Hau raised, he simply stated what his own approach would be and asked if Europeans would handle the matter differently.

We also note that, because we have only a missionary translation of this letter, we have no way of knowing the extent to which it genuinely reflects the content of the original. Marsden, in forwarding it to the CMS Committee in London, was clearly seeking British intervention: he remarked that it was evidence of Māori wanting a King, when the letter did not say anything like that; and he also sought to elevate Hau’s status by saying that he ‘succeeds the late Shungee’ (Hongi).

If missionary attempts to influence Māori approaches to law and its enforcement met with only limited success, much the same could be said for Busby’s efforts. We discussed he Whakaputanga in chapter 4, and there set out our reasons for believing that the adoption of ture was not the prime motivating factor for rangatira who signed that declaration. Rather, rangatira were concerned with seeing off the foreigner who had claimed he was coming to be their King. Aside from he Whakaputanga, Busby’s efforts to guide Māori towards the practical use of ture came to relatively little. In 1837, he persuaded a committee of rangatira to sign a warrant authorising the arrest and deportation of two of the men accused of attempting to murder of the trader Captain John Wright (as mentioned in chapter 4). According to Busby, this committee was appointed by te Whakaminenga and comprised Heke, Wharerahi and Te Kēmara, possibly also joined by Pumuka and Marupō. All except Pumuka (Te Roroa) were northern alliance rangatira.

Then, in 1838, a ‘slave’ named Kite was tried (for want of a better term) and executed for the murder of a British Sawyer named Henry Biddle. There are various versions of what occurred, but it seems that Biddle asked Kite and his young master, the son of a rangatira, to take him in their waka to Whirinaki where they all lived. During the journey, Biddle was assaulted, apparently for refusing to pay, and either was killed outright or stumbled into the water and drowned. When Biddle’s body was found, Busby was sent for. He asked for both Kite and his master to be given up for trial, the settlers having threatened a violent response if the offenders were not brought to account. Patuone, Nene, and the missionary Nathaniel Turner arranged with the Whirinaki leaders for Kite to be handed over, but – according to Busby’s account – they refused to give up the boy. The trial went ahead at Mangungu, apparently with an all-Pākehā jury, and Kite was convicted. Two days later he was taken to a nearby island and shot by a Māori executioner, with the consent of the Hokianga rangatira.

In Busby’s eyes, the trial had been conducted as fairly as possible under the circumstances, and had ‘perhaps for the first time’ introduced Māori to the possibility of justice administered dispassionately, with punishment inflicted only on the guilty and not their kin. The New South Wales Attorney General however suggested that Kite had been shot not for his guilt but because he was a ‘slave’, and said that approving the Resident’s actions would dishonour the British government. Many who have written on the subject have agreed. Jack Lee, for example, suggested that Māori law alone should have applied, instead of Busby’s attempt at ‘half-baked justice’.

It is not clear from the accounts available that Patuone, Nene and the Whirinaki leaders were greatly interested in British justice. It seems more likely that they were interested in pacifying settlers and so preserving valued relationships. Giving someone of low status as utu for a Sawyer must have seemed a relatively simple and pragmatic way of achieving this, and was entirely consistent with Māori values at the time. Another significant feature of this case is that real authority remained with the rangatira: it was they alone who determined the circumstances.
in which Busby’s justice system was to be used, and who would be sent for trial and execution. As Busby conceded, the trial and sentence were possible only because ‘the guilty party [was] . . . a slave, over whom his master held the power of life and death’. Any attempt to pursue the boy over Biddle’s death, he wrote, would have met with armed resistance from his whole tribe. Other than a ‘slave’, he said, there was not the least ground to expect that . . . any New Zealander would be given up by his tribe for the purpose of being brought to trial and punished for any offence he might commit.316

This suggests that there were very real limits on Māori experimentation with ture. The Pākehā rules might be accepted if doing so was consistent with Māori laws and values, but otherwise not. We are reminded of Nuki Aldridge’s explanation of the Māori system of law, which we have discussed in previous chapters. According to Aldridge, ritenga (rules) could be adapted to different circumstances, whereas underlying tikanga did not change. In his view, ture were simply European ritenga, which Māori could adopt as necessary, but only if they were consistent with tikanga.357

The evidence of limited Māori experimentation with ture needs also to be viewed alongside the considerable evidence that Māori law continued to be enforced, not only against Māori but also against Europeans.318 Just as Māori had adapted their enforcement of tapu in order to sustain relationships and trading opportunities, early European settlers had learned to adapt their own behaviour to fit into their host communities. Even in the 1830s, most Europeans in the Bay of Islands and Hokianga (as well as other parts of the north) continued to live under the protection and authority of patron rangatira, and to a significant extent depended on them for survival. Though enforcement had become more lenient, they were expected to respect rāhui and wāhi tapu or face consequences. The consequences could be particularly severe for those who married into hapū and then strayed.

Europeans were also expected to meet obligations to their patron communities: many resented the cycle of reciprocal gift exchange, from which they generally emerged worse off but were powerless to stop. Furthermore, they could engage in trade only with the permission of their patron rangatira, who often expected a cut and some degree of control over their property.319 In Phillipson’s view, this package of reciprocal obligations ‘demonstrates, in effect . . . that resident Europeans, and their “property” were in fact subject to Māori law’ right up to the end of the 1830s and beyond.320

Many claimants emphasised the extent to which Ngāpuhi looked after newcomers, while also noting the mutual obligations this involved. Hirini Henare stated that ‘our tupuna protected the foreigners that lived here at that time’.321 O’Malley and Hutton argued that ‘few of the Pakeha resident in Northland prior to 1840 could have survived for any length of time without the active protection and assistance of local Māori’, even as they resented being ‘subjected to Māori law and domination as the price for being permitted to remain’.322

On the vast majority of occasions, the price for breaching obligations to hapū or rangatira was not recourse to Busby or Henry Williams, but the direct sanction of taua muru. Described by Europeans as ‘stripping parties’, taua muru were in fact the most commonly used method for peacefully resolving disputes between kin. Typically, the group to be subjected to a taua muru would receive a warning a day or two in advance, giving them time to prepare a hākari. When the taua muru arrived, there would be a ceremonial challenge, which could be followed by a discussion, during which appropriate utu might be agreed. Property would then be removed, often in large amounts, and the feast would be eaten. Sometimes, for smaller grievances, gift-giving or the feast itself would serve as appropriate utu, rather than full-scale plunder. Europeans, who generally misunderstood their purpose, saw them as little more than legitimised theft. Nonetheless, Europeans were frequent targets. Mission stations were frequently subjected to taua muru during the 1820s, and violence sometimes erupted when the missionaries resisted.
During the 1830s, taua muru against Europeans became less common as Māori often ignored minor breaches of their laws. Taua muru against Europeans also became less intimidating, and victims could more often negotiate the utu to be paid, rather than simply watching as their goods were carried off. For reasonably serious breaches of tapu or other laws, however, taua muru against Europeans continued. Furthermore, unconverted Māori and Christians alike took part, providing further evidence that conversion to missionary values was often incomplete.

If Māori law and hapū control of resident Europeans was the general rule, there were at least partial exceptions in the Bay of Islands. Through the establishment of their own farms, and through competition between rangatira for European books, ideas, and technology, the mission stations had established some degree of economic independence, and so were free to operate according to their own cultural rules, at least within their own boundaries. Charles Darwin, when he visited in 1835, described Waimate as ‘an English farm house & its well dressed fields, placed there as if by an enchanter’s wand’. By that time, it had become a small village with three large houses and several cottages, as well as a flour mill, stables, stores, large gardens, and almost 80 acres under cultivation or grazing. Its European population was fairly small: even within the mission Europeans were probably outnumbered by Māori, who did much of the building work; they were certainly outnumbered by the surrounding Māori population of perhaps 500 or so, who were engaged in cultivation of their own. Nonetheless, according to Shawcross, taua muru against the missionaries at Waimate and elsewhere became much less common from about 1830 – presumably as a result of the increased competition among rangatira to host mission settlements.

Traders such as Gilbert Mair, James Clendon, and Captain Wright had also established themselves on substantial tracts of land, with both Māori and Pākehā employees. Mair and Clendon each had about 50 or 60 people living on their properties and came to be seen, according to Belich, as ‘junior rangatira’, responsible for their own people and able to operate with a greater degree of autonomy than most Europeans in the Bay. They did not marry into their host hapū, and so were not subject to the rules of whanaungatanga to the same degree as those who had.

In neither case, however, was there complete freedom from Māori rules or authority. In Belich’s view, ‘it is an exaggeration to say that missionaries became economically or politically independent of their Māori sponsors’ during this period; they did, however, become ‘less dependent’. Indeed, Phillipson referred to examples of taua muru against missionaries throughout the 1830s and afterwards (even if they were more restrained than previously), which suggests that Māori continued to see missionaries as subject to their system of authority and law.

Similarly, traders were able to live according to British cultural rules within their own settlements, though rangatira exerted some control over their economic activities. Mair and Clendon lived within Pōmare I’s sphere of influence, to the extent that in 1833 Pōmare was able to seize a vessel Mair and another trader were in the process of buying (because he had a claim against the existing owner) and not return it until he received compensation. In that case, Busby expressed a desire to teach Pōmare ‘a useful lesson’ but conceded he was in fact powerless to do anything. Likewise, as we have seen, Titore not only controlled the activities of timber traders at Whangaroa and elsewhere but was also able to seize their vessels. Patuone, Nene, and Moetara similarly shared control of trading activities and settler communities in the Hokianga. The Pākehā traders’ Māori employees, furthermore, were often provided by rangatira, and stayed only so long as they wanted to.

According to Peter Adams, the resident Bay of Islands European population was scattered among various settlements located along the coast, including Kororārea, Te Wahapū (Mair’s station), Ōtuihu (Pōmare’s pā), Ōkiato (Clendon’s station), and Waikare. Marsden reported that 131 Europeans were living at Ōtuihu during the 1837 conflict – all of them under Pōmare’s patronage to such a degree that they were obliged to fight for him against the northern alliance.
Adams estimated that the permanent population of Kororāreka in 1839 was probably not much more than 100, and that they remained well outnumbered by Māori, basing his view on estimates given by Busby and the ex-convict and grog shop owner Benjamin Turner. Others have given higher estimates: a visiting surgeon in 1837 reported that Kororāreka had 300 Europeans, though it is not clear whether he included visiting sailors. In 1838, Bishop Pompallier recorded that the town had 15 or 20 European houses (which would tend to support Adams’s estimate) and a Māori population of about 400. Robert FitzRoy, who visited in 1835, said that the town had 500 to 1,000 Māori residents, and ‘a few Shopkeepers, who sell Spirits, and do much Harm’. There are other accounts, recorded decades later, which appear to inflate the European population of the town, placing it in the hundreds or over 1,000, and correspondingly diminish the Māori population. Shawcross said that as the ‘respectable’ European population grew towards the end of the decade, the number of ‘runaways’ in Kororāreka diminished, and – contrary to reputation – it became ‘a quiet little seaport town busily concerned with commerce’.

There are differing views on who was in control of the town. CMS missionary, Frederick Wilkinson, who visited with Marsden in 1837, gave evidence to the 1838 House of Lords committee on New Zealand that ‘the Chiefs have kept possession of Kororarika’ but exerted no authority over Europeans in the town, who were therefore ‘under no Law whatever’. However, another missionary, Richard Davis, in 1838 claimed that the white people are already so numerous, that the Natives may be considered to be comparatively in a subdued state. Kororareka is already in the possession of the Europeans and, from their superior judgement and combined strength, the Natives can no longer be considered as possessors or Governors of that place.

We do not think that European influence was anywhere near as complete as Davis said. Nonetheless, as the 1830s progressed Kororāreka’s permanent European residents became more assertive, and in particular looked for ways to control disorder among their own, largely for commercial reasons. The first, short-lived attempt occurred in 1833 and included an attempt to prevent excessive drunkenness by reducing price competition between grog sellers. We described in chapter 4 how in 1837 some 200 settlers petitioned the King, calling for protection against a ‘lawless band of Europeans’ and their ‘acts of outrage’ and ‘evil’, and alleging that neither Busby nor Māori were capable of establishing order. The petition appears to have been prompted by the assault on Captain Wright, though if that were the case the cooperation of rangatira in catching two of the offenders and dispatching them to Sydney would seem to undermine the argument that Māori lacked the capacity to exert authority. The following year, the residents of Kororāreka took matters into their own hands, forming the Kororāreka Association, purportedly to protect its members from theft, violence, and unpaid bills, and to deal with runaway sailors. The association’s influence was limited to the town as far as Matauwhi Bay, and it claimed the authority to frame laws applying to Māori as well as to Europeans. According to Lee, its brand of vigilante justice – which included horse-whipping, locking offenders against its ordinances in sea chests, and tarring and feathering with raupō fluff – may have reduced disorder in the town, but the association’s powers were used to further the business interests of its members, and ultimately it amounted to little more than ‘a private army controlled by men who were not all scrupulous’. Adams, similarly, said that it ‘smacked more of a frontier vigilante group than an embryonic government’.

Control of drunken or runaway sailors, as well as convicts and other ‘abandoned ruffians’ had long been an issue for Māori and for the British, both of whom wanted to avoid any disruption of their economic activities. In general, rangatira were not greatly interested in disorder among Europeans if it did not directly affect their interests. Where conflict between the two peoples occurred, it often arose from what Māori perceived as unfair European trading practices; or from Europeans (often drunkenly) threatening or insulting Māori, or molesting Māori women; or from breaches of tapu. The 1831 petition, though mainly targeted at a perceived French threat,
also asked the King to show his anger towards runaway sailors who were ‘troublesome or vicious towards us’ (see section 3.8.3). The short-lived 1835 liquor law in the Hokianga (section 4.2.2) had been a more direct attempt to impose order on unruly Europeans at the frontier. In the Whakaputanga, rangatira agreed to meet and frame rules for the purposes of peace and good order – indicating that disorder remained an issue, though their request for British involvement was focused explicitly on threats to their authority. The Kororareka Association experiment, limited and illegitimate as it was, provided another example of settler assertiveness. As Belich noted, ‘the community was beginning to control its own “crime” rather than leaving it to chiefly overlords’.346

This, in turn, reflected what Belich saw as a slight and somewhat tentative loosening of Māori control over European settlements in the Bay of Islands generally, and perhaps also in the Hokianga. Many factors combined to produce this effect, including the increase in the European population, growth in the value of Europeans as providers of goods and technology, decreasing intermarriage as more European women arrived, and greater competition among hapū. In Kororareka, another factor may have been the death in mid-1837 of Titore, whom Busby described as ‘the most influential of the Ngapuhi chiefs in preserving order in the town . . . where the natives and the British mingled in the greatest numbers’.347 According to Belich, the result was that by the end of the decade at least some Europeans were no longer responsible to a single rangatira who could both control and account for their actions. To the extent that this was occurring, it represented a threat to rangatira and hapū control over the European population.348

Nonetheless, Belich was careful not to overstate this case. ‘This new autonomy in the larger European clusters was fragile and embryonic’, he wrote. We were reminded by claimants and technical witnesses alike that Māori retained clear demographic and military superiority at the end of the decade, just as they had at its beginning.349 Belich was of the same view, commenting that the few hundred Europeans in the Bay of Islands ‘however rough and tough, were no great military threat to the heirs of Hongi Hika’. Bay of Islands Māori in his view could easily have destroyed the British settlements if they had chosen to, though ‘killing the gaggles of geese that laid the largest golden eggs was the last thing they wanted’.350 We agree that Bay of Islands Māori had greater fighting capacity than the Europeans of the Bay of Islands, and were restrained by their own economic motivations. They were also constrained by their awareness of Britain’s military power. Ships of war had been sent to the Bay of Islands when Busby’s Residence was attacked in 1834, and again during the Bay of Islands war in 1837 (see section 4.8.2). What occurred in Taranaki during the Harriet affair in 1834 (section 3.9.4) would furthermore not have been lost on rangatira. They might have been capable of forcing the residents of Kororareka into the sea if they had felt the need, but they would also have been aware that such an action would have severe consequences.351

It is also important not to overstate the magnitude of disorder and conflict in the Bay of Islands and neighbouring areas during the 1830s. In Kororareka and in Ōtuihu, drunken rabble-rousing, prostitution, gambling, desertion from ships, and disputes over property and payment of bills were standard daily activities among Europeans, but serious violent crimes such as the attack on Captain Wright were much less common. Likewise, violence between Europeans and Māori was relatively rare. This is remarkable, given the ready access that both had to liquor and firearms and the fact that each had their own distinct rules of conduct. There were isolated incidents, such as the murder of Biddle and the 1837 killing of an American sailor, but these were exceptions to a general rule.352 According to Adams, the principal concern of those living in the Bay of Islands was with protection of property rather than personal security: ‘Livelihood, rather than life itself, needed protection.’353

Phillipson argued that the establishment of the British Residency rested on an assumption that ‘well-disposed’ settlers had nothing to fear from Māori, and in his view this generally proved to be the case.354 While Busby became anxious for his family’s safety during the 1837 Bay of Islands conflict, Henry Williams felt able to leave his family for weeks at a time throughout the 1830s and
always returned to find them safe. Overall, Māori went out of their way to avoid conflict with Europeans, not only because they wanted trade but also because most Europeans continued to live under the protection of one or more rangatira. According to Belich, the level of violence between Māori and Europeans in this period was ‘dwarfed by the sum total of contact’.

Overall, then, what was occurring by 1840 was far from the wide-scale disorder and loss of Māori control that some contemporary accounts – such as those of Busby and the 1837 Kororāreka petition – suggested. There was, rather, some disorder and some loosening of Māori control in Kororāreka, while in much of the north the status quo remained: Europeans lived under hapū protection, and were expected – albeit with considerable flexibility – to comply with Māori laws. Within Māori communities, Māori law remained the norm and ture an exception sometimes used in Christian contexts. As Ballara therefore concluded: ‘Maori tikanga continued in force, little changed.’

5.8 Rangatira and Rangatiratanga

We have already discussed the roles that rangatira played in leading their people into a new economic era in the 1830s. We have also discussed the resistance of many rangatira – even those on friendly terms with the missionaries – to Christianity. Some scholars have argued that Christianity and other cultural changes of the period undermined, or threatened to undermine, the status of rangatira. Wright, for example, wrote that the 1830s was a decade of ‘fading prestige’ for both rangatira and tohunga, as missionaries attacked Māori beliefs in tapu and rongoā, preached against polygamy and warfare, told ‘slaves’ that all were equal in God’s eyes, and elevated their status by teaching them literacy and other skills.

There is certainly evidence of disquiet among both Christian and non-Christian rangatira over these missionary actions. Wiremu Hau’s closing query about the degrading new practice of ‘Slaves exalting themselves above their Masters’, is a case in point. The same concern was also said to be behind rangatira Moetara’s decision to remain a ‘devil’. Henry Williams described Tārea ‘roaring like an infuriated bull’ about a sermon in which the missionary said that ‘all men, without distinction of rank’ were condemned if they did not believe in Christ. Tārea’s view, according to Williams, was that ‘This doctrine . . . may do for Slaves and Europeans but not for a free and noble people like the Ngapuhi, therefore they will not receive it.’

Improved treatment of war captives during the 1830s (they were much less likely to be killed for displeasing their rangatira or in the event of their rangatira’s death) could be seen as evidence that rangatira were losing authority. Equally, these changes may have occurred for pragmatic reasons. First, the changing economy, coupled with captives’ newly acquired skills, increased their value to their rangatira. Second, the practice of killing captives was, like cannibalism, abhorred by Europeans and so threatened to disrupt trade.

Several witnesses to this inquiry argued that European observers in the 1830s did not fully understand Māori social roles and hierarchies, and so overstated the changes that occurred during the decade. O’Malley and Hutton reminded us that 1830s British observers came from a ‘highly class-bound’ society, and interpreted changes in rangatira roles through that lens:

Many early observers, assuming that the authority of the chiefs had earlier been more or less absolute, could not fail to conclude that this [authority] had subsequently suffered a serious and almost crippling decline. But if a more realistic starting point is adopted then the consequences of the early contact period on chieftainship appear more mixed.

As we have explained in previous chapters, rangatira authority was far from absolute. Within their hapū, claimants told us, rangatira led by persuasion and effective management, rather than outright command. In 1823, Marsden reported that Hongi Hika was ‘feared and respected’ during wartime, but at home his followers ‘would not hearken to anything he might say.’ Though
he presumably had political motives, Busby in his 16 June 1837 dispatch observed that rangatira had ‘neither rank nor authority, but what every person above the condition of a Slave, and indeed most of them, may despise or resist with impunity’. As Marsden’s comment about Hongi suggests, the exception was warfare, during which rangatira could expect to command warriors from their own hapū if not any other. Wartime conquests were a considerable source of mana. As a result, some historians have argued, declining warfare and the reluctance of some Christian Māori to go into battle probably did lead to a decline in rangatira influence during the 1830s. Ballara noted that one of the main reasons for northern alliance rangatira opposing Christianity was that they were ‘beginning to fear that the popular new doctrine was undermining not only their authority in general, but specifically their capacity to make war’. In 1835, missionary interference in Rewa’s war plans caused him to fly into a rage and strike two of his taurekareka on the head with a piece of wood so hard it was initially feared they had died. Missionary interference, along with missionary views about slavery, influenced Titore and Tāreha to resist conversion. Rangatira, in Ballara’s view, saw that interference as an attack on their mana and tapu. She gave the further example of Mohi Tāwhai, whose conversion led one European observer to comment:

Mohi was greatly feared, but now they said to him: “How is this? When in days gone by we heard of your coming, we all took to our arms. Your name was Tawhai, but now you are called Mohi; and we have no fear in your presence.”

Tāwhai’s experience after conversion might be contrasted with the experiences of Titore and Rewa, who did not convert, continued to wage war during the 1830s (even if they did not always meet with great success), and remained greatly feared throughout much of the north. If prowess in warfare remained important during the 1830s, it was far from the only source of mana for rangatira. Many witnesses referred to the roles played by rangatira in caring for both their hapū and visitors through the advancement of economic and material prosperity and the distribution of food and goods. As we have seen, the great economic expansion for Bay of Islands and Hokianga Māori in the 1830s was led by rangatira who were taking on roles as traders and farmers, and harnessing large workforces for these purposes. The massive scale of some of the hākari, the rapidly growing interest in British goods, and the acquisition of new skills and technology all suggest that the Māori economy was buoyant, and that the roles of rangatira as representatives of their hapū in trade negotiations, as leaders of their labour efforts, and as distributors of the goods they received can only have been enhanced during this period. In this respect it is notable that rangatira in the Bay of Islands interior enhanced their economic status by aligning with the missionaries and acquiring their skills, and became early converts. Those in coastal areas, who had access to economic opportunities that did not involve missionaries, were in general very willing to engage with missionaries where it suited their commercial interests, but much less willing to convert.

Politics was another sphere through which leading rangatira sought to advance their mana during the 1830s. Within their own hapū, they had traditionally acted as mediators in disputes and as leaders when their people gathered to discuss issues of the day. Externally, they also played diplomatic roles, representing their hapū in discussions with other leaders over war and peace, access to resources, or other matters. We have seen in previous chapters that as contact with Europeans increased, these roles took on new significance: rangatira travelled overseas, wrote letters and petitions to kings and governors, negotiated with Busby, and deliberated with each other about the economic and political implications of European trade and settlement. He Whakaputanga had marked the high-water mark of European attempts to mould northern rangatira into a single, unified government with authority to enforce laws over individual hapū. Such ideas had been doing the rounds since the early 1820s. The visit of Hongi and Waikato to England had included a visit to the House
of Lords, though (as already noted in chapter 3) it probably did not give much insight into the workings of that institution. Hongi’s biographer Dorothy Urlich Cloher quoted two accounts of the visit written by peers. One of those accounts reported that Hongi and Waikato ‘surveyed the scene of the House with great attention’. The peers, however, were only interested in the moko and physical attributes of the ‘King of New Zealand and his . . . Minister’. The many visits that rangatira had made to Sydney would have given them somewhat more insight into the roles of governors and colonial administrators. Marsden had long advised rangatira that Māori would benefit from the establishment of ‘a protecting Government’, and seems to have formed the view that many were sympathetic to that goal, while also acknowledging that no rangatira would give up his own authority or that of his hapū in order to establish such a body. A careful reading of Marsden’s accounts suggests that what mainly interested rangatira was the prospect of harnessing British power for their own purposes: either to subjugate weaker tribes or to defend themselves from stronger ones. Nonetheless, he and other missionaries continued to advocate – both to rangatira and to Britain – for the establishment of ‘regular government’, and it is clear that they played a crucial role in introducing such ideas to Māori.

Busby, too, had from the time of his arrival in New Zealand advocated for the establishment of a government based on the collective authority of all rangatira. While he told Māori that unification and peace were needed to bring prosperity and see off foreign threats, his dispatches revealed that his principal motivation was to establish British control under nominal Māori authority. As we saw in chapter 4, his attempt to create a ruling class of ‘tino rangatira’ willing to act independently of their followers was destined to fail: rangatira could not see how such a system would work, and continued to act according to the interests of their hapū. He Whakaputanga was for them an unambiguous declaration of the mana and authority of rangatira in relation to their territories – an authority that remained intact in 1835 and beyond throughout almost all of the north. More specifically, as both claimant and Crown witnesses reminded us, it was a declaration of their authority not as individuals but as representatives of their hapū.

The other significant aspects of he Whakaputanga were its agreement to meet annually to frame laws or ture, and its emphasis on alliance with Britain. Bay of Islands and Hokianga Māori leaders had been visiting New South Wales and London since early in the century, and had taken several steps that in their view would have constituted a form of alliance-building. Hongi’s meeting with King George IV took on particular significance to them, and continued to be seen years later as the source of an enduring bond which was further strengthened by various events in the 1830s – the petition to King William; the appointment of Busby; he Whakaputanga – as well as in more personal ways, such as when Patuone and Nene provided kauri spars to the Royal Navy in the early 1830s, and then exchanged gifts and letters with the King (as described in section 5.3.1).

From a Māori perspective, he Whakaputanga would have been seen as strengthening that alliance, with a particular focus on trade and on seeking British protection against foreign threats. There were other times when Māori sought to enlist British power in their intertribal battles, including the examples from Marsden which we referred to above. In 1837, as the northern and southern alliances were battling in the Bay of Islands, there was a further apparent attempt to enlist British power. Panakareao, the prominent leader of Te Rarawa and a signatory to he Whakaputanga, wrote to Marsden:

Tenei ano ahau ko Nopera Pana te wakapai ana ki te tahi Kawana mo tatou, hei tiaki i a tatou. Mau ano e wakaae ki tetahi kaitiaki mo tatou. Ko ahau i tino wakaae i tou taenga mai ki konei i hua e roa iho koe. He tuhituhi noa ra taku ki a koe mau ano e wakaae ki tetahi hoia mo tatou. Mehemea e wai hoia ana te tangata Maori e kore kea e wawai me Ngapuhi e wawai nei. Me i konei te Puhipi e kore kea matou ko te ‘Rarawa’ a pena me Ngapuhi, e wawai ana ki te aroaro o te tangata i meingatia hei kaitiaki mo te tangata Maori. Heoi ano taku kupu ki a koe.
A missionary translation was provided:

Here am I Nopera Pana, [?]ing a Governor to defend us. Will you consent for a person to take care of us? On your arrival here, I fully consented; and thought you would have remained here longer . . .

Mine, is a familiar letter to you. Will you consent to some Soldiers for us? If the Natives possessed Soldiers, they would not perhaps be fighting as Ngapuhi are now fighting.

If Mr Busby were here, we the ‘Rarawa’, would not be fighting perhaps as Ngapuhi are now combating in the presence of the man who they asked for, to be a defender of the Natives.

Enough of my words to you. 379

In most respects, we think that this is a fair translation, except for the use of ‘defend’ where Panakareao had written ‘tiaki’ (to care for). Our own literal translation is:

This is me Nopera Pana requesting a Governor for us, to protect/care for us. Will you agree to a kaitiaki (carer/protector) for us? I certainly agreed on your arriving here and thought you would have remained here for a long time.

My letter to you seeks your approval for some soldiers for us. If Māori have soldiers then perhaps there would not be fighting with Ngāpuhi who are fighting.

If Busby was here, perhaps we of Rarawa just like Ngāpuhi would not be fighting in the presence of the person who we asked to be the kaitiaki (carer/protector) for the Māori.

Enough of my words to you.

Panakareao wrote this letter from Kaitaia on 9 May 1837, as Te Rarawa were deliberating whether to join the northern alliance against Pōmare’s forces in the Bay of Islands. It seems to have reached Marsden during his visit to New Zealand, when he briefly attempted to mediate in the war. 380 Manuka Henare in his thesis interpreted this letter as meaning that Panakareao was ‘concerned about Ngapuhi and their . . . fighting’ and ‘worried about Busby’s inability to protect Te Rarawa’. In response to these fears, Henare said, ‘Panakareao requests of the British a protectorate relationship and assistance from the King in building a united Māori nation’. As we noted in chapter 4, Henare believed that Busby had discussed Ionian-style protectorate arrangements with rangatira who signed he Whakaputanga. 381 Haami Piripi, of Te Rarawa, also saw the letter as a request for a ‘protectorate relationship’, and as asking for assistance to build ‘a united Māori nation’ in a manner that was consistent with ongoing Māori mana and sovereignty.

He Whakaputanga and Panakareao’s 1837 letter, express a consistent stance on the position of Maori rangatira within Aotearoa at that point in time; that they considered they were sovereign. Any efforts or imposition by the British Kawana in the governance of New Zealand was secondary and inferior to the overriding Mana, and leadership of the Rangatira . . . never is there a request to override the leaders’ chiefly Mana or rights. 382

Within his territories, Panakareao was regarded as a very powerful leader. The CMS missionary William Puckey described him as ‘kingly’ and said that few other northern tribes would dare to act without his consent; another missionary source said he had unrivalled command of 1,400 to 1,600 fighting men. 383 In 1834, Panakareao had brought the CMS to Kaitaia – a step that was motivated largely by the potential economic and technological benefits for his people. He saw himself as being in competition with his Bay of Islands kin for missionaries, and more generally for Europeans, since he believed that ‘the future of the people lay in having Pakeha dwell amongst them’. 384

On 4 May 1837, Busby had written to Bourke about the situation in the Bay of Islands. The Resident described Te Rarawa as ‘very powerful’ and reported that they were planning to join Titore’s side in a bid ‘to drive Pomare’s party from the Bay of Islands, and to obtain a footing for themselves’. Busby’s report said that 200 Te Rarawa had camped at Waitangi in late April but remained neutral. They then ‘returned home to make preparation for the movement of the whole tribe’. 385 Five days later, Panakareao sent his letter to Marsden.

If Panakareao was indeed asking for the establishment
of some form of protectorate (as Marsden and other British observers might have understand that term), that would have been a very significant step for a rangatira of such great mana. However, it is not clear that was what Panakareao intended. Rather, his use of ‘kaitiaki’ for both the proposed kāwana and Busby implies that he saw both in similar terms. Likewise, his request for troops ‘mo tatou’ (‘for us’) can be read as a request for troops to serve Te Rarawa interests. On that point, we note the views of the Kororāreka trader Joel Polack that Māori ‘often express their wish that soldiers might be landed for the protection of British interests, and to preserve peace among themselves’, but ‘nevertheless, with their usual fickleness, or perhaps maturer reflection of their present absolute power, which would depart from them, desire the contrary’.386

A month or after Panakareao’s letter to Marsden, Busby wrote his 16 June 1837 dispatch to Bourke, claiming that warfare and depopulation would soon result in Māori extinction, and proposing the establishment of a government, supported by British troops, which would ‘[i]n theory and ostensibly . . . be that of the Confederate Chiefs, but in reality . . . be that of the Representative of the British Government’. He justified this course with the argument that rangatira were incapable of setting aside personal interest in order to govern impartially. His protectorate proposal, he argued, was exactly what had been anticipated by he Whakaputanga (though of course that was not what the text in Māori said).387 Six months after Busby’s dispatch, a CMS committee headed by Henry Williams and George Clarke would make a similar proposal, claiming that Māori were seeking a protectorate government (see section 5.9).388 A year or so later, Davis claimed that some northern alliance rangatira were holding discussions about electing a king. Busby claimed that Tāreha’s eldest son Hakiro asked him to take up that role.389 Both Hakiro and his father subsequently spoke against te Tiriti. Overall, we do not doubt that there was interest among rangatira in discussing British and missionary ideas about law and government, just as there was interest in other British ideas about intertribal peace, new atua, farming, trade, medicine, carpentry, and ‘learning the book’. But we do not think that rangatira were willing to submit to any arrangement that undermined their mana or hapū interests. Rather, as the letter from Panakareao suggests, they continued to seek ways to serve hapū interests by co-opting British wealth and power. The view of Busby and the missionaries that Māori wanted a government, we think, reflected their own motivations and interests rather more than those of Māori.

5.9 The Impact of Land Transactions

Busby concluded his 16 June 1837 dispatch with the claim that the entire coastline from Cape Brett to Whangaroa, including the whole of the Bay of Islands, had ‘with trivial exceptions’ already passed from Māori ownership. So, too, had ‘most of the valuable Forests in the interior’ and extensive areas on the Hokianga harbour. The need to determine the legitimacy of these purchases, in Busby’s view, provided yet another reason for the establishment of a protectorate government. The Resident suggested that an independent land commission be appointed for this purpose.390 In the end, the post-treaty Land Claims Commission would consider hundreds of claimed land transactions in the north, spanning more than a quarter of a century of European residence up to 1840. More than half of those transactions (244) were in Bay of Islands locations such as Kororāreka, Waitangi, Kerikeri, and Te Puna. Others were in the Hokianga (105 transactions), Ōruru/Mangonui (50), Whangaroa (42), Kaipara (41), and Mahurangi (6).391

We heard many views about land transactions – about their volume and scale, what motivated them, how they might have been understood by the parties involved, their impact on Māori leaders and communities during the 1830s, and their influence on both Māori and British thinking about ideas of law and government. During stage 2 of our inquiry, we will consider specific transactions, including the question of how the parties understood them, and how the Crown subsequently dealt with them. Here, we are concerned with more general issues. Were Māori concerned about land transactions during the 1830s? Were they losing control?
As with many aspects of Māori–Pākehā relations in the north, it was the CMS which led the way in respect of land. As we saw in chapter 3, in 1815 the society established its first mission station on 200 acres at Rangihoua under the protection of Te Hikutū, the proceedings being formalised in European eyes in a deed written by Samuel Marsden. Four years later, when a second mission opened at Kerikeri under Hongi’s patronage, a similar deed was prepared. For many years afterwards, land transactions in the north would remain relatively rare. Overall, the Land Commission recorded fewer than 20 transactions during the 1820s, more than half of them involving the missions.

The other handful involved traders and shipbuilders in the Hokianga, along with a few small arrangements in Kororāreka and Paihia. During the 1830s, the number of transactions grew, and there were changes in the purposes of the Europeans involved. The CMS established its Waimate farm in 1830 under Tohitapu’s patronage, and also expanded at Paihia, intending to secure economic independence and promote farming among Māori. The Waimate site was chosen for its distance from the European ‘riff-raff’ at the Bay of Islands. Three years later, Panakareao allowed the CMS to establish its large mission at Kaitaia. Also in the 1830s, traders such
as James Clendon, Gilbert Mair, and Captain Wright set up sizeable trading stations in the Bay to meet the needs of the fast-growing number of visiting whalers. The rapid development of Kororāreka is also reflected in the number of small land transactions involving merchants.\(^{393}\)

Such growth intensified in the second half of the decade as new settlers flooded in and longer-term European residents sought to formalise existing arrangements or enter new ones. As well as seeking land on which to establish missions, the missionaries began to cater for themselves and their families: Henry Williams was involved in several transactions around the Bay as he sought to establish his sons on farms.\(^{394}\) Busby sought land at Waitangi as he developed speculative plans for a town to be called Victoria. By 1840, according to Shawcross, he and the CMS missionaries had the largest European land interests in the Bay of Islands (though exactly what those interests amounted to is a matter to be determined in stage 2 of our inquiry). There were also many transactions in the Hokianga as the timber trade took off; late in the decade a significant number also occurred around Whangaroa and the Kaipara.\(^{395}\)

The growth was interrupted briefly during the war in 1837 but recovered during 1838. By the end of that year, news of the New Zealand Association’s plans for systematic colonisation had reached the antipodes (see chapter 6), sparking a rush of migration from across the Tasman. In 1839, according to Shawcross, in the Bay of Islands alone there were well over 100 land transactions covering more than 160,000 acres – almost as much as all previous Bay transactions combined. In Shawcross’s view, this was a reflection to some extent of the influx of land-hunters from New South Wales but to an even greater extent of speculative fever among those Europeans . . . already residing in the north.\(^{396}\)

Phillipson also noted that the majority of transactions at the end of the decade involved people already known to Māori. Although some concerned blocks of 1,000 acres or more, the majority, he pointed out, concerned relatively small amounts of land – 50 or fewer acres. In many of these transactions, he noted, Māori continued to occupy at least parts of the land. In his view, ‘An impression that strangers were buying large quantities of land [in the district] would be quite misleading.’\(^{397}\)

We heard a range of views about what the various land transactions meant to both Māori and non-Māori. There were questions about differing concepts of ownership or relationships to land and questions about the extent to which Māori and Europeans understood each other when they entered into transactions. Did Māori understand these transactions as involving permanent alienation? Or did they understand the transactions as tuku whenua – that is, were rangatira granting ‘their’ Pākehā temporary rights to occupy and use the land as a practical means of bringing them into the hapū, so creating ties of mutual obligation? That is how Tribunal characterised land transactions in Kaitaia, Mangonui, and other parts of the Muriwhenua district in its *Muriwhenua Land Report* .\(^{398}\) If that was also how Māori understood land transactions within our inquiry district, it might explain what occurred at Kororāreka, where Europeans were forced to negotiate new agreements after the town changed hands in 1830 as a result of the Girls’ War. It might also explain why it was common for Māori to enter into a transaction over land and then continue to occupy it, or reoccupy it at a later date (especially if their Pākehā left), or continue to cultivate it or use its resources, or expect ongoing access to European goods or knowledge in return; and why Europeans often felt they had to live on and cultivate land continuously in order to keep it in their possession.

We also have other questions. In the later 1830s, when Europeans began to enter into transactions directly with other Europeans, did this occur with or without rangatira consent? As the decade drew to a close, were there changes in how Māori understood European intentions towards land? Were Māori concerned about conflicting or overlapping rights and, if so, how did they expect to address those concerns? We heard a range of views on these issues from claimants and technical witnesses, both in general terms and in relation to specific transactions and relationships.
The answers to these questions depend on the specific circumstances of each transaction and so must wait for stage 2 of our inquiry. What is apparent, however, is that land was a subject of increasing concern for the missionaries and for many rangatira during the 1830s. As we will see in chapter 6, the missionaries’ views influenced both Britain’s decision to intervene in New Zealand and the nature of that intervention; and those concerns also appear to have influenced Māori attitudes towards British involvement, judging by the speeches made by a number of rangatira at Waitangi and Mangungu (see chapter 7).

Busby, responding to the failed mediation over Whananaki in 1836 (see chapter 4), had predicted that disputes over land would become more common as European traders attempted deals in situations where Māori rights were disputed. In the Whananaki case, the Resident wrote, the traders not only had encouraged Waikato to assert his position with force but had also threatened Europeans installed on the land by competing Whananaki hapū. Māori had not known such difficulties until ‘the apples of discord were scattered among them by their British visitors’. The Whananaki dispute, Busby added, ‘will be but the first of a series of such outrages, unless our unprincipled Countrymen can be speedily restrained by the strong arm of legal Authority’. These incidents, furthermore, would threaten not only the lives of Māori but also those of the British, who Māori would identify as the source of the trouble.
That was the beginning of a series of dispatches in which Busby would argue that Māori wanted Britain to establish a government, either by establishing a protectorate under nominal Māori authority or by going further and making them British subjects. Māori were, he said, perfectly convinced of their incapacity to govern themselves, or to cope unaided with the novel circumstances to which they are constantly exposed by the encroachments of their civilised visitors.  

Māori who had visited Port Jackson were alive to the potential dangers arising from increased European settlement (see chapter 3). Rangatira sought to control where Europeans settled, and to incorporate them into hapū, and objected when Europeans did not comply. As early as 1826, Henry Williams wrote of Māori ‘jealousy’ about missionary land transactions: it has been generally thought by them that we come here on account of the goodness of their land . . . In all the efforts to civilise, they do not perceive that we have any views beyond that of benefiting ourselves.

Seven years later, Williams reported on a visit from Tohitapu, who had allowed him to establish the farm at Waimate:

He had much to say as to what he had learnt at the Shipping, relative to the intention of the Missionaries to take the land, and make slaves of the Chiefs, and that we were to receive a number of dollars for each person who became a believer.

In 1837, Tāwhai set out to form a committee of rangatira to keep land at Waimā in Māori hands. The following year, according to the Waimate missionary Richard Davis, Māori communities at Mawhe and Kaikohe, under Te Rīpī’s influence, ‘formed themselves into a kind of confederacy, not to part with their land’. By mid-1839, this confederacy had held three hui. It was clear, however, that Davis himself was playing a significant role. Late in 1839, he wrote of a meeting in which he warned them of the potential for difficulties over land:

They seem to be aware of the danger to which they are exposed but they are at a loss to know what means to adopt for their security. Such is their want of order that if one person wishes to sell land, he sells a tract of country which in many instances would rob others of their patrimonial inheritance. This may be the case in the splendid District of Kaikohe. A Chief, one of the principal proprietors, lives still at Kororareka and they are very jealous least he should effect a sale in that part where he has a share without giving them notice, and should this prove the case, the whites will get a footing and the country will be sold piecemeal.

We note here that Davis’s understanding of what ‘selling’ meant may have differed significantly from that of Māori. Exactly what was meant in each transaction is, of course, a matter for stage 2 of our inquiry. What matters to us is that, if this account is to be believed, Mawhe and Kaikohe Māori were concerned about loss of authority. If so, their concerns may have arisen from Europeans entering a situation in which there were overlapping rights, as Davis argued, but equally may have arisen from Europeans failing to comply with Māori understandings of what the transactions meant.

We saw in chapter 4 that from 1835 the CMS had begun to establish trusts for the stated purpose of protecting Māori land from alienation. The first of these arrangements concerned land at Kawakawa and Whananaki, the latter of which was the subject of Waikato’s dispute with Noa and his subsequent deep mistrust of the CMS. The Kawakawa deed was said to have been signed by Turi, Pukututu, and more than 80 others, and was written in Māori. A missionary translation, presented to the 1838 House of Lords committee, stated:

To all Men let it be known. No Part of our Land at the Kawakawa or any of the Places around shall be sold to the Europeans; but let it continue for us and for our Children for ever. The Missionaries at Paihia shall fix Marks, and make
sacred the Boundaries, and hold in Trust that no one may sell any Part without the Consent of the Missionaries.410

Henry Williams, forwarding the Kawakawa trust deed to the CMS in London, had said:

Owing to the numerous Arrivals of Europeans in the Country, and the Desire on the Part of some not the real Proprietors and on the Part of Europeans to purchase, we have been under serious Apprehension that the Natives may in a short Time be bought up and ruined, unless some paternal Care be exercised towards them . . . I have communicated with the British Resident upon the Subject; but he does not feel himself at liberty to act beyond giving a Caution to any Parties who may be disposed [to enter land transactions] without satisfying the Claims of the real Proprietors. The Natives about whom we are interested are those not desiring to dispose of the Lands, but who are under Apprehension of having them forced out of their Possession.411

Altogether, some 17 similarly worded deeds were created, covering land in the Bay of Islands and other parts of the country. As a result of these arrangements, the CMS in early 1839 reported that ““immense tracts of good land . . . remain in [the] possession of the natives”, who otherwise were “continually parting with their land”.412 It is tempting to see irony in the fact that the European organisation with more land interests than any other should be so vocal in opposing the transactions of others. At the time, the missionaries argued that their involvement in land – whether through the establishment of trusts or the work of turning Māori into Christian farmers – was ultimately for Māori benefit.

At least some of the land referred to in the trust deeds later ended up in claims before the Lands Commission, which will be considered in stage 2 of our inquiry. For now, it is notable that Māori – or at least Christian Māori – were willing to enlist missionary assistance and to sign written deeds in order to control land arrangements. With the trust deeds, and indeed also with deeds that purported to alienate land, there are also many unanswered questions. We cannot say here whether those Māori who signed deeds could read them and so knew the intentions of the Europeans involved; nor can we say whether the deeds accurately reflected verbal agreements, or reflected what was happening on the ground: again, those are questions that can only be answered case by case, if at all. The important point for this stage of our inquiry is that written documents – pukapuka – appear to have carried some weight with rangatira at least as symbols of the existence of a relationship, and were being used with increasing frequency during the 1830s in relation to politics (the 1831 petition and he Whakaputanga) and trade (Titore’s letter to King William) as well as land.

During 1838 and 1839, as the land rush escalated, CMS missionaries would write of their concerns to London in ever more urgent terms. The theme in many of these dispatches was simple enough: Māori were losing control, and British authority was needed.413 Early in 1838, Henry Williams wrote on behalf of the CMS northern subcommittee:

unless some protection be given by the British Government, the Country will be bought up and the people pass into a kind of slavery, or be utterly extirpated. The European Settlers are making rapid advances, and are beginning to hold out threats. Should any encouragement be given to the [New Zealand] Association, thousands would immediately come and overrun the country, and the natives must give way.414

The only response, he argued, was

that the English Government should take charge of the Country, as the Guardians of New Zealand and that the Chiefs should be incorporated into a general assembly, under the guidance of certain officers, with an English Governor at their head, and protected by a Military Force, which would be the only means of giving weight to any laws which might be established and preserve that order and peace so much desired. The natives have many years since proposed that this should have been done, and have repeated their desire from time to time.415
This was more or less the Ionian-style protectorate arrangement that Busby had proposed. A few months later, Williams referred to Māori alarm over the inflow of migrants, and said they were asking the missionaries what to do. Later the same year, Baker wrote that if the New Zealand Company’s immigration schemes went ahead ‘New Zealand would at once fall as a nation’ – a predicament that could be solved only by ‘some effectual steps’ on the part of the British Government.

During 1839, missionary concerns became even more heightened. In March, Davis wrote that the residents of Kaikohe had ‘sold themselves out and do not, I believe, possess at present a spot of ground on which to build a house’, except with the consent of European inhabitants. As noted above, he may have understood transactions differently from Māori and so exaggerated their impact. In July, the CMS northern subcommittee reported that ‘Settlers are fast buying up the Country and every vessel is bringing New Settlers down.’ Whereas the previous year the subcommittee had advocated for a government to be established under Māori authority, it now suggested that this was not possible: ‘we fear that before any thing in the form of Native power could be made to bear upon Foreigners the Country is gone, at least its Sovereignty.’

In August, William Williams wrote:

The tide of emigration to New Zealand has already set in. Every fortnight or week brings a new arrival. Many are here whose object is to buy up the country... unless purchases are made as a reserve for the natives they will soon have no place to call their own.

Māori welfare may have been one of the factors behind this tone of missionary alarm. Undoubtedly, there were others. Missionary dispatches also warned of French political ambitions, and of unruly behaviour by Europeans which left the missions vulnerable ‘at any time to the depredation of any lawless hand, who might fearlessly destroy stock and property to a considerable amount.’ The missionaries wanted Māori to be under their influence, not that of British riff-raff or Catholics. Phillipson has argued that missionary concerns were also based on their own cultural belief that land transactions invariably involved permanent alienation, whereas Māori may have held different views.

Nonetheless, the anxiety about settlement and land is palpable in the missionary dispatches, and there is no doubt that their views were influential in Britain. Indeed, Alan Ward identified concern about land as a significant factor influencing both Māori and British views during this period. In his view, the missionary claims ‘that by the late 1830s many Māori communities had sold most of their land and were well-nigh landless’ could not be supported by evidence. There was, however, ‘a good deal of evidence of confusion and conflicting understandings about who had better customary right in the first place’ and about what exactly the land transactions amounted to, along with ‘a growing tendency among the Pakeha transactors to press their claims... strongly.’

The Crown, in their closing submissions, maintained that British decision-making had, at its heart, the ‘restoration of Māori control over their key economic resource: the land’.

We heard, as well, from many of the claimants that relationships with land were a significant source of concern in some places, as were different understandings of land transactions. Emma Gibbs-Smith, for example, told us of tensions between Te Kēmara and Henry Williams over the Paihia land on which the mission had been established, and over access to pipi beds there. Hugh Te Kiri Rihari of Ngāti Torehina ki Mataki said a relationship of ‘trust and confidence’ had initially been established with CMS missionaries at Rangihoua, but these had broken down as a result of land transactions. Nuki Aldridge spoke of missionaries and other Europeans being self-interested and ‘not very honest’ in their transactions with Māori over land.

Even if the accounts from Busby and the missionaries were exaggerated, then, there is no doubt that land transactions were causing many rangatira concern. Different Māori and European understandings, disputed or overlapping Māori rights, and rapidly increasing interest in land from new and existing European settlers were all likely reasons for this. It is important to be clear that such effects were not uniformly felt. Land was more of
a concern in the Bay of Islands and Hokianga than elsewhere, and within those districts it was more of a concern in locations such as Waitangi, Paihia, and Kororāreka, where the number of transactions had been greatest and where Europeans were attempting to establish their own systems of authority and to claim greater levels of economic independence from their rangatira patrons.

It is also important to recognise that in some locations Māori retained their enthusiasm for European settlement right up to the end of the decade. As trade had increased, land transactions had become an easy way to obtain European goods. It was not just the proceeds from the transactions that appealed, but the ongoing benefits of settlement itself, which created markets for Māori agriculture and in return offered steady supplies of European goods. Belich characterised Māori willingness to support larger-scale settlement as a process of ‘Planting Pakeha instead of potatoes.’ In places such as Waitangi and Kororāreka, Europeans may have begun to exceed their welcome, but in other locations where Pākehā were fewer, demand seems to have remained high. As the CMS missionary Robert Maunsell observed at the end of 1839, securing a Pākehā remained ‘the grand object of their desire’ for those hapū who were still without.

Where land was a concern, the question that remains is: how might Māori have expected those concerns to be addressed? To the extent that rangatira had concerns about different Māori and European ways of relating
to land and understanding land transactions, we think that Māori retained the capacity to enforce their understandings. Right up to the end of the decade, they had the numbers and the on-the-ground military power. The main factor constraining them was their own desire for the economic and other benefits that Europeans brought, and more generally their desire to maintain relationships, bearing in mind that the largest land transactions involved people who had lived among them for years. They were also aware of British military power, but this in itself was not necessarily a constraint on their continued occupation, cultivation or other use of land that had been subject to transactions.

The other question about authority over land concerns overlapping or disputed rights. This was not a new issue for Māori, who had clear legal rules for determining whether possession was tika, and clear processes (ranging from inter-hapū discussion to taua) for dealing with conflicts. The fact that Busby and other Europeans did not always like their methods is no reason to regard those methods as illegitimate or to regard Māori as incapable of dealing with such situations. The involvement of Europeans seeking land (or access to timber) clearly increased the likelihood that territorial disputes would occur between hapū, but was otherwise not necessarily a complicating factor: in these cases the Europeans were simply clients to the patron rangatira involved in the transactions, and traditional means of resolving disputes between hapū could still apply.

There was nothing new in rival hapū discussing their take, nor in them resorting to force when the discussions broke down. The involvement of Busby and the missionaries added new dimensions: however, it seems to us that they were being co-opted into traditional roles. That, it seems to us, is what occurred in the dispute between Noa’s people of Ngāti Manu and Waikato’s Te Hikutū over land at Whananaki, which we discussed in section 4.8.1. Noa’s people turned to the missionaries as allies, seeking to harness their perceived authority to serve hapū interests. They appear to have seen Busby as a neutral peacemaker, a senior British rangatira on whose marae they could safely gather. Waikato also appears to have viewed Busby as a British rangatira whose role was to control Europeans, and in this particular case to stop what he saw as unjustified missionary interference in his affairs. When Waikato asked Busby to become involved in the dispute, he left Busby the musket that King George had given him 17 years earlier – a sign, we think, of the alliance that Waikato believed he had with Busby’s royal āriki.

Two things were novel about this dispute. The first was that Noa’s people, under missionary advice, had used a written deed in a bid to secure their interests. However this, in itself, did not suggest that their systems of authority had changed, merely that rangatira were using a new tool to assert that authority. The second novel aspect was that Noa’s people arrived at the hui unarmed, and by doing so had given up – for the moment at least – any ability to enforce their interests according to Māori law. In doing so, they were placing their trust in the advice of Busby and the missionaries, who lacked capacity to enforce law of any kind. A vacuum was created, which Waikato filled by taking action that (at least according to Titore) was consistent with Māori law. Though Busby initially persuaded Ngāti Manu to defer utu (while he sought the King’s permission to take utu against Waikato himself) we do not know how long their restraint lasted.

Ultimately, if we accept Busby’s accounts, hapū with interests in the dispute (either directly or through kinship) continued to seek utu against each other for some time, while no longer involving Europeans. We do not know if Noa took up arms again, but in 1837 other, more senior Ngāti Manu rangatira certainly did.

5.10 Conclusion

‘It cannot be said too often,’ wrote Angela Ballara in Taua, ‘that changes came in different areas at different times.’ Ballara was referring to cultural change in the 1830s across New Zealand as a whole, but the principle applies equally to the parts of the north that concern us. What occurred in Kororārea during this decade was not the same as what occurred in Paihia, Waimate, Kerikeri, Otuhiu, Pākanae, Waimā, Ōmapere, or Whangaroa. In many of these areas, contact with Europeans was ongoing and intense; in
others, it was less so. In some, that contact was dominated by missionaries seeking to spread their word; in others, it was dominated by traders seeking flax or spars, or by the drunken crews of whaling ships, or by runaway convicts, or by small-time merchants.

Māori responses differed too. Most turned with great enthusiasm towards European goods; most adopted pukapuka; some also adopted the Christian God, while others showed indifference or turned away. Some experimented with or accommodated British ideas of law, government, and dispute resolution where those suited their purposes; others did not. Some turned towards farming as a means of ensuring prosperity; others sold spars or flax, or grog and sex. Some turned away from war, while others – including Christians – continued to fight. There was, in other words, no homogeneous Māori response to the considerable inflow of European people, goods, and ideas that occurred during the 1830s.

That is not to say that general trends cannot be discerned. It is obvious that the 1830s was a time of tremendous change for Māori in the Bay of Islands and Hokianga, a time when the pull of trade and British ideas were posing significant challenges to traditional ways of life. Some of the changes that occurred were undeniably significant. But those changes occurred in ways that were consistent with Māori laws and values, and in an environment where Māori authority remained – with limited exceptions – intact. The new religion, for example, was to a significant degree incorporated into the old, providing new atua and new forms of karakia to add to existing whakapapa. Literacy was pursued in Māori ways, which relied on prodigious feats of memory as well as on actual reading, and embraced the symbolic power of pukapuka as well as their practical uses. The sphere in which Busby and the missionaries were most despairing of Māori ways – that of warfare and peacemaking – continued largely to be conducted according to tikanga. The fact that senior Europeans were brought into the Māori peacemaking system as mediators, and were respected in that role, does not diminish the fact that Māori remained in control, nor that the ultimate purpose was the distinctly Māori one of resolving conflict without diminution of mana. Economic changes, while significant, also occurred within existing frameworks: the pursuit of mana; fulfilment of the obligations of rangatiratanga, manaakitanga, and whanaungatanga; and the use of a system of exchange that had both economic and relationship dimensions. The hapū of the Bay of Islands and Hokianga competed just as vigorously in this new sphere as they had once competed in warfare. The modified enforcement of tapu, too, can be seen through this lens – as an adaptation that was consistent with the pursuit of mana.

We do not therefore see evidence that Bay or Hokianga Māori during the 1830s were dying out or confused or demoralised in the face of increased contact with Europeans. It must be remembered that the evidence for such a view comes almost entirely from the dispatches of Busby, and from British missionaries, whose business it was, in one way or another, to convert. They arrived on these shores to deliver Māori from the bonds of tapu and utu, and deliver them instead into the arms of Jesus Christ and British law. Belich saw missionary dispatches to London as ‘advertising campaigns’ aimed at demonstrating the benefits of Christian salvation; McKenzie saw the missionaries as fantasists.

We do not, however, claim that Māori maintained absolute control of their contact with Europeans towards the end of the 1830s. The general picture, in our view, is as follows. Within Māori communities themselves, Māori control remained more or less complete. Māori laws, values, and social and political structures endured. Where changes occurred – for example when individuals or communities adopted Christianity or farming – these changes occurred voluntarily, and in ways that accorded with Māori values. Pākehā could suggest that Māori make changes – adopt new religion, laws, clothing, and so on – but there was no possibility of Europeans requiring or compelling such change. This was true within whānau and hapū, and it was also true of inter-hapū relationships, where Busby and the missionaries, and their ideas of kāwanatanga and ture, had acquired some influence but nothing at all in the way of real control.

Where the Māori and Pākehā worlds met, the situation was more complex. To a very great extent, Pākehā in the
north continued to live under Māori patronage throughout the 1830s. They were expected to comply with rāhui and other mechanisms of Māori law, to give gifts, often to marry into their host communities. The extent of this patronage is shown by the fact that they could be killed by Māori, and nothing at all would happen to the perpetrators unless their own rangatira consented. Any limits on Māori control were voluntary and self-imposed: they were willing to accommodate Pākehā ways because Pākehā had things they wanted.

There were, however, small enclaves where the European populations had grown large enough or valuable enough to assert some degree of localised autonomy from their Māori masters, such as the missions, the larger trading stations, and Kororāreka. None of these communities was able in any way to assert themselves over neighbouring Māori communities, or even Māori in their midst. Nor were they free of economic obligations to their host hapū. So long as they met those obligations and complied with Māori laws in their relationships with Māori, they were able to live their domestic lives and manage their trade with Europeans according to their own values and rules, most often without fear of Māori interference.

Land was also a concern for many Māori, especially in the coastal Bay of Islands. We do not think that Māori lacked either the authority or the systems for addressing these concerns. There was, however, a trade-off involved, since any attempt to control European activities created risks. We also acknowledge that Māori had little capacity to exert any power in the international sphere, and were aware not only of Europe’s material wealth but also of its martial strength. They appear to have feared France, and held Britain’s power in awe – a perspective that can only have been reinforced by the Harriet affair and the occasional appearance of ships of war in the Bay of Islands. We do not think Māori were greatly cowed by this power; rather, they sought to engage with it preemptively and constructively. At least since Hongi’s time they had sought to build an alliance with Britain, using European mechanisms such as petitions and declarations, and Māori mechanisms such as exchanges of gifts. They did so in full awareness of British power, and in the hope that by aligning with that power they could serve their own interests.

All of these were limited exceptions to a general rule of Māori control, and of willing adaptation to the wider world and to the huge material and technological benefits it was bringing. New Pākehā, in most areas, remained welcome, and so too did new ideas. By 1840, Māori continued to outnumber Europeans, and British settlement depended on Māori goodwill. The Bay of Islands and Hokianga remained Māori territories. They remained, furthermore, the territories of independent hapū, each meeting the opportunities and challenges arising from contact with Europe in its own way, each led by rangatira charged with representing and building its distinct mana, yet all closely related, and all capable of acting in concert should circumstances demand it.

Notes
1. Submission 3.3.33, pp 46, 58, 63–65
2. Document A30(c), pp 7–8; see also doc A30(c), pp 90–91; transcript 4.1.1, pp 120, 128, 196, 200; doc c10, p 7; doc d7, p 8; doc b13, p 13; doc A11, pp 17, 119–121, 262
3. Transcript 4.1.1, pp 252, 260, 289
4. See, for example, transcript 4.1.1, pp 31, 195, 199, 236; transcript 4.1.2, p 186
5. Document A1, p 91
6. Document A11, p 269
7. Transcript 4.1.2, p 73
8. Document D2, pp 14–15
9. Document A19(a), pp 43–44, 89; see also doc A19, pp 70–71
11. Document A18, p 227
12. Document A11(a) vol 4, pp 1376–1394; Busby to Bourke, 16 June 1837, qMS 0345, ATL, Wellington
15. Document A11, p 255; Nathaniel Turner to WMS, 1 November 1838, qms 2065, ATL, Wellington
16. Document A19(a), p 93; see also doc A19(a), pp 18, 90
21. Belich, Making Peoples, p 157; see also Owens, 'New Zealand before Annexation', p 45
24. Document A37, pp 384, 391
26. Document A37, p 391
28. Crosby, Musket Wars, pp 335–336; S Percy Smith, 'Wars of the Northern Against the Southern Tribes of New Zealand in the Nineteenth Century', Journal of the Polynesian Society, vol 13, no 1 (1904), p 53
31. Document A11(a), vol 4; pp 1373–1377; Busby to Bourke, 4 May 1837 and 16 June 1837, qms 0345, ATL, Wellington; doc A18(e), pp 630–632; Hobson to Bourke, 8 August 1837, BPP, 1840 [238], pp 9–11; Polack, New Zealand, vol 1, p 205
33. Document A1, p 251
35. Henry Williams, Early Journals, p 261
36. Pool, Te Iwi Maori, p 45
37. Document A1, p 256; doc C9, pp 25–26; see also Pool, Te Iwi Maori, p 45; doc A37, pp 399–394
38. Document A19(a), p 84; Pool, Te Iwi Maori, p 45
39. Document A37, pp 393–394; doc A11, p 167; doc A1, p 88
40. Adams, Fatal Necessity, pp 40–41; Wright, New Zealand, 1769–1840, p 64; doc A11, p 256
41. Wright, New Zealand, 1769–1840, p 64; doc A11, p 256
42. Adams, Fatal Necessity, pp 40–41; Wright, New Zealand, 1769–1840, p 64; doc A1, p 88; see also doc A11, p 256
43. Polack, New Zealand, vol 2, p 271, see also pp 271–275
44. Report from the Select Committee of the House of Lords, Appointed to Inquire into the Present State of the Islands of New Zealand, and the Expediency of Regulating the Settlement of British Subjects therein with Minutes of Evidence, Taken before the Committee and an Index thereto (London: House of Commons, 1838), pp 13, 19–20
45. Ibid, p 121
46. Ibid, pp 180–181
47. Document A37, pp 391, 395–396; see also doc A36, pp 325–326
49. Ballara, Taua, p 219
52. Document A11, p 257
53. Document A11(a), vol 4, p 1380; Busby to Bourke, 16 June 1837, qms 0345 ATL, Wellington
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55. Document A11, p 179
56. Document A18(e), pp 820–825; Busby to Bourke, 10 September 1835, qms 0345, ATL, Wellington; see also Shawcross, ‘Maoris of the Bay of Islands’, fol 333.
59. Belich, Making Peoples, p 154
60. Document A1, pp 88–89
61. Document A11(a), vol 4, p 1380; Busby to Bourke, 16 June 1837, qms 0345, ATL, Wellington. The claimant Emma Gibbs-Smith also provided some support for this view, telling us that at the time ‘children born with Māori and Pākehā blood were usually killed at birth for fear of loss of land’: transcript 4.1.2, p 217. The English traveller Edward Markham also claimed that infanticide increased as a result of ship visits. Markham, however, spent only nine months in New Zealand so was scarcely in a position to gauge trends. As his estimate of Māori literacy shows, his observations were not altogether reliable: Edward Markham, New Zealand, or Recollections of It (Wellington: Government Printer, 1963), pp 54–55; doc A11, p 162.
62. Document A11(a), vol 4, p 1380; Busby to Bourke, 16 June 1837, qms 0345, ATL, Wellington; Report from the Select Committee of the House of Lords, pp 84–85; Wright, New Zealand, 1769–1840, pp 74–75
63. Report from the Select Committee of the House of Lords, pp 104, 122
64. Ibid, pp 84–85; doc A11, p 161; see also Pool, Te Iwi Maori, pp 47–49
67. Document A19, p 18
69. Belich, Making Peoples, pp 126, 174
70. Adams, Fatal Necessity, pp 20–25
72. Shawcross, ‘Maoris of the Bay of Islands’, fols 350, fig xix
74. Document A1, p 69
75. Ibid, pp 59, 63; Shawcross, ‘Maoris of the Bay of Islands’, fols 266, 268, fig XV, 336, 339–340; doc A11, p 176
77. Document A1, p 63
78. Ballara, Taua, p 402
81. Belich, Making Peoples, p 134
83. Rhys Richards and Jocelyn Chisholm, Bay of Islands Shipping Arrivals and Departures 1803–1840 (Wellington: The Parematata Press, 1992), summary tables 1, 2; see also Shawcross, ‘Maoris of the Bay of Islands’, fols 331–333; Binney, ‘Tuki’s Universe’, p 224
84. Lee, Bay of Islands, p 185; Shawcross, ‘Maoris of the Bay of Islands’, fol 350, fig xix
85. Document A1, pp 54, 64
86. Ibid, pp 49, 67–68; doc A11, pp 131–137
88. Waitangi Tribunal, Muriwhenua Land Report, pp 28, 41
89. Document A11, pp 136–137; Shawcross, ‘Maoris of the Bay of Islands’, fol 338
90. Yate, An Account of New Zealand, pp 31–32
91. Document A1, p 66; see also doc A11, pp 136–137
92. Waitangi Tribunal, Muriwhenua Land Report, p 44
94. Document A11, p 140
96. Document A11, pp 140–141; doc A1, pp 69–70. The claimant Erimana Taniora explained (doc c2, p 14): ‘Muru is the taking of property. When we refer to a muru being conducted against a person, the muru was to take away their belongings. This would include gardens and livestock. Muru . . . is about restoring balance . . . it is a way of righting the wrong.’
97. Document A11, pp 142–143
98. Document A1, p 70

100. Document A37, p 67
101. Document A36, pp 354, 357, 361
102. Document A37, pp 671–672
103. Document A11, p 153
104. Document A37, p 631
105. Document A11(a), vol 5, p 1621
106. Lee, Bay of Islands, pp 185–186; Shawcross, ‘Maoris of the Bay of Islands’, fols 350–351; doc A36, pp 353, 382
107. Polack, New Zealand, vol 2, p 216
108. Document A16, p 190; see also doc A11, pp 229–230
109. Document C9, p 22
110. Raymond Firth, Economics of New Zealand Maori, 2nd ed (1959; repr Wellington: Government Printer, 1973), p 328. Note that Firth incorrectly dated the last Waimate haungata at May 1836; discussed also in doc A1, p 79.
111. Document A1, pp 62–66; Ballara, Taua, p 12
112. Document A3, pp 64–66
113. Ibid; doc A11, p 155
114. Document A11(a), vol 5, p 1826; Turner to John Beecham, 1 November 1838, Nathaniel Turner, papers, 1836–49, qMS 2065, ATL, Wellington
116. Document A11, p 156
117. Ibid, pp 156–157
118. Ibid, p 184
121. Document A36, pp 352–355
122. Firth, Economics of the New Zealand Maori, pp 444–445
125. Document A1, p 66
126. Ibid; see also doc A11, p 137
130. Williams, Christianity among the New Zealanders, pp 103, 116, 118, 121; Shawcross, ‘Maoris of the Bay of Islands’, fols 224, 325–326
131. Wright, New Zealand, 1769–1840, pp 162–163; Williams, Christianity among the New Zealanders, p 149; Binney, ‘Christianity and the Maoris to 1840: A Comment’, pp 185, tbl 1
132. Shawcross, ‘Maoris of the Bay of Islands’, fols 357–359
134. For overviews of historians’ views on this debate, see doc A11, pp 186–193; doc A19, pp 21–22.
135. Wright, New Zealand, 1769–1840, pp 146–147, 180–183
136. Ibid, pp 144, 147–148; see also Ballara, Taua, p 419; doc A37, p 394; Shawcross, ‘Maoris of the Bay of Islands’, fols 354–355
139. For example, see Belich, Making Peoples, pp 165–169; Owens, ‘Christianity and the Maoris to 1840’, pp 21, 24; Ballara, Taua, pp 412–435
140. Owens, ‘Christianity and the Maoris to 1840’, pp 21–23, 29, 33–35; Belich also saw Māori teachers as significant: Making Peoples, pp 165–169. For an example of the effectiveness of Māori preachers, see William Williams, Christianity among the New Zealanders, pp 151–152. As discussed in the section on literacy, Owens and other historians have also argued that Christianity followed literacy, rather than the other way around.
142. Belich, Making Peoples, pp 154, 178
143. Ibid, pp 165–166; Ballara, Taua, p 419
144. Belich, Making Peoples, p 168
145. Ibid, p 219
147. Ballara, Taua, p 79
148. Shawcross, ‘Maoris of the Bay of Islands’, fols 357
149. Ibid
150. Ibid, fols 357–359 (for regions, see fol 204, fig vii); see also Owens, ‘Christianity and the Maoris to 1840’, p 32; and Head, ‘The Pursuit of Modernity’, pp 102–103. Head was not specifically concerned with this question, but nonetheless emphasised the adoption of missionary ideas among Māori leaders as distinct from their followers. William Williams noted that by 1833 ‘The number of Christian baptisms up to this period was confined for the most part to a few of the natives
connected with the different mission stations'; Williams, *Christianity among the New Zealanders*, p 148.


156. Shawcross, ‘Maoris of the Bay of Islands’, fol 357.


163. Document A11(a), vol 4, p 1370; Busby to Bourke, 28 March 1837, QMS 0345, ATL, Wellington.


165. Those who had converted at the time they signed he Whakaputanga included Te Kekeao, Atuahaere, Moetara, Heke, Tamati Pukututu, Hemi Kepa Tupe, Wiremu Taunui, and Haimona Pita-Matangi. By February 1840, Panakareao, Nene, Patuone, Te Morenga, Te Wharerahi, and Mohi Tāwhai had joined them.


169. Orange, ‘Rawiri Taiwhanga’.


171. For examples, see Williams, *Christianity among the New Zealanders*, pp 115, 150–152, 198–199, 210–211.


176. Ballara, *Taua*, pp 421–422. O’Malley and Hutton noted that the Catholic bishop Pomplaiier was less concerned with the abandonment of customs such as moko and haka, and that all of the missions accused others of having laxer standards than their own: doc A11, p 210.


183. Ibid; doc A37, pp 307, 310; Wilson, *From Hongi Hika to Hone Heke*, p 171.


188. Document A11, pp 214–221; doc A1, p 70; Ballara, *Taua*, p 418
189. Document A11(a), vol 2, pp 517–518; doc A11, p 216
196. Binney, ‘Christianity and the Maoris Before 1840: A Comment’, p 164, see also p 144
197. Ballara, *Taua*, p 419
198. Document A1, pp 81–82; see also doc A11, pp 192–193
202. Wilson, *From Hongi Hika to Hone Heke*, p 143; Williams, *Christianity among the New Zealanders*, pp 255–256
205. Wilson, *From Hongi Hika to Hone Heke*, p 139
207. Document B18(a), p 33
209. Wright, *New Zealand, 1769–1840*, pp 151–154, see also pp 59–61, 144, 147, 149
210. Document A11(a), vol 2, p 838; King to CMS, 9 September 1836, Church Missionary Society, archives relating to the Australian and New Zealand Missions, 1808–84, micro ms coll 053, ATL, Wellington; doc A11, p 203
211. Wright, *New Zealand, 1769–1840*, p 170
212. Document A11(a), vol 1, pp 176–177
221. Document A25, pp 84–86
222. Document B10, pp 59–60
226. Shawcross, ‘Maoris of the Bay of Islands’, fol 327, fig xvii; doc A2, pp 14–18
227. Document A26, pp 21–22; doc A37, p 427
228. Document A11, p 196; see also Williams, *Early Journals*, p 133
Colenso, Fifty Years Ago in New Zealand (Napier: R C Harding, 1888), pp 20–21.


232. Williams, Christianity among the New Zealanders, p 85, see also p 127; see also doc D1, pp 41–44; Parkinson, ‘Our Infant State’, pp 38, 439–441; Owens, ‘Christianity and the Maoris to 1840’, pp 34–35; doc A11, p 196; Wright, New Zealand, 1769–1840, pp 174–175


234. For example, see Williams, Early Journals, pp 326, 345, 386, 395, 400, 449–450, 461–467, 472; Church Missionary Society, Visit of the Bishop of Australia to the Church Missionary Society’s Mission in New Zealand and Notices of Its State and Progress (London, 1840), pp 130–131, 142; Williams, Christianity among the New Zealanders, pp 85, 118, 119, 164–165, 171, 202, 211, 248–249, see also pp 257, 260

235. McKenzie, Oral Culture, Literacy and Print, p 15

236. Church Missionary Society, The Missionary Register, 1834, pp 61, 119; McKenzie, Oral Culture, Literacy and Print, p 14; doc A11, p 197; Williams, Early Journals, pp 326, 386. Williams also referred to Heke paying with ‘a canoe of good firewood’.

237. McKenzie, Oral Culture, Literacy and Print, p 23


239. Colenso, Fifty Years Ago in New Zealand, p 20; see also McKenzie, Oral Culture, Literacy and Print, p 27

240. Document A11, p 190

241. Yate, An Account of New Zealand, p 239; Markham, New Zealand or Recollections of It, p 55

242. Church Missionary Society, The Missionary Register, 1833, pp 468, 550. Similar claims were made by William Williams and Marsden: see Williams, Christianity among the New Zealanders, pp 248–249; Church Missionary Society, The Missionary Register, 1838, p 137.

243. Document A11(a), vol 1, p 83

244. McKenzie, Oral Culture, Literacy and Print, p 17; see also Wright, New Zealand, 1769–1840, p 177

245. Church Missionary Society, The Missionary Register, 1832, p 406 and 1833, p 243; see also Church Missionary Society, The Missionary Register, 1893, p 348

246. Williams, Christianity among the New Zealanders, p 202; Williams, Early Journals, pp 386–387

247. McKenzie, Oral Culture, Literacy and Print, p 30

248. Ibid, pp 15–16

249. Ibid, p 10

250. Document A16, p 187

251. Ibid, pp 136–137, 139–142

252. Ballara, Taua, pp 420–421

253. Ibid; doc A11, pp 191, 197; doc A20, pp 56, 60–61

254. McKenzie, Oral Culture, Literacy and Print, pp 19–20


256. McKenzie, Oral Culture, Literacy and Print, p 32

257. Belich, Making Peoples, p 165

258. Owens, ‘New Zealand before Annexation’, p 39; Ballara, Taua, pp 420–421; doc A1, p 78

259. Document A20, p 15, see also pp 33, 56

260. Document A1, p 272

261. Document A37, pp 430–431

262. Document B26(a), pp 35, see also pp 5, 10, 22, 27, 32

263. Document B10, pp 65–67


265. Crosby, Musket Wars, pp 252–254; Shawcross, ‘Maoris of the Bay of Islands’, fol 365, fig 21


267. Wright, New Zealand, 1769–1840, p 147


269. Ballara, Taua, p 163

270. Belich, The New Zealand Wars, p 25


274. Document A19(a), p 91; see also doc A19(a), p 92; doc A11(a), vol 4, pp 1346–1356; Busby to Bourke, 18 January 1836, qMS 0345, ATL, Wellington

275. Ballara, Taua, pp 431–432; see also Wright, New Zealand, 1769–1840, pp 154–155; doc A11, p 198

276. Ballara, Taua, pp 158–160

278. Ballara, Taua, pp 159, 204, 432.


282. Busby to Bourke, 13 July 1837, qMS 0345, ATL, Wellington.


287. Document B22(b), pp 26; doc B21(a), p 17; doc B36(a), pp 2–3; doc C9, p 21; doc C23, p 7; doc D14, p 11; see also doc A30(c), pp 28, 38–39; doc A36(a), pp 25, 565, 569 (which refers to Te Ika-a-Ranganui as the ‘last great battle’), 572 (which refers to Te Ika-a-Ranganui extending the mana of Ngāpuhi over other Te Raki tribes); Ballara, ‘Hongi Hika’, in The Dictionary of New Zealand Biography, Ministry for Culture and Heritage, http://www.teara.govt.nz/en/biographies/1h32/hongi-hika, last modified 30 October 2012; doc A25(a), pp 58–59; doc A29(a), p 9. In Taua, Ballara said that one reason for declining warfare was ‘the resolution of inter-Maori take in the different districts’, and another was that accommodations were reached and marriages occurred between formerly competing groups: Ballara, Taua, p 443. Phillipson saw warfare declining partly because Ngāpuhi already had enough slaves: doc A1, p 81.

288. Ballara, Taua, pp 147, 152.


290. Head, ‘The Pursuit of Modernity in Māori Society’, p 102. Alan Ward also argued that economic progress, along with concerns about ‘declining numbers and strength, relative to that of the Pakeha’, were factors encouraging Māori to seek peace: doc A19, p 22.


296. Ibid, p 152.

297. Document A11(a), vol 4, pp 1376–1394; Busby to Bourke, 16 June 1837, qMS 0345, ATL, Wellington.


299. Document A1, p 91; Ballara, Taua, p 100.

300. Ballara, Taua, p 100; see also doc A37, p 268; Belich, Making Peoples, pp 167–168; Wright, New Zealand, 1769–1840, p 160; doc A37, pp 267–268; doc A1, pp 85–86; Williams, Christianity among the New Zealanders, pp 39–40, 163, 173, 203–204; Yate, An Account of New Zealand, p 121.

301. One obvious example was Busby’s failed intervention in the dispute over Whananaki. On other occasions, rangatira such as Pōmare II, Nene, Taonui, Papahia, and Te Tupe approached the Resident about disputes with Europeans regarding theft, property damage, trade, or land. The missionaries were called on for similar reasons: see doc A1, pp 114, 240, 249–252; doc A19, pp 40–42; doc A19(a), p 85; Orange, The Treaty of Waitangi, pp 14–18; Binney, ‘Tuki’s Universe’, p 228; Jennifer Ashton, ‘“So Strange a Proceeding”: Murder, Justice and Empire in 1830s Hokianga’, NZJH, vol 46, no 2 (2012), p 150. For examples of rangatira ignoring Busby’s responses to trader complaints, see doc A37, pp 671–672.


305. Report from the Select Committee of the House of Lords, p 272.


309. Document A11, p 231; see also doc A1, p 84.


311. Submission 3.1.142(a), p 578; Report from the Select Committee of the House of Lords, pp 270–271; doc A18(e), pp 630–632; Claudia Orange, ‘The Treaty of Waitangi: A Study in its Making, Interpretation and Role in New Zealand History’ (PhD thesis, University of Auckland, 1984), p 89 n 42. Judith Binney said there had also been ‘three attempts to bring Maori before the New South Wales Supreme Court for crimes against Europeans’ prior to 1840, though all failed: Binney, ‘Tuki’s Universe’, p 228. These appear to have referred to crimes committed while on ships or otherwise outside New Zealand and therefore rangatira jurisdiction. On one of those occasions, she said, a Māori sailor was imprisoned on a ship for the alleged murder of a European crew member, but was released as he was awaiting trial.

312. Jeffrey Sissons, Wiremu Wi Hongi and Patu Hohepa, Nga Puriri o Taiamai: A Political History of Nga Pahu in the Inland Bay of Islands (Auckland: Reed, 2001), pp 37, 86, 134. According to Henry Williams,
Pumuka was of Te Roroa but lived at Whangae in the Bay of Islands interior: Williams, *Early Journals*, p 107 n 6


334. Document A11(a), vol 4, pp1395–1398; Busby to Bourke, 9 November 1838, qMS 0345, ATL, Wellington; Busby to Bourke 28 May 1838, qMS 0345, ATL, Wellington; Ramsden, *Busby of Waitangi*, pp 185–188; Ashton, “So Strange a Proceeding”, p 152


337. Document B10, pp 27–31, 60, 71


341. Transcript 4.1.1, p 33; see also transcript 4.1.1, p 201; doc A30(c), p 6

342. Document A11, p 128


350. Document A11(a), vol 4, pp 1277–1278; Busby to Bourke, 13 May 1833, qMS 0345, ATL, Wellington


354. Wolfe, *Hell-Hole of the Pacific*, p 84

355. Ibid, p 91

356. *Report from the Select Committee of the House of Lords*, p 164


358. Shawcross, ‘Maoris of the Bay of Islands,’ fol 350, fig xix

359. *Report from the Select Committee of the House of Lords*, p 101

360. Document A1, p 141; Davis to CMS, 6 December 1838, MS 1211/1 ATL, Wellington


362. Sherrin, ‘From Earliest Times to 1840’, pp 463–464; see also doc A18(e), pp 630–632; Hobson to Bourke, 8 August 1837, BPP, 1840 [238], pp 9–11


367. Document A11(a), vol 4, p 1378; Busby to Secretary of State for War and the Colonies, 16 June 1837, qMS 0345, ATL, Wellington


374. Document A1, p 235


380. Wright, *New Zealand, 1769–1840*, pp 152, 156–157, see also pp 190–191, 193, 195, 197

381. Document A37, p 517

CONTESTED GROUND

365. Document A11, p 229, see also p 19; doc A1, p 86
367. Document A11(a), vol 4, p 1385; Busby to Bourke, 16 June 1837, qMS 0345, ATL, Wellington
374. Shawcross, ‘Maoris of the Bay of Islands’, fols 356–357
381. Document A16, pp 140–141
382. Document B26(a), pp 25–26
385. Document A11(a), vol 4, pp 1373–1376; Busby to Bourke, 4 May 1837, qMS 0345, ATL, Wellington
386. Polack, *New Zealand*, vol 2, p 219
387. Document A11(a), vol 4, pp 1382–1383, 1394; Busby to Bourke, 16 June 1837, qMS 0345, ATL, Wellington
388. Document A19(a), pp 17–18, 55, 88
389. Document A1, p 253
390. Document A11(a), vol 4, pp 1391, 1393; Busby to Bourke, 16 June 1837, qMS 0345, ATL, Wellington
398. Document A11(a), vol 4, pp 1356–1362; Busby to Bourke, 26 January 1836, qMS 0345, ATL, Wellington
399. Document A11(a), vol 4, pp 1346–1356; Busby to Bourke, 18 January 1836, qMS 0345, ATL, Wellington; doc A11(a), vol 4, pp 1362–1367; Busby to Bourke, 20 February 1836, qMS 0345, ATL, Wellington
400. Document A11(a), vol 4, pp 1361; Busby to Bourke, 26 January 1836, qMS 0345, ATL, Wellington
401. Document A11(a), p 99
402. Document A11(a), vol 2, pp 626–627; Henry Williams to CMS, 13 May 1826, qMS 2230, ATL, Wellington
403. Williams, *Early Journals*, p 306
404. Document A19(a), p 57 n 100
405. Document A1, p 141; Davis to CMS, 1 June 1839, MS 1211/2, ATL, Wellington
406. Document A1, p 141; Davis to CMS, 19 November 1839, MS 1211/2, ATL, Wellington
407. Document A1, p 141; Davis to CMS, 6 December 1838, MS 1211/1, ATL, Wellington

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5-Notes

410. Report from the Select Committee of the House of Lords, pp 260–261
411. Ibid; see also doc A19(a), p 94
412. Moore, Rigby, and Russell, Old Land Claims, pp 64–65
414. Document A11(a), vol 2, p 687
415. Ibid
416. Document A19(a), p 103
417. Ibid, p 91
418. Document A1, p 131; Davis to CMS, 1 March 1839, Richard Davis, letters and journals, vol 2, MS 1211/2, ATL, Wellington
419. Document A18, p 128 n 362
420. Document A19(a), p 94
421. Ibid, p 92; see also doc A19(a), pp 18–20, 55, 84–89, 90–106
422. Document A1, pp 140–141
424. Document A19, p 27
425. Submission 3.3.33, p 80
426. Document B18(a), pp 15–17
427. Document B13(a), pp 8–12; see also doc D5, p 29
428. Document B10, pp 56, 59, 78, 80
429. Shawcross, ‘Maoris of the Bay of Islands’, fol 370; doc A1, pp 68, 107; Belich, Making Peoples, p 201
430. Document A1, p 135
431. Ballara, Taua, p 417
433. Belich, The New Zealand Wars, p 327; McKenzie, Oral Culture, Literacy and Print, p 35
6.1 Introduction

We turn in this chapter to look at the immediate factors that resulted in the British Government’s decision in 1839 to instruct Captain William Hobson to obtain a cession of sovereignty from rangatira over parts or all of New Zealand, and to establish the sovereign authority of the British Crown. We have seen in previous chapters that the British Government had maintained a policy of ‘minimum intervention’ in the Pacific in the years following the formation of the penal colony in New South Wales. By the early 1830s, increasing contact – including the settlement of some hundreds of British subjects – had brought this policy into question in New Zealand. Missionary societies in particular lobbied for increased action by the British Government to restrain disorderly Britons and to protect Māori. In response to these views, and because Britain’s burgeoning commercial interests in New Zealand required that the peace be kept, the Government had appointed a British Resident to the Bay of Islands in 1832. Despite this decision to send an official British representative, the imperial authorities continued to acknowledge that New Zealand remained independent: the British Crown had established no sovereign authority in New Zealand. Britain’s recognition of New Zealand’s independent status was affirmed when HMS Alligator fired a 21-gun salute at Waitangi in 1834 to mark the selection of New Zealand’s first ‘national’ flag. Such recognition continued after the rangatira asserted their independent authority through he Whakaputanga (see section 4.7.2).

Beginning in 1837, however, several factors led the British Government to decide that it was necessary to increase its formal presence in New Zealand, though what form this would take remained an open question. The first significant factor came with the formation of the New Zealand Association in May 1837, which created a new and powerful lobby in favour of ‘systematic colonisation’ – Edward Gibbon Wakefield’s theory for the progressive expansion of settlement colonies, which he and others hoped to apply in New Zealand. As the Colonial Office began considering the Association’s overtures, James Busby’s dispatch of 16 June 1837 arrived, which as we have seen provided a stark (though inaccurate) view of the effects of British settlement on Māori. For the missionary societies, Busby’s dispatch provided evidence (though, in their view, exaggerated) that it was necessary for Britain to exercise actual authority in New Zealand in order to prevent uncontrolled settlement and to preserve New Zealand for the work of the missionaries. Accordingly, they commenced what proved to be a sustained opposition to the proposals of the New Zealand Association and its successors. However, Busby’s dispatch was soon followed by a report from a different source, which observed that these
same circumstances warranted the Crown establishing authority in areas where British settlement was already under way. The author of the report was Captain William Hobson.

The imperial authorities considered their position within the context of significant changes that were then occurring both at home and abroad. The domestic political scene had been for some time preoccupied with electoral reform. After the passing of the Reform Act 1832, this had taken a different trajectory through the Chartist movement, which advocated universal suffrage. Alongside these political developments, ongoing industrialisation had spurred a massive increase in migration to Britain’s settlement colonies in North America, South Africa, and Australia. Increasing migration gave rise to new colonies of settlement, including South Australia, which was established in 1834 under Wakefield’s model. It also coincided with increasing calls from existing settlement colonies to be granted self-governing powers. Two armed uprisings in the British North American (Canadian) colonies in late 1837 underlined the need to address these issues. A Parliamentary Committee was convened in 1838 to inquire into the situation there. The Committee’s chair, Lord Durham – a long-time advocate of organised colonisation, including of New Zealand – made a series of recommendations, including provision for self-government.

Although Durham’s recommendations for Canada were not immediately accepted, the transition towards colonial self-government soon commenced in various guises across the settlement colonies. This transition occurred alongside the consolidation of Britain’s supreme position as an imperial power after the Napoleonic Wars. Britain’s supremacy, however, did not mean that the imperial authorities had ceased to pay attention to the actions of other nations: France had begun to assert its imperial ambitions once again (taking control of Algeria in 1830), and its renewed activity in the Pacific did not go without comment. At the same time, Britain’s experience of empire continued to galvanise humanitarians; after the abolition of slavery in the British Empire by legislation in 1833, humanitarian organisations, particularly missionary societies, turned their attention to the experience of indigenous peoples. The Parliamentary Committee on Aboriginal Tribes convened for two years (1833 to 1835) and reported in 1837, the same year that the Aborigines’ Protection Society was formed.

These developments all had a significant bearing upon the Colonial Office as it came to reconsider – from the first approaches of the New Zealand Association in 1837 – Britain’s position in New Zealand.

6.2 Wakefield’s Scheme for Colonisation
6.2.1 Early plans for organised settlement
In chapter 3, we outlined some early proposals to establish small settler colonies in New Zealand. These included plans endorsed by New South Wales Governor Lachlan Macquarie in 1810 and 1816 to establish settlements for flax production, although these came to nothing. In 1823, in England, Edward Nicholls proposed a military settlement, but the Colonial Office was not interested. In due course the first New Zealand Company was founded in London in 1825 under the chairmanship of John Lambton (later Lord Durham) and deputy chairmanship of Robert Torrens. It planned to establish a colony based on timber and flax production, but this idea was abandoned after a financial crash in London later that same year. Nicholls’s proposal was revived in 1826, but the Colonial Office remained uninterested. What all these early schemes had in common was their commercial focus on the exploitation of natural resources, such as flax and timber.

6.2.2 Systematic colonisation
The advocacy for organised settlement assumed an altogether different character from the late 1820s, however, with the rise to prominence of Edward Gibbon Wakefield and his theories of systematic colonisation. While serving a three-year term in Newgate Prison for abducting an heiress in 1826, Wakefield – well-off thanks to the inheritance of his deceased wife, whom he had also once abducted – began to think about colonisation. He justified his theories on the basis of what he regarded as the deficiencies of English civilisation, particularly the gap in the fortunes of rich and poor, arguing that emigration...
was a way out of poverty and crime for the masses. The business of colonisation arguably also offered Wakefield a new career path now his conviction had dented his plans to become a member of Parliament.\(^3\) In any event, Wakefield’s ideas followed a general increase in migration that began in 1815, and coincided more specifically with an upsurge in British migration to the Australian colonies from the late 1820s. As such, Professor James Belich has written, ‘Wakefield was riding the wave of public opinion, not creating it.’\(^4\)

Wakefield outlined his plans in a series of publications, including *Sketch of a Proposal for Colonizing Australasia* and *Outline of a System of Colonization* in 1829. He argued that settlers could too easily spread out through a colony because of an abundance of cheap land, and this left a shortage of labour for men of capital. Moreover, under such a scenario there could be no centres of ‘civilised’ society, which he regarded as essential to successful colonisation. Instead, as he felt had happened in North America, there would be frontier lawlessness and debauchery. Wakefield contended that the Crown or a colonisation company should acquire the land cheaply and then on-sell it at high prices only, with the proceeds being used to fund the emigration of British labourers. These workers would not initially be able to buy their own land, so the colony’s labour supply would be assured, although in due course they would be able to improve their position in society through land acquisition. The speculation involved in colonies would belong not to land-sharks but to the investors in colonisation schemes. As Dr Patricia Burns put it, ‘Edward Gibbon Wakefield’s plan was an example of emigration “by private speculation” – and a profitable speculation it could prove.’\(^5\)

Wakefield’s theories were employed soon enough in the colonisation of South Australia when settlement commenced in 1836, although Wakefield considered that the land put on sale there was still too cheap for his principles to work. He parted company from the colony’s promoters, believing they had made too many compromises in order to appease the British Government. He now began to look instead to New Zealand, where he saw an opportunity to apply his theories in their purest form: here, wrote Burns, ‘the Wakefield system would be established in its perfection.’\(^6\) In 1836, Wakefield testified about the virtues of systematic colonisation before the House of Commons Select Committee on the Disposal of Land in the British Colonies, which had been appointed in part to inquire into his theories. He named New Zealand as a great prospect – ‘the fittest country in the world for colonisation’ – albeit one that was currently being colonised in ‘a most slovenly, and scrambling, and disgraceful manner’ (the opposite, in other words, to his vision of what Professor Erik Olssen described as ‘a civilized society in a new land, a civilized society predicated upon the capacity of Britons to co-operate and to govern themselves’).\(^7\)
6.2.3 The New Zealand Association and its opponents

A meeting was thus held in London on 22 May 1837, with Wakefield himself in the chair, to discuss the founding of a Wakefieldian colony in New Zealand. A publication had already been printed, entitled *A Statement of the Objects of the New Zealand Association*. The meeting duly resolved to form a society by this name to pursue the object of systematic colonisation in New Zealand. The *Statement* foresaw Māori happily selling their ‘unused’ lands for nominal sums and being willingly ‘brought to adopt the language, usages, laws, religion, and social ties of a superior race’. It also saw a need to obtain Māori consent, through a treaty, prior to the formation of any settlements, since Māori national independence has been virtually, not to say formally acknowledged by the British Government . . . [by] the appointment of a Resident at the Bay of Islands, and the recognition of a New Zealand flag.

Baring, however, also contended in a letter to the Prime Minister, Lord Melbourne, that Captain James Cook’s discovery and Macquarie’s 1814 proclamation (which, as we saw in chapter 3, referred to New Zealand as a dependency of New South Wales) meant that Britain had rights over New Zealand ‘as against other European nations’. The *Statement* set out the object of obtaining parliamentary approval, explaining that a Bill had been drafted which would grant the Association’s leaders a charter to colonise. Essentially, the Association was offering the Crown a British colony at no cost, in return for the Association having the power to make laws and acquire and sell land, using the profits to fund further emigration.9

The Association’s second meeting, a week after the first, was well attended and full of optimistic speeches. At the next meeting, a committee was elected which included no fewer than 10 Members of Parliament. Much publicity was generated in the *Spectator* and the *Colonial Gazette*. Burns concluded that, ‘On the whole, it would be hard to find an organisation which began in a more feverish state of excitement than the New Zealand Association’10

No sooner had the Association come to prominence, however, than its opponents went on the attack. The Church Missionary Society (c.m.s), under the leadership of its lay secretary, Dandeson Coates, immediately focused its lobbying in opposition to the Association. Once the c.m.s committee had been able to read the Association’s *Statement*, it promptly resolved that ‘all suitable means’ be used to stop the plan from ‘being carried into execution’11

The c.m.s’s opposition was based on several grounds. First, it believed that Parliament had no business supporting land transactions in a country where the British had no legitimate claim to sovereignty. It would appear from this that the c.m.s placed no faith in the Association’s stated intention to acquire Māori consent. Secondly, it pointed to the ‘[u]niversal experience’ of ‘uncivilized Tribes’ that came into contact with European colonisers: the suffering of ‘the greatest wrongs and most severe injuries’. Thirdly, it considered that any significant colonisation would from its unavoidable tendency . . . interrupt, if not defeat, those measures for the Religious Improvement and Civilization of the Natives of New Zealand which are now in favourable progress through the labours of the Missionaries.12

But neither was the Association guaranteed a warm reception from the Government. The Colonial Office was already overstretched, dealing with more than 30 colonies located around the globe, and its staffing numbers were unable to keep pace with the rate of colonial expansion.13 Dr (later Professor) Paul Moon put it this way:

the larger agony of managing the almost unmanageable Indian sub-continent, and the struggle to rein in disobedient or incompetent colonial officials, shunted Britain’s less significant colonial possessions very much into the background of official priorities.14
Moreover, the officials and political masters of the Colonial Office included a number of men with strong connections to the CMS or sympathies with its aims. Lord Glenelg, the Secretary of State for War and the Colonies, had been a vice-president of the CMS. His junior minister, George Grey, the Under-Secretary of State for War and the Colonies (not to be confused with the later New Zealand Governor of the same name), had been a member of the CMS committee. So too had the senior official in the Colonial Office, James Stephen, the Permanent Under-Secretary.15

That did not mean – as we shall see – that these men simply sided with the CMS, but it did mean they had an inherent antipathy towards the colonising aims of the Association. As Dr (later Dame) Claudia Orange observed, for example, Glenelg was ‘reluctant to admit that colonisation in any form was desirable for New Zealand’.16 Dr Peter Adams noted likewise that ‘on more than one occasion Stephen doubted his impartiality towards Wakefield and the New Zealand Company and said so’.17

As it transpired, Baring submitted the Association’s proposed Bill to Lord Melbourne in mid-June 1837. But King William IV’s death on 20 June meant that Parliament would have to be dissolved and elections held, stalling any advance the Association hoped to make.

The Association suffered a much more significant setback shortly afterwards with the publication of the final Report from the Select Committee on Aborigines (British Settlements). This committee, which began hearing evidence in 1833 – including that of Coates and his counterpart from the Wesleyan Missionary Society, John Beecham – and was chaired by a prominent abolitionist, concluded that:

It is not too much to say, that the intercourse of Europeans in general, without any exception in favour of the subjects of Great Britain, has been, unless when attended by missionary exertions, a source of many calamities to uncivilized nations.

Too often, their territory has been usurped; their property seized; their numbers diminished; their character debased; the spread of civilization impeded. European vices and diseases have been introduced amongst them, and they have been familiarized with the use of our most potent instruments for the subtle or the violent destruction of human life, viz. brandy and gunpowder.18

As one of its general suggestions, the Committee recommended that settlers not be given governing responsibility over indigenous peoples, with whom they would invariably be in dispute over land:

The protection of the Aborigines should be considered as a duty peculiarly belonging and appropriate to the Executive Government, as administered either in this country or by the Governors of the respective Colonies. This is not a trust which could conveniently be confided to the local Legislatures. . . . [T]he settlers in almost every Colony, having either disputes to adjust with the native tribes, or claims to urge against them, the representative body is virtually a party, and therefore ought not to be the judge in such controversies.19

For New Zealand in particular, the Committee proposed the appointment there of ‘consular agents’, who could prosecute British subjects committing offences and who would be supported by the periodical visits of British naval ships. It added:

Various schemes for colonizing New Zealand and other parts of Polynesia have at different times been suggested, and one such project is at present understood to be on foot. On these schemes Your Committee think it enough for the present to state, that regarding them with great jealousy, they conceive that the Executive Government should not countenance, still less engage in any of them, until an opportunity shall have been offered to both Houses of Parliament of laying before Her Majesty their humble advice as to the policy of such an enlargement of Her Majesty’s dominions, or of such an extension of British settlements abroad, even though unaccompanied by any distinct and immediate assertion of sovereignty.20

As Dr Donald Loveridge drily observed, ‘on the face of it the New Zealand Association was unlikely to draw much comfort from this Report.’21
Adams noted that the 1837 select committee report has often been regarded by historians as ‘the highest expression of nineteenth-century humanitarian idealism towards indigenous peoples’. The committee was effectively attempting to resurrect the scheme provided for in the South Seas Bill in 1832, which had been defeated in Parliament. The reasons for the defeat of that Bill still held – there was little appetite among politicians to establish British jurisdiction in New Zealand.

With the King’s death, the Association saw that, for its part, nothing could be achieved until the next parliamentary session. It busied itself in the meantime with self-promotion. The committee members resolved at their 10 July meeting to strengthen the Association ‘by laying their views before the public, and adding to their numbers’. The Association thus embarked on writing a book and, in September 1837, recruited Lord Durham – the newly returned ambassador to St Petersburg – as its chairman. Wakefield hoped that Durham would be able to persuade the new Queen Victoria to allow the book to be dedicated to her, thus providing a de facto royal endorsement, although no such dedication appeared when the book was published in November.

Regardless, Durham’s appointment was significant for the Association. As a leading figure in the reform movement, he was ‘the only man who could ensure continued Radical support of the Whig Government and the Prime Minister’ at a time when Melbourne’s Government faced potential defeat over its handling of Canadian affairs. Durham thus gave the advocates of systematic colonisation in New Zealand some real leverage. He had, as mentioned previously, been chairman of the 1825 New Zealand Company, and it seems that body had tried to resurrect itself under his leadership in 1834. A condition of his chairmanship of the Association was that the prior investment of the original New Zealand Company be recognised.

The Association’s book was entitled *The British Colonization of New Zealand* and was authored in large part by Wakefield. Loveridge thought it ‘best . . . described as a 423-page version’ of the *Statement*. He noted, though, that it laid much greater emphasis upon the supposed benefits to Māori of systematic colonisation, with an entire chapter dedicated to the ‘Civilization of the New Zealanders’. Here, the Association set out the injury to Māori caused by uncontrolled British settlement, and indeed quoted extensively from the 1837 select committee report to make its point. It concluded that what was needed in response was not a form of Māori self-government, as promoted by the missionaries – which it suggested would fail owing to Māori lacking, for now, the requisite ‘higher degree of intelligence’ – but an approach much like that promoted by the Association:

> a deliberate and methodical scheme for leading a savage people to embrace the religion, language, laws, and social habits of an advanced country, – for serving in the highest degree, instead of gradually exterminating, the aborigines of the country to be settled . . . This . . . is not a plan of mere colonisation: it has for its object to civilize as well as to colonize: . . . to preserve the New Zealand race from extermination.

The exact plan laid out in *The British Colonization of New Zealand* was for the Association to acquire land from Māori who were ‘already disposed to part with their land and sovereign rights’. British government would then be established, which would in turn extend to Māori the benefits of British subjecthood. Other Māori would observe the advantages of British government and would progressively seek to join in. ‘By degrees, then,’ it was explained, ‘and by the desire of the native inhabitants, British sovereignty and laws would be extended over the whole of New Zealand’.

At the same time as the Association was setting forth its views, the CMS was busy generating publicity of its own. On 27 November 1837, Coates wrote a letter to Glenelg that was printed and widely distributed as a pamphlet entitled *The Principles, Objects and Plan of the New Zealand Association Examined*. In it, he argued that colonisation was inevitably injurious to indigenous peoples and that the Association was simply motivated by profit, though it did not admit it. It was, he wrote,

> too high wrought, too Utopian, to believe that a miscellaneous body of men will expatriate themselves, to a savage land.
The British Move towards Annexation

at the antipodes, merely out of a benevolent regard to the civil-
ization and moral improvement of the Natives . . .

Coates doubted that Māori would willingly sell land, let alone cede sovereignty (or indeed understand the proposition). He claimed that the Association’s scheme would disrupt the work of the missionaries and inevitably lead to ‘collision and warfare with the Natives’. He suggested instead that the Resident’s status be upgraded to that of the consular agents proposed in the select committee’s report, with magisterial powers that operated within New Zealand and a native police force formed to support him. A small ship of war would also be stationed permanently in New Zealand, and British subjects tried for misdemeanours.

Wakefield responded promptly on behalf of the Association, sending a letter of his own to Glenelg on 12 December 1837. This also appeared as a pamphlet. In it, Wakefield contended that Coates had understated the negative consequences for Māori that unregulated European settlement was already having in New Zealand. He argued that colonisation could not be stopped, and that systematic colonisation would be much more preferable for Māori than the status quo. He also questioned Coates’s claim that Māori would not sell land, pointing to the missionaries’ own claims to have purchased a considerable amount. He accused Coates of deliberately ignoring those parts of *The British Colonization of New Zealand* that demonstrated – through careful development ‘by some of the wisest and best men in this country’ – ‘that there is a mode of colonization by which the savage peoples of a thinly populated country . . . may be preserved from the horrors of lawless colonization’.

Glenelg does not appear to have expressed a particular concern about the propriety of private individuals – who were not putting at risk their own capital – establishing a colony and effectively, through their land purchases, extending the formal boundaries of the British Empire, although these were particular concerns of Stephen’s.

Undeterred by Glenelg’s rejection, Wakefield met with Melbourne on 15 December and again on 16 December, when he presented a petition signed by 40 businessmen engaged in whaling in New Zealand, urging colonisation as a means of safeguarding British commercial interests. The CMS organised its own deputation and requested a meeting with Glenelg on 20 December (the day Glenelg was to give the Association his final answer), and the Wesleyan Missionary Society secured a meeting for 27 December.
6.3.2 Busby’s dispatch and the Government’s response

The Government, for its part, had a difficult task in responding to what Adams accurately described as the CMS and Association’s ‘tug-of-war’ for official approval. Melbourne and Lord Howick, the Secretary at War, had been generally encouraging when meeting the Association in June, and Howick had offered some criticisms of the Association’s draft Bill. Melbourne had even approved these before they were sent to the Association. Howick prefaced his comments, though, with the warning that they were merely his opinion. In fact, while sympathetic to the Association’s objectives, he shared Stephen’s estimation of its plans as ‘so vague and so obscure as to defy all interpretation’. But the Association, which had approached Melbourne in June because it expected Glenelg to be hostile, proceeded on the basis that it had the requisite support. As Adams noted, there were no reasonable grounds for such indignation.

But despite the Association’s over-confidence, both this reaction and Wakefield’s lobbying were beginning to pay dividends. On 16 December, Melbourne wrote to Howick: ‘So many people are engaged in this New Zealand business, that they have a right to an answer & I hope you will make up Glenelg’s mind on the subject.’ Pondering Wakefield’s arguments about the situation in New Zealand, he added,

If we really are in that situation that we must do something . . . it is only another proof of the fatal necessity by which a nation that once begins to colonize is led step by step over the whole globe.

When Glenelg met the Association’s representatives at the Colonial Office on 20 December, they cannot have been particularly confident of a favourable outcome. As the meeting went on, Glenelg indeed gave them no cause for optimism, as he reiterated all the reasons for the Government’s position. But then he said this:

The intelligence which Her Majesty’s Government have received from the most recent and authentic sources justifies the conclusion that it is an indispensable duty, in reference both to the natives and to British interests, to interpose by some effective authority to put a stop to the evils and dangers to which all those interests are exposed, in consequence of the manner in which the intercourse of foreigners with those islands is now carried on.

As Adams noted, this could conceivably have been leading on to an announcement that Busby was to be replaced or the Resident’s powers increased. But any prospect of that was laid aside by Glenelg’s explanation that the Government considered the select committee’s idea of consular agents ‘inadequate to meet the existing evil’. Rather, he said, preventing injury to Māori could ‘be accomplished only by the establishment of some settled form of government within that territory, and in the neighbourhood of places resorted to by British settlers’. His point was ultimately this:

Colonization to no small extent is already effected in these islands; the only question, therefore, is between a colonization desultory, without law, and fatal to the natives, and a colonization organized and salutary.

Glenelg thus told the Association that the government was willing to consent to the incorporation, by a Royal charter, of various persons, to whom the settlement and government of the projected colony . . . would be confined.

This would be based on ‘precedents of the colonies established in North America by Great Britain in the sixteenth and seventeenth centuries’.

This was certainly an unexpected development: as Adams put it, the Association ‘appeared to have won a decisive victory’. While Wakefield wrote some years later that Melbourne had brought Glenelg into line, this appears not to have been the case. As we have seen, the Prime Minister merely asked Howick to help the rather
indecisive Glenelg make up his mind. Howick saw Glenelg as weak and not up to the job of Secretary of State for War and the Colonies, and probably did try to persuade him to support the Association – not least because Durham’s support was so vital to the Government. But there was an altogether much more important factor in Glenelg’s about-face: Busby’s 16 June 1837 report, which reached the Colonial Office on 18 December 1837, almost on the eve of Glenelg’s meeting with the Association at which he had promised to deliver his final answer. This was the ‘intelligence’ Glenelg was referring to.41

We have already discussed this dispatch in chapters 4 and 5. Its importance to this chapter lies in the profound impact it had on the chain of events in London that led to the British Government’s eventual decision to acquire sovereignty in New Zealand. In fact, historians generally regard the 20 December 1837 meeting between Glenelg and the Association as a pivotal moment.42 Before the arrival of Busby’s report, the likelihood – although not the certainty – was that Glenelg’s response to the Association would be ‘no’. Adams even argued that ‘For a few crucial days in the winter of 1837 the immediate future of New Zealand hung in the balance.’43 But Busby’s dire description of Māori disease and mortality – including even on mission stations, where Māori were meant to be protected from European vices – appeared to strike a fatal blow to the arguments of those opposed to state-sponsored colonisation. While Glenelg had concerns for both Māori and
British interests, Adams summed up his views on protecting Māori in this way:

> Up until the middle of December 1837, Glenelg had favoured the argument of the protestant missionary societies: that colonization by whites invariably destroyed indigenous races; that this could be prevented in New Zealand if the country was left to the missions, backed by the Government; and that therefore the New Zealand Association must be opposed. At a stroke Busby’s report destroyed the middle term of this argument. Haphazard white colonization of New Zealand was already occurring, accompanied by disastrous results for the Maoris. More important, the missions had failed to lessen the impact of this colonization, for the disastrous results were just as apparent among the Maori population subject to their immediate influence as elsewhere.⁴⁴

Glenelg had little option but to back down by proposing terms on which a charter would be offered.

But by no means did he do so entirely, because his offer came with important conditions. Among these, as set out in a letter to Durham of 29 December 1837, were: the colony could not be established without Māori consent, freely given; the Crown could veto nominations to the governing body and overturn any of its laws; Crown officials would vet all land transactions with Māori; other chartered colonies could potentially be established elsewhere in New Zealand (that is, there was no guarantee of a monopoly for the Association); and, perhaps most importantly, the founder members of the venture would need to invest their own capital through forming a joint-stock company. Durham objected to these conditions but took particular umbrage at the last. The Association’s committee members had ‘expressly stipulated that they shall neither run any pecuniary risk, nor reap any pecuniary advantage’ from the venture, and he argued that investment of their own money would conflict with their governing duties in New Zealand.⁴⁵

**6.3.3 The Church Missionary Society remains opposed**

The CMS met Glenelg, Grey, and Stephen on 4 January 1838. Prior to this, Coates had borrowed Busby’s report from Glenelg and written to him to dispute some of the Resident’s claims, such as the decline of Māori on mission stations. Adams described Coates as ‘unable to square the incontrovertible facts with his own idealized conception of the missionaries as saviours of the Maoris in this world, as well as in the next’.⁴⁶ Coates also suggested that Britain might deviate ‘from the strict letter of the law of nations’ in New Zealand to obtain the sovereignty over one or two enclaves, and thus facilitate the introduction of British law. Loveridge considered that the suggestion that Britain acquire sovereignty over any land in New Zealand represented ‘a significant departure from the previous policies of the missionary societies’, and showed again the impact of Busby’s dispatch. Coates recommended, however, that the enclaves be under ‘the entire administration of the [British] Government’, and exclude both colonisation and commerce.⁴⁷

At the 4 January meeting itself, the CMS deputation could not help but suspect that the Association was to receive a charter. The offer was eventually confirmed in a letter from Grey to the CMS on 25 January 1838, although he stressed that CMS objectives would be safeguarded. In reply, Coates wrote that

> no conditions under which a Charter could be granted to that Association for the colonization of New Zealand could . . . effectively guard against the evils to be apprehended both to the Society’s Mission and to the Natives from such a proceeding if it should be adopted.⁴⁸

In other words, the CMS’s objection was based on the principle that any form of colonisation would have destructive consequences. Coates’s Wesleyan Missionary Society colleague Beecham next took up the war of words in a pamphlet produced in early February 1838. As Loveridge remarked, its contents were predictable: ‘the Association and its plans were found wanting in all respects’. But Beecham did make the point that the only measure taken in New Zealand to counter the impact of ‘our immoral countrymen’ had been to appoint a Resident who had been little more than ‘a mere spectator’. Now the Government was contemplating going ‘from one extreme
to another’. He advocated an intermediate position, such as the idea of consular agents.49

Hobson’s own August 1837 dispatch, which we discussed in chapter 4, arrived in London on 1 February 1838. In sum, Hobson proposed that ‘factories’ be established in specific locations where European settlers had congregated, with the consent of local Māori obtained by means of treaty. In these British enclaves, which would be dependencies of New South Wales, a ‘factor’ would rule over Māori and British subjects alike, police and courts of law would eradicate the issue of frontier disorder, and Māori would be exposed at first hand to the workings of civil government.50 Hobson’s dispatch and Busby’s June 1837 report were published together on 7 February 1838. Beecham seized on Hobson’s view that Busby’s grim account of New Zealand conditions went too far, and – as Loveridge put it – ‘rushed back into print’ with another pamphlet that set out the Government’s options for New Zealand: namely, colonisation, Busby’s protectorate, consular agents, and Hobson’s ‘factories’. Inevitably, Beecham rated consular agents first and colonisation last. His key criticism of the Association was that it would be ‘impossible for any private commercial company’ to deal adequately with New Zealand’s difficulties. Instead, the situation could ‘only be met by a Government measure, to be entrusted, as to its execution, to public officers whose sole business it shall be to carry it into full effect’.51

6.3.4 The 1838 impasse

As it transpired, the negotiations between the Association and the Government collapsed over the latter’s requirements for an input of funds by the founders and its refusal to allow the colony to encompass the whole of New Zealand (thus leaving open the possibility of a rival colonising venture). Glenelg announced that the Association would not be awarded a charter. Durham decided instead to attempt again to prepare a Bill for consideration by Parliament. Glenelg did not object to this plan, although he warned that the Government’s support was by no means guaranteed. Reflecting on these events, Wakefield reasoned that Glenelg and the Colonial Office were under the sway of the CMS, and that the joint-stock condition had been insisted upon principally because it was known the Association would reject it and the negotiations would break down accordingly.52 This line of thought was maintained by Dr Alexander McLintock, who wrote in 1958 that Coates was trusted ‘implicitly’ by Glenelg, who turned to him routinely for advice:

Had Glenelg been left to his own devices, the course of events might have proceeded differently and more happily. As it was, he gave way [to Coates] on all counts and the Association was doomed, leaving to Wakefield the unenviable task of creating a new design from out of the wreckage of the old.53

Writing two decades later, Adams contended that it would be wrong to exaggerate the extent of CMS influence, even over Glenelg. He noted the ways in which the CMS was routinely rebuffed, and observed that ‘[s]uch treatment reveals the Colonial Office’s dislike of amateur advice and interference’, regardless of where it came from. He added that Glenelg, Grey, and Stephen ‘were all wary of Dandeson Coates, who was by no means on the intimate terms with them or with the Colonial Office files that has sometimes been supposed’.54

Into 1838, therefore, there was now relative uniformity of opinion in Britain among the missionaries, colonisers, and the Government as to the necessity for the establishment of an official British presence in New Zealand beyond that already represented by the British Resident. What remained in dispute was the form this enhanced presence should take. As the year went on, the CMS and the Association continued to vie for the Government’s favour. In a way, the two bodies had some aspirations in common. As Belich put it, ‘both wanted just enough intervention to facilitate their goals, but not so much as to impede them’.55

Adams usefully summed up the impasse like this. The CMS’s primary weakness was that it refused to see that its solutions — such as preventing all colonisation (save for the families of missionaries), and convincing Parliament to increase the Resident’s power and give him naval support — were impractical and outdated now that informal
colonisation was well under way. Aspects of its case were also ‘blatantly self-interested’. But the Association too was, of course, driven by self-interest. It wanted to buy Māori land ‘for a song’ and resell it at a considerable profit to bring out thousands more settlers. Its financial planning was also irresponsible – it anticipated raising money in England on the strength of having bought the ‘right’ to purchase a million acres from the original New Zealand Company. The Association maintained that it could establish the colony at no expense to the public, and that its members had forsaken ‘all notion of private speculation’. But the Government wanted its founders to put up their own money, because it reasonably feared the Association would fold, leaving the government to bear its expenses.\textsuperscript{56}

On 30 March 1838, the Earl of Devon proposed the appointment of a House of Lords select committee ‘to inquire into the present state of the Islands of New Zealand’, as this would assist consideration of any proposed legislation. Glenelg supported the motion, which was successful. He favoured the committee reporting quickly, for the Government itself intended to take some action on the matter.\textsuperscript{57} Then, in May 1838, the Association received some unexpected support, in the form of the first annual report of the Aborigines’ Protection Society, which had been formed by five members of the 1837 select committee ‘to watch over and protect the interests of the natives’.\textsuperscript{58} With regard to New Zealand, the report stated that:

> the question is not now whether any Colony at all shall be attempted there, for that question is settled by the fact of such large numbers of British subjects being already there, as to demand some legislative interference in the way of control [sic]. It will not be friendship to the Aborigines to leave them a prey to the unprincipled and lawless, under the plea of the injustice that might be done them by the establishment of a British colony among them. The non-interference has now gone on too long, not to justify and demand immediate interference.\textsuperscript{59}

The authors followed up this comment by stating that they could not see ‘any obviously essential defects’ in the Association’s plans and did not accept that colonisation per se was injurious to native peoples. If a colonisation scheme had flaws, they said, ‘Let these be corrected, and the evils must be diminished.’\textsuperscript{60}

The Association’s Bill – for ‘the Provisional Government of British Settlements in the Islands of New Zealand’ – was tabled on 1 June 1838. It professed the intention of protecting and benefiting Māori by preserving them from injury, ‘diffusing amongst them the blessings of Christianity, and promoting their civilization and happiness’. It allowed for the appointment of 16 commissioners who could enter into any contracts to obtain Māori land. Any territory gained thereby would be considered ‘part of Her Majesty’s foreign possessions’. Treaties could also be entered to extend British legal jurisdiction over lands not so surrendered, and a ‘Protector of Natives’ was to oversee Māori interests in all these matters.\textsuperscript{61}

The Bill was heavily defeated in the Commons. As soon as Baring moved its introduction, a member opposed it on the basis that Britain ‘had no right to establish a colony in a part of the world which was as independent of Great Britain as France or any of the nations of Europe’. Another contended that establishing colonies was strictly the business of the Crown. The CMS also petitioned against the Bill, arguing that Māori would soon – through missionary work – be able to govern themselves, and that colonisation would be very harmful. In moving the second reading on 20 June, Baring railed against the CMS, the ineffectiveness of the missionaries, the flaws in Busby’s and Hobson’s proposals, and the sheer expense to the Crown of establishing a colony itself. But he met with considerable opposition from those who opposed the Association’s financial model (that is, of using borrowed money rather than the founders’ own funds), from the supporters of the missionaries, and from those who thought that colonisation was solely a government prerogative. A second reading was denied by a majority of 92 to 32.\textsuperscript{62} William Gladstone, later British Prime Minister, remarked that:

> There was no evidence that the chiefs of New Zealand had parted with any of their rights of sovereignty, and it behoved the House to be extremely cautious how they consented to
any scheme for dispossessing them by underhand means... There was no exception to the unvarying and melancholy story of colonization.63

The Association was effectively ‘stumped’, as Adams put it. In the face of adversity, its members claimed the latest setback to be a ‘temporary failure’ and resolved to continue to assure ‘to the inhabitants of New Zealand the blessings of Christianity and civilization and to this country the advantages of a self-regulated system of colonization’. But this ‘despairing’ resolution proved to be the Association’s final recorded action. The occasion of its Bill had been the moment for it to change course, with the Government remaining committed to establishing some form of increased official presence in New Zealand. But the Association refused to meet the Government’s insistence on a joint-stock company. What Adams described as its ‘over-sanguine interpretation of the Government’s approval in principle’ meant its opportunity was lost. But nor, as noted, could the CMS take advantage of the situation. It continued to advocate a consular agents scheme, despite the lack of official interest.65

The Government, for its part, had become somewhat passive, as if waiting for the right scheme to be brought to it. The Colonial Office’s search for an alternative was, wrote Adams, ‘pursued with neither energy nor haste’ and ‘occupied almost the whole of 1838’. In the meantime, the Lords select committee’s ‘report’ (of a mere half-dozen lines) on New Zealand was released in August 1838. It essentially concluded that the expansion of the formal Empire was a matter for the Government:

RESOLVED, – that it appears to this Committee, that the Extension of the Colonial Possessions of the Crown is a Question of public Policy which belongs to the Decision of Her Majesty’s Government; but that it appears to this Committee, that Support, in whatever Way it may be deemed most expedient to afford it, of the Exertions which have already beneficially effected the rapid Advancement of the religious and social Condition of the Aborigines of New Zealand, affords the best present Hopes of their future Progress in Civilization.67

Adams read this brief comment as a firm rejection of private enterprise as ‘an instrument of imperial expansion’, and indeed as a further parliamentary vindication – after the 1837 Commons committee report on aborigines in British settlements – of the arguments of the missionaries.68 Orange and Moon both made the same assessment.69 But Loveridge disagreed, arguing that the committee members had simply been unable to agree and had ‘sought refuge in a Report which did nothing but toss the proverbial ball back into the Government’s court’.70

6.4 The Government Takes Initial Steps

6.4.1 The decision to appoint a consul

The favoured option among government officials had for some time been Hobson’s factories scheme. Adams noted that positive Colonial Office opinions about the scheme were expressed in February, May, and August 1838. The scheme appealed to officials as a viable solution, and had the benefit of avoiding any mention of systematic colonisation. Loveridge added, however, that ‘little thought had been given to the practicalities’ of its implementation. Moreover, while Glenelg had accepted the idea of replacing Busby with an official with greater powers in June or July 1838, no candidate had been identified by the end of parliamentary recess five months later.71

Glenelg advised New South Wales Governor Sir George Gipps on 1 December 1838 that an officer would soon be appointed British Consul in New Zealand.72 Professor Paul McHugh noted that use of the term ‘consul’ signified ‘an intention at least to obtain consular jurisdiction’ over British subjects in New Zealand.73

Glenelg’s decision, therefore, was to embark upon a scheme in which British authority would be exercised over British subjects only. This differed from Hobson’s factories scheme, in which full authority would be exercised over all people, including Māori, in pockets of British territory. Loveridge speculated that Glenelg’s announcement may have been prompted by a letter Coates sent Glenelg on 30 November 1838, which warned that the impact of ‘immoral’ British subjects on Māori was severe and there was a pressing need ‘to avert still heavier calamities’. Coates
urged the Government to apply without delay ‘such remedies as the case may admit to secure the natives from the wrongs under which they now so severely suffer’.74

Glenelg’s timing may, however, also have been because the Association, ‘phoenix-like’, was now ‘rising from its own ashes’, as Adams put it. In August, some of its members formed a new joint-stock company called the New Zealand Colonisation Association (the irony being that these same men had previously refused to accede to the Government’s requirement for the formation of such a company), and by November 1838 they had purchased the Tory and were planning a preliminary expedition to New Zealand. Most particularly, though, Glenelg’s announcement that he would appoint a consul was probably connected to the letter from the Admiralty received on the same day as Coates’s letter, which responded favourably to the Colonial Office request for an increase in the frequency of warships visiting New Zealand.75

The principal reason for the Colonial Office’s lack of attention to the New Zealand situation in 1838 was that it continued to have a lot on its plate. In March 1838, Stephen described the previous two months as the busiest and most troubling of his career – but he did not mention New Zealand among his anxieties.76 As Adams noted, with respect to 1838 generally:

New Zealand was not particularly important compared with the progress of Durham’s mission in Canada, the termination of apprenticeship in the West Indies, the problems of jurisdiction and race relations created by the Boers trekking northwards from the Cape Colony, the demands for self-government and an end to transportation in New South Wales, and the financial and economic difficulties which faced both West and South Australia.77

However, one problem that persisted irrespective of the demands of running an empire was Glenelg’s indecision. Stephen expressed frustration at Glenelg’s procrastination on more than one occasion, and Howick encouraged Melbourne to dismiss him in December 1837 and again in August 1838. The Colonial Secretary’s critics made mirth of his inactivity, with one suggesting the Canadian crisis had given him ‘many a sleepless day’ (emphasis in original).78

Soon after his letter to Gipps, Glenelg wrote to the Foreign Office, requesting that it consider ‘appointing an officer, invested with the character and the powers of British Consul, at New Zealand’. Lord Palmerston, the Secretary of State for Foreign Affairs, approved the appointment later the same month, and on 28 December Hobson was

Lord Glenelg, 1820. Glenelg was the Secretary of State for War and the Colonies from 1835 until February 1839. He strongly opposed the proponents of systematic colonisation in New Zealand, although in December 1837 James Busby’s reports led him to believe that disorganised and ‘desultory’ colonisation was already taking place and that organised colonisation might be better.
offered the position. It was the Government’s wish, Hobson was told,
to confer the appointment on some one who may possess some previous knowledge of the peculiar character of the Society in New Zealand: and from the report which you furnished to the Governor of [New South] Wales while commanding *HMS Rattlesnake* on that station Lord Glenelg is induced to inquire whether it would suit your views to accept the appointment.

Hobson confirmed his interest on 1 January 1839 but, as Loveridge observed, he ‘was quite familiar with the difficulties Busby faced’ and ‘no fool’. He naturally asked what kinds of means and powers he would have in performing his duties: how, for example, would he repress crime and settle inter-racial disputes? Would relations between Māori and the British Government change?

Hobson was invited to London to discuss these matters personally with Glenelg. As he recalled, Glenelg explained ‘the reluctance with which Her Majesty’s Ministers interfered with the affairs of New Zealand, but that the force of circumstances had left them no alternative’. Those circumstances were the ongoing emigration to New Zealand of ‘depraved’ characters, as well as the activities of a society advancing the cause of ‘still further emigration’. It had thus become necessary for the interference of Government, to avert evils which must result both to the Aborigines and to the settlers, if unrestrained by the necessary Laws and Institutions.

However, Hobson was rather taken aback to learn that Glenelg had given little thought to how a factories scheme would be implemented in New Zealand. In fact, Hobson himself was invited to provide those details, which he did in writing on 21 January 1839.

In this 1839 update, Hobson retreated somewhat from his 1837 report. He explained that his earlier proposal had been ‘one of expediency, rather than of choice’, because it would leave lands beyond the factories open to interference from foreign powers like France and blighted by unscrutinised land transactions and ensuing disorder. Moreover, he had been under the ‘impression that Government had resolved to treat the States of New Zealand as an independent nation’. At the time, his own preference had been for something ‘preparatory to a permanent connection between Great Britain and New Zealand’, and he had suggested the factories idea because it was ‘the only measure, short of actual assumption of Sovereignty by Great Britain, that is calculated to afford protection to our fellow subjects who settle in New Zealand’ (emphasis in original).

We assume by the phrase ‘actual assumption of sovereignty’, Hobson meant the assumption of sovereignty over the whole of New Zealand. His view now was that if his 1837 proposal were to be pursued,

the extent of the Factories should not be limited, but that it should remain discretionary with her Majesty’s Government to affix these boundaries and extend them as circumstances may require. In order to secure the means of carrying this proposal into full effect, considerable tracts of Land should be purchased by Government, beyond the contemplated limits of the Factories.

Hobson then related the detail of how the factories scheme would work. A Superintendent, who would also be Consul General, would control all British settlements and interact with the united chiefs and with junior officers serving as Factors, Vice Consuls, and Justices of the Peace. Hobson had a rough idea of how order would be preserved and revenue raised, but he conceded that he was ‘unaccustomed to consider such cases in all their bearing, and to examine the possible effects of every proposal’. And he concluded by pointing out the flaws in the entire factories approach – principally the lack of control over lands and people between and around the factories. The only real solution to this situation was for:

Her Majesty’s Government [to] at once resolve to extend to that highly gifted Land the blessing of civilization and liberty, and the protection of British Law, by assuming the
sovereignty of the whole Country, and by transplanting to its Shores, the Nucleus of a moral and industrious population.\textsuperscript{85}

As Loveridge noted, Hobson’s preferred remedy for New Zealand in January 1839 was therefore ‘[a]nnexation and large-scale colonization.’\textsuperscript{86}

### 6.4.2 The first draft of the instructions to Hobson

This did not necessarily mean, of course, that Hobson’s solution became the preference of the Government. The same day that Hobson submitted his updated proposals, Stephen produced what Adams called ‘the first official exposition of the intentions underlying the consular appointment.’\textsuperscript{87} This was a memorandum written for the Crown’s renewed negotiations with the Association (or at least its successors).\textsuperscript{88} Stephen set out that the Government’s representative (who would eventually become Governor) would negotiate with Māori for the cession of ‘such parts of New Zealand as may be best adapted for the proposed Colony’. Provision was made for systematic colonisation by a joint-stock company under Government supervision. Three days later, however, on 24 January, in the first set of draft instructions to Hobson, Stephen made no reference to chartering a colonisation company.\textsuperscript{89}

Adams put this amendment down to Glenelg’s intervention. Indeed, in his covering note to the instructions, presented to Cabinet on 12 February 1839, Glenelg stressed that the plan was ‘not one for the encouragement of an extended system of colonization, but for the establishment of a regular form of government, urgently demanded by existing circumstances.’\textsuperscript{90} The instructions themselves described Crown intervention in New Zealand as ‘indispensable’ given the current growth in British settlement.\textsuperscript{91} As Stephen had put it:

> Whatever might be our views as to the wisdom of extending the Colonial Dominion of the British Crown in this direction, or as to the propriety of bringing the Civilized Natives of Europe into contact with the Aborigines of New Zealand, the course of events has reduced us to the necessity of choosing between an acquiescence in the growth of a British Settlement there without the restraints of Law, and the formation of a Colony in which lawful authority may be exercised for the protection of the Natives and the benefit of the Settlers themselves.\textsuperscript{92}

The 24 January instructions set out that Hobson was to ascertain which ports and districts should – because of existing British settlement, trade promotion opportunities, and the need to protect Māori – have British sovereignty established over them. The Bay of Islands was named as one such likely location. The leading chiefs of these places would then need to be identified and persuaded to cede their sovereignty voluntarily to the Queen, in exchange for alliance with the Crown and varying payments depending on the value of the land. Stephen told Hobson to be honest and protective in his dealings with ‘these ignorant and helpless people.’\textsuperscript{93} As an inducement, the chiefs were to be offered assistance in protecting their unceded lands from external enemies (Grey noted that such a promise might be ‘hazardous’ if it committed Britain to resist any incursion by the French or Americans). Hobson was also authorised to give the chiefs presents as ‘the price’ of sovereignty.\textsuperscript{94}

Hobson’s commission as Governor would commence as soon as the sovereignty of any areas had been acquired. Lands that the Crown then purchased in these sovereign areas were not to be disposed of by free grants, but rather sold at minimum prices set in London. Stephen summarised that:

> Within the British Territory in New Zealand you [Hobson] will possess the character & powers of a British Governor. Beyond that Territory you will be invested with the rights and privileges of a British Consul. The powers of either Class will be used for establishing and enforcing Law and Order amongst the British Inhabitants and for protecting the Natives from violence and injustice.\textsuperscript{95}

Loveridge observed, ‘This was, more or less, Hobson’s first “factory” plan reconfigured as concrete instructions.’\textsuperscript{96} In other words, Hobson’s response to the initial
The British Move towards Annexation

The proposal to establish a British Consul had shifted Glenelg some way towards Hobson's preference for the establishment of British sovereignty over at least some of New Zealand. As we have seen, Glenelg emphasised the limited ambit of the scheme in his note to Cabinet. British authority would be restricted, he said, to 'certain defined portion or portions of Land the portion or portions being those where the British are already settled'.

Hobson was then given the draft instructions, both for comment and presumably to help him decide whether to take up the position. He had been hoping to secure a naval command but, when this fell through, he accepted on 14 February 1839.

6.4.3 Glenelg’s resignation

In early February, however, Glenelg had been forced to resign over his handling of the Canadian crisis. Both Howick and Lord John Russell, the Home Secretary, had threatened to quit the Ministry over the matter, and Melbourne had no option but to express a lack of confidence in him. Glenelg was replaced on 20 February by the Marquis of Normanby, who had previous experience as both Governor of Jamaica and Lord Lieutenant of Ireland. But Normanby was not inclined to prioritise the New Zealand question, directing in mid-March 1839 that a set of briefing papers on the subject (including the draft instructions) ‘be put by for his Lordship’s future reference whenever this question should be ripe for decision, which at present it is not’. This must have been a surprise to Hobson, who had been expecting to be sent to New Zealand soon after his appointment.

At some point the Colonial Office drew up another document that has usually been regarded as a second set of draft instructions and identified as originating at various points after Glenelg’s resignation, between February and May 1839. McHugh, for example, argued that Stephen and Grey prepared the document in early March, while Adams was sure it was written after 18 May 1839. Loveridge, however, contended that this rather long and rambling document could ‘by no stretch of the imagination be described as a complete set of instructions’ and that it was almost certainly written by James Stephen in December of 1838 or early January of 1839 as a rough compilation of ideas, after Hobson was selected for the position of Consul and before the Under Secretary wrote the 24 January draft instructions.

It read, wrote Loveridge, ‘more like a first stab at articulating the rationale for and scope of British intervention than anything else’.

The document, if we accept Loveridge’s identification, is noteworthy for showing Stephen’s thinking in the first draft of the instructions. It focused heavily on why it was necessary for sovereignty to transfer from Māori to the Crown, while acknowledging, implicitly, the departure thereby from the select committee’s report on aborigines of 1837. Despite the Māori population’s separation into disunited tribes and the lack of ‘possession by any of them of the Civil polity, or social Institutions of civilized Communities’, Stephen wrote:

The Queen disclaims any pretension to regard their lands as a vacant Territory open to the first future occupant, or to establish within any part of New Zealand a sovereignty to the erection of which the free consent of the Natives shall not have been previously given.

Stephen was also careful to rule out the acquisition of sovereignty over all of New Zealand:

In some views the most simple and effectual measure would be to obtain from the Chiefs the Cession to the Queen of the Sovereignty of the Whole Country. But for the present at least such a measure would be a needless encroachment on the rights of the Aborigines.

Sovereignty was first to be obtained over those parts where British subjects were living. With the cooperation of a confederation of chiefs – obtained through a guarantee of their sovereign and territorial rights, as well as annual gifts – indirect British control could be extended over the rest of the country. This, Stephen thought, would
be to Māori advantage, introducing to them gradually ‘the blessings of civilised society’.

Stephen also noted that representative government was an impractical option for New Zealand, in that the Māori population so heavily outnumbered the settlers. Yet parliamentary approval would be needed to establish a colony that was not based on this principle. He realised it would not be possible to pass prospective legislation before Hobson left, and the wait for confirmation from Hobson that sovereignty had been ceded before legislation could be passed (with the further delay in communicating this back to the other side of the world) would leave New Zealand without lawful government or a court system for a year and a half. Stephen decided, however, that this lengthy delay was manageable.

Irrespective of the timing of this document, Glenelg’s departure resulted in a significant delay in government action. Soon enough, too, there was another change of personnel in the Colonial Office, with Henry Labouchere replacing Grey as Under-Secretary.

There matters stood, with Labouchere admitting in April 1839 that the Government ‘had not been able fully to consider the New Zealand Question’. Not only was Normanby proving as indecisive as Glenelg – Howick and Russell had quickly formed the opinion that he was not up to the job – but the Colonial Office was also dealing with ‘smouldering fires’ across the globe. Quite apart from the challenges in the West Indies, Canada, and West Africa, in September 1839 Normanby listed a range of additional trouble spots in Malta, the Ionian Islands, Gibraltar, Ceylon, and the Australian and South African colonies. But none of this compared to the possibility of a confrontation with France over developments in the Middle East. Stephen complained in September that he had been ‘living for the last six months in a tornado’. As Adams observed, ‘New Zealand was only a minor eddy in that tornado’.

6.5 The Colonisers Finally Provoke Action

Soon enough, however, Normanby was forced into action by the proponents of systematic colonisation. In late 1838, some members of the 1825 New Zealand Company, including Robert Torrens, had presented a plan to colonise New Zealand under the new banner of the New Zealand Society of Christian Civilization. The plan was to combine a chartered company with a British protectorate. But the idea found little favour in the Colonial Office, where Glenelg’s preference remained the establishment of factories. Moreover, the momentum among the systematic colonisers had sat first with the New Zealand Association after Durham joined it in 1837, and thereafter with its successor, the Colonisation Association.

More significant, therefore, was the Colonisation Association’s approach to Normanby as soon as he took office on 20 February 1839. Its secretary, William Hutt, told the new Secretary of State for War and the Colonies that the requirements for a charter laid down by Glenelg had now been met. He asked Normanby for a meeting on the subject. Hutt said a million acres of land had been purchased in New Zealand (a reference to the claims of the 1825 company), as well as a ship, and the would-be colonists were prepared to go there whether the Government offered them protection or not. Adams thought the letter ‘served fair warning that the colonizers had reached the end of their tether’.

The Colonial Office was not minded to act by this threat. Instead, it told the Colonisation Association on 11 March 1839 that the original offer of a charter was now withdrawn and the new colonising body was in any case rather different from its predecessor – as indeed were the known circumstances in New Zealand. The Colonisation Association changed its tone and Normanby granted it an audience on 14 March 1839. What transpired at this meeting is debated. Wakefield, who was not present, claimed that Normanby gave the colonisers his support and told them all obstacles to their plans had now been removed, but that he wrote to condemn their plans less than 48 hours later, having been influenced by his officials. Labouchere, who was at the meeting, said that Normanby had given the colonisers his support and told them all obstacles to their plans had now been removed, but that he wrote to condemn their plans less than 48 hours later, having been influenced by his officials. Labouchere reported Normanby as saying that until then he could not even recognise the Colonisation Association’s proceedings. Adams thought other evidence generally supported Labouchere’s version.
The following day Stephen wrote to Labouchere and expressed the view that, short of annexation and a self-governing colony, there were only two viable methods of establishing a formal colony in New Zealand. The first and preferred option was that which had been put to Durham by Glenelg at the end of 1837 (but which Glenelg had more or less retreated from ever since): a chartered joint-stock company. He reasoned that it would be necessary to offer the charter to a different group from those involved with the Association in order to placate the CMS, whose objection to colonising New Zealand would prove ‘fatal’. If a charter could not be offered in practice, then the other option was ‘Lord Glenelg’s second, or substituted scheme’: Hobson’s factories.114

While Wakefield and his associates initially chose to regard Normanby’s stance as an invitation to proceed immediately, they were forced privately to acknowledge two days after the 14 March meeting that this was not so. No letter has been located, but Adams guessed that the rebuff might have come in a verbal response from Labouchere to Hutt about the draft Bill that the latter had sent to the Colonial office on 12 March. Even by his own account, Wakefield knew soon after the meeting with Normanby that the Colonial Office had not given any go-ahead. And, all the same, he chose to continue the pretence that it had.115 Adams thought Wakefield’s reasoning for this would have been that it had now become vitally important for the company to purchase land in New Zealand before the Government’s authority was established there. Nothing was to be lost by flying in the face of the facts and claiming government approval for action which had become necessary anyway.116

Indeed, one thing Labouchere had told Hutt was that the Government would secure itself a monopoly over the land trade in New Zealand, and Hutt had duly reported this back to the Colonisation Association on 20 March.117 Hutt knew that this would force the colonisers to purchase land from the Crown at 500 times the price it could be bought from Māori. Wakefield’s response at this time is often quoted. He said:

send off your expedition immediately – acquire all the land you can – & then you will find that Govt. will see the absolute necessity of doing something. Until something has been done by the Company or a Company the chances of success to Americans – the French or the Missionaries – are equal – either one or the other may colonise in their own way – there is no power to dispossess them. Possess yourselves of the soil & you are secure but if from delay you allow others to do it before you – they will succeed and you will fail (emphasis in original).118

His colleagues took the message on board. The 20 March meeting had been called in the wake of the rebuff given at the 14 March meeting, to discuss winding up the Colonisation Association, but Wakefield’s words had the opposite effect. The organisation was turned into a public joint-stock company, the New Zealand Land Company (‘the Company’), and on 29 April Hutt told the Colonial Office that the Tory would sail the following week.119 Adams ascribed a great deal of cynicism and greed to the colonisers. Not only did Wakefield perpetuate an incorrect interpretation of the 14 March meeting, but he also then deliberately advised that a preliminary expedition set out to obtain plenty of cheap land from the Maoris and get secure possession of the soil before the Government pre-empted it. Then the Government would have to follow with courts and protection. The colonizers acted hastily not primarily to force the Government to intervene, but to grab Maori land before it did so.120

These developments radically shifted the ground. Loveridge wrote that they ‘lit a fire’ under Normanby and his officials, while Adams described Hutt’s letter about the Tory sailing ‘as something of a bombshell’ – although he suggested that the Company’s intentions had been reasonably well spelled out in letters from Hutt on 20 February and from chairman Standish Motte on 4 March, and that officials had not taken proper heed.121

The Government’s first reactions were to warn Hutt that there was no guarantee the Company’s land titles would
be recognised by the Crown, and to set about implement-
ing the factories plan. On 18 May 1839, Stephen wrote a list of urgent tasks. These included:

- commissions for Hobson from, respectively, the Foreign Office (for his posting as Consul) and the Queen (for his role as New Zealand’s first Governor);
- Treasury approval of expenses;
- final instructions for Hobson; and
- dispatches to the Australian Governors explaining the state of affairs and instructing them to assist Hobson.

Mainly, however, Stephen noted the need for legislation to allow for the creation of a system of courts, police, and other arms of government. Should this – which was his preference – not be possible, the Crown lawyers would need to be consulted about what Hobson could legitim-ately establish ‘by the mere Royal prerogative’. Either way, Stephen feared the whole process could take ‘some months’.¹²²

Then, at some time in the second half of May 1839, somebody in the Colonial Office (it is not clear who) had the idea of simply making New Zealand a part of New South Wales. Altering a colony’s boundaries could potentially be achieved via the Royal prerogative, and doing so in this case would instantly overcome the risk of a drawn-out parliamentary process, during which settlers could continue to buy up significant amounts of land. Given that there was already a government in New South Wales, its authority could be automatically expanded to encompass New Zealand. As Loveridge put it, the idea marked a ‘major innovation in the long process of deciding what was to be done about New Zealand’.¹²³

On 30 May Normanby sought confirmation from both the Attorney-General and the Solicitor-General that the governing authority of New South Wales could be extended to encompass New Zealand once Māori had ceded sovereignty. The Law Officers’ response, of 4 June, represented the authoritative legal opinion of the British Crown. They regarded the authority vested in the New South Wales legislature as encompassing newly dependent territories, and concluded therefore that ‘her Majesty may lawfully annex to the Colony of New South Wales any

territory in New Zealand, the Sovereignty of which may be acquired by the British Crown’. As a result, a new com-
mission was drawn up for Hobson, with Letters Patent signed by the Queen on 15 June 1839. These amended New South Wales’s boundaries to include

any territory which is or may be acquired in sovereignty by Her Majesty . . . within that group of Islands in the Pacific Ocean, commonly called New Zealand.¹²⁴

With legal approval obtained, Stephen wrote to the Treasury on 13 June about securing funding for the new colony. Financial authority was obtained on 22 June and formally set out in a minute of 19 July, in which the Treasury advised that the funding advanced would need to be repaid from colonial revenue. It added that annexa-
tion of New Zealand should be

strictly contingent upon the indispensable preliminary of the territorial cession having been obtained by amicable nego-

ciation with, and free concurrence of, the native chiefs.¹²⁵

The Treasury also contemplated the possibility that Hobson might fail to obtain the chiefs’ consent to a treaty of cession, in which case lack of ensuing revenue from New Zealand might necessitate the British Government covering any expenses Hobson had incurred.¹²⁶

Foreign Office approval was then obtained and, on 30 July, Hobson’s commission as Lieutenant-Governor over territory ‘which is or may be acquired in Sovereignty in New Zealand’ was signed by Normanby on behalf of the Queen. On 13 August Hobson was also commissioned as Consul with the responsibility of negotiating with Māori for the recognition of British sovereignty in New Zealand. Hobson was anxious to know about his salary switch from that of a Consul to that of a Lieutenant-Governor. On 13 August he asked the Colonial Office:

May I beg to be informed how my Salary is to be drawn when my consular duties cease, which I assume will terminate with the cession to Her Majesty of the Sovereignty of New Zealand.
Loveridge noted that Hobson’s assumption appeared here to be that he would acquire sovereignty over the entire country.\(^{127}\)

Coates was given a private briefing about these preparatory developments by Labouchere on 18 June 1839. Loveridge thought this was undoubtedly designed to ensure CMS support for Hobson’s mission. Labouchere stressed that the Company’s plans had not been approved and indeed that the whole idea of chartering a company had been abandoned. If Loveridge is correct, then this meeting had the desired effect, for on 17 July the CMS committee wrote to its missionaries in New Zealand, requesting their full support for Hobson.\(^{128}\) Coates wrote to Hobson the same day, offering him information respecting the New Zealand Tribes and their country which may I think prove useful to you in prosecuting an object, to which I believe you attach much importance, the carrying into execution the interesting mission with which you are charged by Her Majesty’s Government in the vigorous way conducive to the welfare of the Natives of that country.\(^{129}\)

In an attempt to counteract the publicity the Company was now generating, Labouchere arranged for a CMS supporter to ask a question about New Zealand in the Commons. In answer to this, on 25 June 1839, Labouchere explained that the Government had come to the determination of taking steps which would probably lead to the establishment of a colony in that country; but . . . those measures were still under consideration . . . A number of persons had gone out to New Zealand, and in order to protect the aborigines, and for the maintenance of good order among the inhabitants, it was thought fit that measures should be taken to establish law and peace.\(^{130}\)

He added that the Company’s actions had not been approved of, and

in any future step which the Government might take in reference to New Zealand, they would not consider themselves bound to recognise any title to land set up which might appear to be fraudulent or excessive.

Māori were ‘unable properly to protect their own interests’ and it was ‘the duty of the Government to protect them, and to see that no title to land should be set up of the kind he had described’. Loveridge regarded this statement as ‘one of the first public indications that British policy towards New Zealand had altered, and that direct intervention was in the wind’.\(^{131}\)

### 6.6 Normanby’s Final Instructions

#### 6.6.1 Key features of the instructions

The preparation of Hobson’s final instructions began in July 1839, while the requisite approval from the Law Officers and the Treasury was being obtained. Stephen completed the draft on 9 July; it was then approved in turn by Labouchere and Normanby over the following two days. On 28 July, Hobson asked to see the instructions and was given a copy before the end of the month. He raised certain questions on 1 August.\(^{132}\) Rather than respond to these matters via an amendment to the existing set of instructions, Normanby provided Hobson with a separate reply on 15 August. The formal instructions themselves had been provided to Hobson the day before, on 14 August, and had not been amended in any significant way from the July draft. Normanby’s 15 August letter is effectively an addendum to the instructions.\(^{133}\)

Hobson’s instructions are generally regarded as the key statement of British intentions in New Zealand prior to the signing of te Tiriti, and have thus been accorded significant importance in a variety of Tribunal reports. The Orakei Tribunal, for instance, quoted the first half of them practically in full and discussed them at great length.\(^{134}\) A decade later, the Muriwhenua Land Tribunal declared that the instructions ‘so illuminate the Treaty’s goals that, in our view, the Treaty and the instructions should be read together’.\(^{135}\) Whereas most accounts cite the final instructions of 14 August, Loveridge – who perused the Colonial Office file – traversed the initial July draft, noting, for example, the alterations made to Stephen’s draft by...
Because the draft remained largely intact, we – like the Orakei Tribunal – will quote here from the final instructions as published in the British Parliamentary Papers. We note any significant departures from the draft text below.

Normanby began by acknowledging Hobson’s prior experience in New Zealand, thus relieving Normanby ‘from the necessity of entering on any explanations on that subject’. It sufficed instead for Normanby to remark that a very considerable body of Her Majesty’s subjects have already established their residence and effected settlements there, and that many persons in this kingdom have formed themselves into a society, having for its object the acquisition of land and the removal of emigrants to those islands.

His Government, said Normanby, had watched these developments with interest and acknowledged that a colony in New Zealand would have considerable advantages:

We have not been insensible to the importance of New Zealand to the interests of Great Britain in Australia, nor unaware of the great natural resources by which that country is distinguished, or that its geographical position must in seasons, either of peace or of war, enable it, in the hands of civilized men, to exercise a paramount influence in that quarter of the globe. There is, probably, no part of the earth in which colonization could be effected with a greater or surer prospect of national advantage.

However, Normanby stated, ministers had been ‘restrained by still higher motives from engaging in such an enterprise’. They had concurred with the report of the Commons select committee on aborigines in British settlements that the increase of national wealth and power, promised by the acquisition of New Zealand, would be a most inadequate compensation for the injury which must be inflicted on this kingdom itself, by embarking in a measure essentially unjust, and but too certainly fraught with calamity to a numerous and inoffensive people, whose title to the soil and to the sovereignty of New Zealand is indisputable, and has been solemnly recognized by the British Government. We retain these opinions in unimpaired force; and though circumstances entirely beyond our control have at length compelled us to alter our course, I do not scruple to avow that we depart from it with extreme reluctance.

The circumstances Normanby referred to were said to be as follows. By 1838, more than 2,000 British subjects had settled in New Zealand and amongst them were many persons of bad or doubtful character – convicts who had fled from our penal settlements, or seamen who had deserted their ships; and that these people, unrestrained by any law, and amenable to no tribunals, were alternately the authors and the victims of every species of crime and outrage. It further appears that extensive cessions of land have been obtained from the natives, and that several hundred persons have recently sailed from this country to occupy and cultivate those lands. The spirit of adventure having been thus effectually roused, it can no longer be doubted that an extensive settlement of British subjects will be rapidly established in New Zealand; and that, unless protected and restrained by necessary laws and institutions, they will repeat, unchecked, in that quarter of the globe, the same process of war and spoliation, under which uncivilized tribes have almost invariably disappeared as often as they have been brought into the immediate vicinity of emigrants from the nations of Christendom. To mitigate and, if possible, to avert these disasters, and to rescue the emigrants themselves from the evils of a lawless state of society, it has been resolved to adopt the most effective measures for establishing amongst them a settled form of civil government.

Establishing this ‘settled form of civil government’, Hobson was instructed, was ‘the principal object of your mission’.

Normanby went on to explain that, while the Government recognised Māori sovereignty, it would be in their own interests for Māori to come under the protection of the Queen, so incapable were they now of maintaining that independence:
I have already stated that we acknowledge New Zealand as a sovereign and independent state, so far at least as it is possible to make that acknowledgement in favour of a people composed of numerous, dispersed, and petty tribes, who possess few political relations to each other, and are incompetent to act, or even deliberate, in concert. But the admission of their rights, though inevitably qualified by this consideration, is binding on the faith of the British Crown. The Queen, in common with Her Majesty's immediate predecessor, disclaims, for herself and for her subjects, every pretension to seize on the islands of New Zealand, or to govern them as a part of the dominion of Great Britain, unless the free and intelligent consent of the natives, expressed according to their established usages, shall be first obtained. Believing, however, that their own welfare would, under the circumstances I have mentioned, be best promoted by the surrender to Her Majesty of a right now so precarious, and little more than nominal, and persuaded that the benefits of British protection, and of laws administered by British judges, would far more than compensate for the sacrifice by the natives, of a national independence, which they are no longer able to maintain, Her Majesty's Government have resolved to authorize you to treat with the Aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any parts of those islands which they may be willing to place under Her Majesty's dominion. I am not unaware of the difficulty by which such a treaty may be encountered.  

This was what McLintock – no fan of ‘higher motives’ – referred to in 1958 as ‘a classic exposition of the philosophy of trusteeship and an official apologia for reluctant action.’ Moon, too, noted that Normanby had both apologised for and justified British intervention, asserting Māori rights and then following this with ‘a series of qualifications which, bit by bit, chipped away at this non-interventionist façade.’

Orange thought this wording reflected the difficulty the Colonial Office faced in appeasing both the colonisers and their opponents:

Normanby had to recognise Māori independence, even a sovereignty of sorts, but he also had to negate it; he had to allow for British colonisation and investment in New Zealand, yet regret its inevitability; and he had to show that justice was being done the Māori people by British intervention, even while admitting that such intervention was nevertheless unjust. As various government sources had noted, a move to nullify or infringe upon New Zealand’s independence had to make allowance for the feelings of foreign powers, humanitarians, missionaries, and the Māori themselves.

Notably, the final version of the instructions – with their reference to ‘the whole or any parts’ of New Zealand – contained the first official acknowledgement that the Colonial Office was contemplating acquiring sovereignty over the entirety of the country. Hobson had preferred this course for some time, and it can be assumed that the CMS now pressed for it too (Coates certainly urged it, no doubt as the best means of thwarting the colonisers). What seems to have swayed the Colonial Office was the understanding that systematic colonisation was going to lead to large numbers of settlers in New Zealand in the near future, and that only partial control of the country would be inadequate in the circumstances. Settler interaction with Māori outside British territory held the potential for threatening the peace. Still, as can be seen, much was left to Hobson’s discretion.

Normanby noted that Māori might regard a treaty with some suspicion, since on the face of it there was the prospect of ‘the appearance of humiliation on their side, and of a formidable encroachment on ours’. Hobson was to bear in mind that Māori ignorance of a treaty’s inherently technical terms might ‘enhance their aversion to an arrangement of which they may be unable to comprehend the exact meaning, or the probable results’. He was instructed, therefore, to overcome these impediments ‘by the exercise, on your part, of mildness, justice, and perfect sincerity in your intercourse with them’. Normanby thought the missionaries would prove ‘powerful auxiliaries’ in Hobson’s support because they had ‘won and deserved their [Māori] confidence’. So too would the ‘older British residents’, who had ‘studied their character and acquired their language’. But he added that Hobson had been selected for his own ‘uprightness and plain dealing’. 
In summing up this part of the instructions, Normanby impressed upon Hobson the need to provide a full account of British intentions:

You will, therefore, frankly and unreservedly explain to the natives, or their chiefs, the reasons which should urge them to acquiesce in the proposals you will make to them.

In doing so, as McHugh noted, Normanby instructed Hobson to place particular emphasis on the protective benefits that Māori would receive from agreeing to recognise Crown sovereignty.\(^{148}\) Normanby wrote:

Especially you will point out to them the dangers to which they may be exposed by the residence amongst them of settlers amenable to no law or tribunals of their own; and the impossibility of Her Majesty extending to them any effectual protection unless the Queen be acknowledged as the sovereign of their country, or at least of those districts within, or adjacent to which, Her Majesty’s subjects may acquire lands or habitations.\(^{149}\)

Normanby permitted Hobson, however, to win Māori consent through ‘presents or other pecuniary arrangements’ if necessary.

Loveridge noted that the only significant section of text in the July draft that did not make it into the final instructions was located at this point. Stephen had included a paragraph that stated:

I am induced to believe that the New Zealanders neither understand, nor are able to appreciate, the distinction, so familiar to ourselves, between the rights of Sovereignty, and those of property; but that regarding them as identical they suppose that the Lands they have already ceded have passed from their own Dominion and that a general acknowledgement of the Sovereignty of the Queen would involve a Cession of the Lands which they still retain.\(^{150}\)

This omitted text continued by stating that Hobson would, therefore, need to explain that ceding sovereignty did not extinguish property rights. However, if Māori did believe they would lose their property rights upon ceding sovereignty, and consent for British sovereignty was acquired, then this might work to Hobson’s advantage in that cession under that misapprehension could ‘abridge the difficulty of establishing a British Sovereignty coextensive with the British Possessions in the Island.’ The implication is that if Māori ceded their sovereignty believing they were also ceding their property rights, then there would be less difficulty making and enforcing laws throughout the whole country regardless of the state of land transactions.

In any event, Hobson would have to insist on ‘the principle, that all Lands possessed by the Queen’s Subjects in New Zealand, are within Her Majesty’s Dominion.’ Loveridge noted that Labouchere remarked in the margin that the whole of this paragraph should be omitted but did not explain why. Ian Wards thought it likely to be because it would be ‘not politic’ to admit publicly that Māori did not understand the distinction.\(^{151}\) Either way, Loveridge thought it improbable that Hobson would have seen the omitted text.\(^{152}\)

In the final instructions, Normanby then moved to the need for a Crown monopoly over land purchasing. This represented a significant development that was designed to circumvent the activities of the Company. We note that, at no point in communicating all this, did Normanby use the word ‘pre-emption.’ He told Hobson that the chiefs ‘should be induced, if possible, to contract with you, as representing Her Majesty, that henceforward no Lands should be sold or otherwise transferred ‘except to the Crown of Great Britain.’ Allowing Māori to sell to settlers at nominal prices would have the same effect as the Government giving land away:

On either supposition, the land revenue must be wasted; the introduction of emigrants delayed or prevented, and the country parcelled out amongst large landholders, whose possessions must remain long unprofitable, or rather a pernicious waste.

Immediately upon his arrival, Hobson was therefore instructed to
The British Move towards Annexation

The British Move towards Annexation

Normanby did not doubt that enormous ‘purchases’ of land had already taken place, and he told Hobson that the ‘embarrassments occasioned by such claims will demand your earliest and most careful attention’. In due course, he continued, the Governor of New South Wales would appoint a ‘Legislative Commission’ to inquire into purchases made before the issue of the proclamation. The commissioners would report to the Governor, who would then decide ‘how far the claimants, or any of them, may be entitled to confirmatory grants from the Crown, and on what conditions such confirmations ought to be made’. Any ‘uncleared lands’ so awarded would then be made subject to an annual tax, deterring successful claimants from owning lands they could not actually use. Tax arrears would see the land forfeited to the Crown. These methods, said Normanby, would obviate ‘the dangers of the acquisition of large tracts of country by mere land-jobbers’. We note that, here, ‘the dangers’ referred to were that the Crown would lose revenue by being deprived of control over the trade in land.

Having set out how the Crown should prevent settlers acquiring land directly from Māori in future, or retaining too much of what they had already purchased, Normanby then turned to Hobson’s own forthcoming dealings in land. In doing so Normanby adopted something of the rationale (if not quite the language) of systematic colonisation. He explained that

it will be your duty to obtain, by fair and equal contracts with the natives, the [purchase by] the Crown of such waste lands as may be progressively required for the occupation of settlers resorting to New Zealand . . .

Such purchases were to be conducted through a Protector of Aborigines, and the resale to settlers of lands acquired was to provide the funds for further purchases. Normanby envisaged Crown land-purchasing would thus be inexpensive and self-funding. He acknowledged that

the price to be paid to the natives by the local government will bear an exceedingly small proportion to the price for which the same lands will be re-sold by the Government to the settlers.

However, he continued,

Nor is there any real injustice in this inequality. To the natives or their chiefs much of the land of the country is of no actual use, and, in their hands, it possesses scarcely any exchangeable value. Much of it must long remain useless, even in the hands of the British Government also, but its value in exchange will be first created, and then progressively increased, by the introduction of capital and of settlers from this country. In the benefits of that increase the natives themselves will gradually participate.

Despite Hobson needing little more than ‘the original investment of a comparatively small sum of money’ to initiate land-buying, then, he was still instructed to act in protection of Māori interests:

All dealings with the aborigines for their lands must be conducted on the same principles of sincerity, justice, and good faith, as must govern your transactions with them for the recognition of Her Majesty’s Sovereignty in the Islands. Nor is this all: they must not be permitted to enter into any contracts in which they might be the ignorant and unintentional authors of injuries to themselves. You will not, for example, purchase from them any territory, the retention of which by them would be essential, or highly conducive, to their own comfort, safety or subsistence. The acquisition of land by the Crown for the future settlement of British subjects

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must be confined to such districts as the natives can alienate, without distress or serious inconvenience to themselves. To secure the observance of this, – will be one of the first duties of their official protector.\textsuperscript{155}

Normanby also outlined the other advantages that he thought would accrue to Māori through the establishment of Crown Colony government. The missionaries had already done much for Māori religious instruction, he said, and one of Hobson’s immediate duties to ‘this ignorant race of men’ would be to ‘afford the utmost encouragement, protection, and support, to their Christian teachers.’ Setting up schools for teaching Māori to read would be ‘another object of your solicitude.’ Normanby went on:

until they can be brought within the pale of civilized life, and trained to the adoption of its habits, they must be carefully defended in the observance of their own customs, so far as these are compatible with the universal maxims of humanity and morals. But the savage practices of human sacrifice, and of cannibalism, must be promptly and decisively interdicted. Such atrocities, under whatever plea of religion they take place, are not to be tolerated within any part of the dominions of the British Crown.\textsuperscript{156}

The foregoing matters comprised approximately half of the 14 August instructions.

The second half addressed what Normanby described as the manner [in which] provision is to be made for carrying these instructions into effect, and for the establishment and exercise of your authority over Her Majesty’s subjects who may settle in New Zealand, or who are already resident there . . .

Normanby thought it initially best that New Zealand be ruled externally, from Sydney. It had therefore been decided, he explained, that any territories acquired in New Zealand would become a dependency of New South Wales. Normanby acknowledged there might be objections to this measure, but, after the most ample investigation, I am convinced that, for the present, there is no other practical course which would not be opposed by difficulties still more considerable, although I trust that the time is not distant when it may be proper to establish in New Zealand itself a local legislative authority.\textsuperscript{157}

Normanby then expanded on the reasons why it was best for New Zealand to become at first a dependency of New South Wales:

It is impossible to confide to an indiscriminate body of persons, who have voluntarily settled themselves in the immediate vicinity of the numerous population of New Zealand, those large and irresponsible powers which belong to the representative system of Colonial Government. Nor is that system adapted to a colony struggling with the first difficulties of their new situation. Whatever may be the ultimate form of Government to which the British settlers in New Zealand are to be subject, it is essential to their own welfare, not less than that of the aborigines, that they should at first be placed under a rule, which is at once effective, and a considerable degree external.\textsuperscript{158}

He emphatically ruled out New Zealand serving as a penal colony, however: ‘no convict is ever to be sent thither to undergo his punishment’.

Normanby explained that a number of offices would be created immediately, including those of ‘a judge, a public prosecutor, a protector of the aborigines, a colonial secretary, a treasurer, a surveyor-general of lands, and a superintendent of police’. Normanby set out that legislation would be passed in the British Parliament enabling the New South Wales Governor and Legislative Council to make all necessary provision for the establishment in New Zealand of a court of justice and a judicial system, separate from, and independent of, the existing Supreme Court.

The Governor and Legislative Council would enact laws that ‘may be required for the government of the new
colony’. Apart from the position of Protector of Aborigines, no reference was made to how these arrangements might be applied to Māori.

Normanby concluded by setting out how Hobson should select his staff, raise a colonial revenue through the imposition of duties on the import of goods, report back on his activities, and so on. In addition to the manner of land purchasing set out in the first half of the instructions, Normanby stressed that:

Separate accounts must be kept of the land revenue, subject to the necessary deductions for the expense of surveys and management, and for the improvement by roads and otherwise, of the unsold territory; and, subject to any deductions which may be required to meet the indispensable exigencies of the local government, the surplus of this revenue will be applicable, as in New South Wales, to the charge of removing emigrants from this kingdom to the new colony.

Normanby’s final word was to emphasise the extent to which Hobson would have to rely both on his own judgement and on the advice of Gipps:

Many questions have been unavoidably passed over in silence, and others have been adverted to in a brief and cursory manner, because I am fully impressed with the conviction, that in such an undertaking as that in which you are about to engage, much must be left to your own discretion, and many questions must occur which no foresight could anticipate or properly resolve beforehand. Reposing the utmost confidence in your judgement, experience, and zeal for Her Majesty’s service, and aware how powerful a coadjutor and how able a guide you will have in Sir G Gipps, I willingly leave for consultation between you, many subjects on which I feel my own incompetency at this distance from the scene of action to form an opinion.

6.6.2 Hobson’s response and Normanby’s addendum

When Hobson saw these instructions (in draft form) at the end of July 1839, he was – quite naturally – eager for a few points of clarification before he departed and became dependent on both Gipps’s and his own discretion. In his letter to Normanby of 1 August 1839, he pointed out that no distinction had been made between the northern and southern islands. However,

The declaration of the independence of New Zealand was signed by the united chiefs of the northern island only (in fact, only of the northern part of that island), and it was to them alone that His late Majesty’s letter was addressed on the presentation of their flag.

Hobson thought Māori in the southern islands, by contrast, much less advanced ‘towards civilization’. He assumed that Britain was able to exercise much greater freedom in a country over which it possesses all the rights that are usually assumed by first discoverers, than in an adjoining state, which has been recognized as free and independent.

Accordingly, Hobson effectively asked to be excused from obtaining the consent of South Island Māori:

with the wild savages in the southern islands, it appears scarcely possible to observe even the form of a treaty, and there I might be permitted to plant the British flag in virtue of those rights of the Crown to which I have alluded . . .

Hobson then went on to suggest that the proclamation he would issue upon landing in New Zealand be written in London before his departure, ‘in order to convey exactly the views of the Government’. He expressed full support for Gipps appointing the land claim commissioners and for the commission reporting to New South Wales, as this would relieve him from all interference in matters of dispute, which would have a tendency to place me at issue with so large a number of persons over whom I am appointed to preside.

However, Hobson added, ‘I am at a loss to know to what point I am to direct my attention, beyond the mere preservation of the peace’. He then went on to ask for a
more specific definition of the role of the Protector of Aborigines, as he feared that he and the appointee might have ‘very different ideas’ about Māori welfare.

Turning to the instruction that he ‘interdict the savage practices of cannibalism and human sacrifice’, Hobson sought further particulars. ‘Shall I be authorised’, he asked, after the failure of every other means, to repress these diabolical acts by force? And what course am I to adopt to restrain the no less savage native wars, or to protect tribes who are oppressed (probably through becoming Christians) by their more powerful neighbours[?]?

Continuing in this vein, Hobson inquired whether he would have the power ‘to embody and call out militia, or to direct the movements of the military force’. He also asked whether he would have the power ‘to execute or to remit the punishment of criminals’.

Hobson concluded his letter as follows:

No allusion has been made to a military force, nor has any instruction issued for the arming and equipping of militia. The presence of a few soldiers would check any disposition to revolt, and would enable me to forbid in a firmer tone those inhuman practices I have been ordered to restrain. The absence of such support, on the other hand, will encourage the disaffected to resist my authority, and may be the means of entailing on us eventually difficulties that I am unwilling to contemplate.¹⁶⁴

As noted, Normanby provided what was in effect an addendum to the instructions on 15 August, two weeks after Hobson’s response.¹⁶⁵ He wrote to Hobson and confirmed that his instructions had related to the North Island only. The Colonial Office did not have sufficient information about the South Island to be definite on the matter, but if the island really was, as Hobson supposed, uninhabited, except but by a very small number of persons in a savage state, incapable from their ignorance of entering intelligently into any treaties with the Crown, I agree with you that the ceremonial of making such engagements with them would be a mere illusion and pretence which ought to be avoided.¹⁶⁶

Normanby went on to suggest how Hobson might act:

The circumstances noticed in my instructions, may perhaps render the occupation of the southern island a matter of necessity, or of duty to the natives. The only chance of an effective protection will probably be found in the establishment by treaty, if that be possible, or if not, then in the assertion, on the ground of discovery, of Her Majesty’s sovereign rights over the island. But in my inevitable ignorance of the real state of the case, I must refer the decision in the first instance to your own discretion, aided by the advice which you will receive from the Governor of New South Wales.¹⁶⁷

As well as replying to Hobson on a range of sundry matters, Normanby addressed what were arguably Hobson’s key concerns about the repression of ‘savage practices’ and the use of military force. On the first point, Normanby’s implication was that Hobson should first attempt ‘the arts of persuasion and kindness’. Should this fail, he was of the view that ‘abhorrent’ and ‘calamitous’ practices should indeed be repressed by force ‘within any part of the Queen’s dominions’. Normanby seemed to imply, however, that it would not come to this, because the common revulsion ‘in the minds of all men, the most ignorant or barbarous not excepted’, would soon see them ‘checked with little difficulty’. He thought that Māori would ‘probably yield a willing assent to your admonitions, when taught to perceive with what abhorrence such usages are regarded by civilized men’.

This answer appeared to give advance indication of Normanby’s response on the issue of military force. On this, he indeed told Hobson that it was ‘impossible, at the present time, to detach any of Her Majesty’s troops to New Zealand, and Hobson would have to raise a militia if an armed force were needed.

6.6.3 An overview of Normanby’s instructions

These, then, were the sum of Hobson’s written instructions before his departure for the antipodes. In this section we
set out the way historians and other commentators have portrayed the instructions. We give our own view on them in chapter 10. We will say here, however, that for the tasks of negotiating a treaty, facilitating the entry of British subjects, and the preservation of peace, they were rather vague, notwithstanding the recourse Hobson would have to the advice of Governor Gipps (a man who had never set foot in New Zealand) before arriving in New Zealand. Modern historians are generally in unison on the instructions’ limits. While others have excused the lack of a treaty draft as allowing Hobson flexibility, Moon considered this the ‘most glaring omission’ of all. He also thought that Normanby’s agreement with Hobson on the South Island to be emblematic of how poorly informed the Colonial Office was on some of the most basic elements of New Zealand’s indigenous social and political make-up, and as an extension of this deficit in understanding, it revealed the enormous confidence that the British installed in an official of very modest abilities.

Adams thought Normanby’s response on the South Island to be expedient and a reflection of the late shift to a policy of actually colonising New Zealand; it was also one made despite Colonial Office opinion that claims based on Cook’s discovery could not be relied upon. Loveridge identified another key omission from the instructions as any explanation of whether and, if so, how British law would be extended over those areas not acquired in sovereignty. The instructions, of course, accepted that the Māori cession of sovereignty might be partial only. Yet, notwithstanding Hobson’s January 1839 concern that a lack of jurisdiction over adjoining territories was one of the key drawbacks of the factory scheme, not even Hobson raised a concern about this in his 1 August letter. As Loveridge noted, the instructions seemed instead to suggest that the acquisition of sovereignty over tribal areas would follow almost automatically after that of the main areas of existing settler occupation. As we have seen, the Colonial Office had by now accepted Hobson’s view that the acquisition of sovereignty over the whole of New Zealand, and not simply parts, was a distinct option. Certainly, in the case of the South Island, Hobson was given licence to proclaim British sovereignty on the basis of discovery if he thought southern Māori incapable of entering a treaty with the Crown.

Along with the 1837 select committee report on aborigines, the instructions have in the past been seen by New Zealand historians as another high point of enlightened British humanitarianism in the late 1830s. William Pember Reeves, whose work The Long White Cloud had an immediate and lasting impact, referred in 1898 to ‘the noblest and most philanthropic motives’ that led the British to guarantee Māori their land rights. In 1914, TL Buick called the instructions ‘statesman-like’, while in 1958 McLintock, with some disapproval, described the ‘humanitarian motive’ as ‘dominant’. McLintock thought the Government had come down far too heavily on the side of Māori ‘rights and privileges’ at the expense of the colonisers’ aspirations, and that the subsequent treaty was therefore ‘an expression of unbalanced idealism, the epitome of principle divorced from practice’. Dr (later Professor) Keith Sinclair, writing the previous year, had by contrast extolled this very humanitarianism, describing the treaty as ‘a sincere attempt to found a new colony on a just footing’.

This orthodoxy was challenged by Wards, whose The Shadow of the Land was published in 1968. This book emphasised the military might that underpinned Britain’s expansion around the globe, and how that was applied in the New Zealand context. He suggested that historians had concentrated on the nobler aspects of Colonial Office determination to preserve the Maoris from the seamier side of organised colonisation, and have thus presented the acquisition of New Zealand as a deliberate attempt to salvage a native people and to initiate an experiment in practical idealism . . .

However, this narrative had ignored the realities of the situation and, ‘through over-emphasis and uncritical repetition, hindered our understanding of this area of New Zealand’s history’. Moreover, it had ‘falsely represented the situation to five generations of Maori people’. The situation
Wards referred to was ‘the threat of intervention by a third party’, by which he meant the French (or possibly the Americans) rather than the New Zealand Company (see the discussion on the French ‘threat’ below).

Whether Wards was correct about the French threat is debatable, because the Colonial office appears to have seen the Company as a far greater threat than a foreign power in mid-1839. But historians today would generally agree on external pressures being decisive in motivating the Crown to act. As Wards noted, the content of the first draft of the instructions most likely to ensure active missionary support was carefully preserved in the final version, even though – in his view – the object had shifted from the acquisition of sovereignty over parts of New Zealand to the whole. Partly as a result of this,

Historians have not recognised the ambivalence of the Colonial Office position, and have so successfully established the concept of a deliberate experiment in practical idealism that it is tantamount to denying a heritage to explain the day to day processes in other terms.

In the 1970s, more historians looked afresh at the instructions, just as they did at the treaty itself (as we shall see in chapter 8). In 1973, Dr (later Professor) Alan Ward called the instructions ‘inadequate’, ‘inappropriate’, and ‘naïve’. He argued that the humanitarian agenda had not been lost with a sudden decision in mid-1839 to acquire sovereignty over all of New Zealand, but rather that ‘the humanitarians’ confidence of success had ebbed proportionately’ as settlement increased and intervention loomed. Adams also backed away from crediting the instructions with high-minded idealism. He found the proposal that intervention was necessary to prevent Māori annihilation and rescue the settlers from the evils of lawlessness contained ‘a certain amount of myth-making’. As he pointed out, the 1837 select committee’s report on aborigines had been set aside by the Colonial Office as early as December of that year, when the decision was made in principle to establish a more formal presence in New Zealand than the consular agents the report had proposed. Thus, Normanby claiming an ongoing reliance on that report to explain the Colonial Office’s delay was ‘disingenuous’. Rather, the tardiness had everything to do with the failed negotiations with the colonisers, and with ‘political indecision’. Adams also thought there was

in fact a difference between what Hobson was instructed to tell the Maoris and what the Colonial Office actually meant. Hobson was told to explain to the chiefs that Britain was intervening ‘especially’ on their behalf because there was no other way to protect them. The Colonial Office meant that Britain was intervening partly to protect the Maoris, but also to protect the British settlers in New Zealand and the interests they had created. Hobson was not directed to emphasize this, nor to explain the Government’s new willingness to promote the systematic colonization of New Zealand. The Maoris were to be told only half the story.

The instructions to Hobson, Adams wrote, were ‘consciously oriented towards persuading the Maoris that their protection was the main object of intervention’. We bear this in mind in later chapters, as we deal with how Hobson actually communicated his message to the chiefs at Waitangi.

Orange, in her seminal work of 1987, continued the criticism. She found Normanby’s ‘insistence on the upholding of Maori rights deceptive, for along the trail of decision-making those rights had already been severely restricted’. She noted the lack of any provision for Māori government, despite the fact that this very option had previously been in view. It was, she wrote,

as if the perception of Maori capacity in this respect had diminished as the government moved towards accepting that New Zealand was destined to be a British settler colony. No longer were they considering a Maori New Zealand in which a place had to be found for British intruders, but a settler New Zealand in which a place had to be found for the Maori.

Orange also considered much of the content of the instructions to be ‘exaggeration, giving a distorted impression of an enfeebled Māori race and a secured British
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...ascendancy’. But even if a more accurate picture of Māori strength had been depicted, she continued, ‘British intervention could scarcely have been justified’. In a similar vein, Belich concluded in 1996 that the Colonial Office was just as susceptible as the missionaries, traders, and settlers to wanting the ‘myths of empire’ – such as inevitable European dominance – fulfilled as quickly as possible. As he put it, ‘They were predisposed to believe that what myth taught would happen was happening’, and thus saw fatal impact and a pressing need for British intervention.

The instructions have been treated by this Tribunal with considerable respect, and have obviously been an important context for interpreting the treaty’s terms and the principles flowing from them. The Orakei Tribunal, for example, wrote:

It is axiomatic in construing the provisions of a Treaty such as the Treaty of Waitangi between the head of a highly civilised nation and representatives of a relatively unsophisticated and powerless native people that the utmost good faith must be imputed to the British Crown.

The Tribunal accordingly took issue with Adams’s suggestion that pre-emption was designed to facilitate the on-sale of land to settlers at great profit: this, it said, was ‘an oversimplification of Lord Normanby’s instructions’ which overlooked ‘the critically important fact’ that Normanby also stressed the protective function of pre-emption.

In a similar vein, the Muriwhenua Fishing Tribunal in 1988 referred to Normanby’s expression of ‘the high ideals of his time’, while the Muriwhenua Land Tribunal in 1997 remarked upon his ‘elegant phraseology’. As former chairperson Chief Judge Edward Durie (as he then was) commented in 1991, ‘it is appropriate to read the Treaty in the light of such . . . things as Lord Normanby’s extremely significant instructions’. Unsurprisingly, the Court of Appeal also referred to the instructions in the 1987 Lands case, with Justice Somers invoking Normanby’s words to stress the obligations of good faith owed by the treaty partners to one another. Justice Richardson did likewise in the context of arguments about the ‘honour of the Crown’.

We have already noted Loveridge’s observation, as a witness appearing for the Crown, that the instructions made no mention of whether and how British law would be extended over areas not acquired in sovereignty. Yet, by and large, the Crown’s evidence tended to portray the instructions in a favourable light. Notwithstanding his criticisms in 1974 (see above) – as well as a further list of flaws noted in his 1999 book An Unsettled History – Ward found much to commend in the instructions. He did acknowledge that Normanby’s depiction of a weak Māori society characterised by little more than nominal control was ‘inaccurate to say the least’. But he argued that such an understanding depended on hindsight, and given the reports the Colonial Office was receiving from New Zealand in 1837 to 1839 ‘there were good and proper reasons for Stephen and Normanby to think and plan as they did’. Overall, he thought the instructions indicated considerable thoughtfulness in the planning of Hobson’s mission, and should be noted in mitigation, at least, of apparently ‘minimal’ preparations to ensure proper Māori understanding.

6.7 Hobson Departs and the Instructions Leak

While Hobson was still en route to Australia, those parts of Normanby’s instructions dealing with land policy were leaked to the press, and to mixed reaction. The Colonial Office’s plans were supported by the Globe newspaper but criticised by the Colonial Gazette, which thought that the process for establishing the validity of pre-1840 land transactions was too vague and that settlers would be encouraged to dissuade Māori from ceding sovereignty. The paper called the whole affair ‘a complete mess’. It urged the Government to go back to the basis of British sovereignty having been established by Cook in 1769 and ‘formally asserted by the Crown of England in 1814’ (a reference to Macquarie’s order that described New Zealand as a ‘dependency’ of New South Wales – see chapter 3). Thus ‘the knot of a thousand difficulties’ – the phrase Loveridge took for the title of his research report – would be cut.
The idea that Cook’s ‘discovery’ gave Britain sovereign rights had been asserted regularly by those promoting the colonisation of New Zealand in previous years. Loveridge called it a ‘favourite theme’ of the Association in 1837 and the Company in 1839. But even The Times – which had taken a strong line against the Association’s plans – asserted in December 1838 that New Zealand was the ‘colonial property of the British Crown . . . by dint of discovery and claim’, and that recognising Māori sovereignty was an act of ‘pure grace’ on Britain’s part. The Sydney press said the same in early 1840 – indeed, even after te tiriti was signed the Sydney Monitor argued that the Queen’s rights to New Zealand were still based on Cook’s discovery and the ‘subsequent occupation by British subjects’.  

Joseph Somes, the Deputy-Governor of the Company, wrote to the Secretary of State for Foreign Affairs, Lord Palmerston, on 7 November 1839, arguing that both the leaked instructions and the published Treasury minute of 19 July 1839 – which affirmed that Māori would need to cede sovereignty before British authority over New Zealand could be asserted – had been welcome news in France. They were, he said, ‘calculated to invite foreign pretensions, which otherwise would never have been imagined’. In his view, British sovereignty over New Zealand had been clear until 1831, ‘when a series of proceedings commenced, by which the sovereignty of Britain may perhaps have been forfeited’ (and even transferred to the missionaries in 1834, and from them on to Māori in 1835).

The Colonial Office responded by stressing the repeated acknowledgement of Britain’s lack of sovereignty. On 16 November 1839 Stephen told Russell, who had replaced Normanby as Secretary of State for War and the Colonies only a matter of days after Hobson had left for New Zealand, that the evidence showed ‘that Great Britain has recognized New Zealand, as a Foreign and Independent State’. In March 1840 Stephen reiterated these points in a memorandum that was provided to Lord Palmerston. This set out, among other things, that legislation of 1817, 1823, and 1828 had made clear that ‘New Zealand is not a part of the British dominions’; that King William Iv had, via Lord Goderich’s letter in response to the chiefs’ 1831 petition, made ‘the most public, solemn and authentic declaration, which it was possible to make, that New Zealand was a substantive and independent State’; that Governor Bourke’s 1833 instructions to Busby had assumed ‘the independence of New Zealand’; that Hms Alligator had fired a salute of 21 guns to mark the raising of New Zealand’s first ‘national flag’ in 1834; and that the King had subsequently recognised the New Zealand flag. The dispute between the Company and the Government spilled further into 1840, when a parliamentary select committee
was appointed to inquire into the Government’s policy with respect to New Zealand.\textsuperscript{200}

As it transpired, the committee finished its work only a month before Hobson’s May 1840 proclamations of sovereignty over New Zealand were received and gazetted in London in October 1840. Russell hoped the proclamations would bring ‘an end to all disputes’ between the Company and the Government. But as Loveridge observed, this just ‘moved all existing controversies into a new and different context’.\textsuperscript{201}

\section*{6.8 The Process Adopted by the British for Acquiring Sovereignty}

What, then, was the ‘sovereignty’ that Hobson was instructed to acquire from Māori? And what role did the British envisage for a treaty with Māori in the process of establishing British sovereignty in New Zealand? We pause to consider these very important questions in light of the events we have already canvassed, before proceeding – in the following chapters – to discuss the treaty itself.

Normanby’s final instructions to Hobson reflected several presumptions about the constitutional arrangements that the British intended to establish in New Zealand, and about the process by which these arrangements could be achieved. In particular, the instructions demonstrate what British authorities saw as a need to balance the rights of settlers and Māori, within the constitutional restraints that had been set by Imperial precedent. The history of British colonisation of territories of British settlement in which the sovereign capacity of the indigenous inhabitants was recognised had established clear principles about how sovereignty was to be acquired and a local government established. McHugh argued that, in the debate about what to do in New Zealand, the British authorities considered these principles to be binding on the Crown.\textsuperscript{202}

The British government’s plan began to take clear shape during 1839, once the British decided that the most appropriate method of governing New Zealand would be through the Crown Colony model. We have already encountered the model of Crown Colony government in New South Wales. In such a colony, the Crown appointed and instructed a governor, in whom legislative, executive, and judicial powers were combined and concentrated. Governors in a Crown Colony had very considerable authority, its exercise depending on the resources with which they were provided. They worked initially only with advisory councils, and then later with nominated executive and legislative councils.\textsuperscript{203}

While settlers had little power over such governors, distance and difficulty communicating meant that the Crown also found it hard to exercise active oversight over its governors as the ‘men on the spot’.\textsuperscript{204} As James Stephen remarked in 1830, their ‘proximity to the scene of action . . . would more than compensate for every other incompetency’; Stephen himself, by contrast, acknowledged he had no choice but to ‘distrust my own judgement as to what is really practicable in such remote and anomalous societies’.\textsuperscript{205} This also meant that, despite the best efforts of the Colonial Office, the requirement to submit colonial law for review was neither always observed nor strictly enforced.\textsuperscript{206} The net effect of the large scope of powers that were granted to governors in a Crown Colony, and the lack of Imperial oversight of their behaviour, meant that much depended on the competency and suitability of those governors.

Through Crown Colony government the British intended to reconcile what Stephen described (in his briefing to Labouchere in March 1839) as the ‘two cardinal points to be kept in view in establishing a regular Colony in New Zealand’. These points were ‘first, the protection of the Aborigines, and, secondly, the introduction among the Colonists of the principle of self-Government’.\textsuperscript{207}

Crown Colony government would achieve the first of these points, Stephen argued, because from the outset Māori would have the protection of British law, and would eventually gain the full rights of British subjects. Stephen was (according to McHugh) ‘scathing of American law’, which ‘denied tribe members status as citizens of the republic and left them as a collectivity described as “domestic dependent nations”’.\textsuperscript{208} McHugh stressed that Stephen saw British subjecthood as ‘the true means of protecting Maori . . . by giving each individual the protection of British law’.\textsuperscript{209}
Māori would, however, require a period of transition before they were capable of fully (and peacefully) protecting their own rights and interests as British subjects. During this period, there would be some form of temporary accommodation for Māori customary law. Despite such accommodation, McHugh wrote,

it was accepted from the outset that Crown sovereignty over all inhabitants meant that all Māori were notionally amenable to English law (even if the reality of enforcing that was highly problematic and ridden with practical as well as political difficulty).  

On the other side of Stephen's equation was a key right possessed by settlers as British subjects in settlement colonies: government by representative assembly. By this time, McHugh explained,

the belief had become ingrained that colonies of British subjects in non-Christian lands took English law with them as their birthright, and with it both subjection to the Imperial Parliament and entitlement to representative legislative institutions.  

No such entitlement existed in ‘conquered’ or ‘ceded’ colonies. The initial establishment of such institutions in settler colonies was delayed primarily because of concern about the relationship between settlers and indigenous peoples. Crown Colony government allowed for a period of transition until a representative assembly could be safely established. McHugh noted that it had been ‘rare’ for colonial authorities to be given power to ‘conduct relations with the surrounding tribes’ upon their establishment.

The first draft of the instructions to Hobson of 24 January reflected these views in noting that a representative assembly ‘would be wholly unsuited to the infancy of such a Settlement’. Stephen expanded on this view in his briefing to Labouchere, as further justification for his two cardinal points, noting that ‘calamity would prevail between the European and the Aboriginal’ should government by a representative assembly be granted to British settlers upon the foundation of the colony.

Normanby’s final instructions were formal instruments that contemplated significant acts of state: entering into a treaty, and annexing new territory into the British Empire. They set out the Crown’s definitive reasons for not immediately allowing settlers the powers of a representative assembly, which we set out again here:

It is impossible to confide to an indiscriminate body of persons, who have voluntarily settled themselves in the immediate vicinity of the numerous population of New Zealand, those large and irresponsible powers which belong to the representative system of Colonial Government. Nor is that
system adapted to a colony struggling with the first difficulties of their new situation. Whatever may be the ultimate form of Government to which the British settlers in New Zealand are to be subject, it is essential to their own welfare, not less than that of the aborigines, that they should at first be placed under a rule, which is at once effective, and a considerable degree external.\textsuperscript{214}

Crown Colony government was required to protect Māori from potential injustice at the hands of the incoming settlers, thereby avoiding ‘calamity’ in the form of warfare that unregulated interaction could provoke.

In sum, through the Crown Colony model of government the Crown would possess the power to make and enforce laws over all people – including Māori – in the places where sovereignty had been established. Through concentrating control in the person of the Governor, the Crown would provide the ‘external’ power that could balance the rights of both settlers and Māori. The Governor would exercise those powers until further arrangements for settler representative government had been made, and some accommodation for Māori rights and interests had been reached. In doing so, peace and good order would be established in the new colony.

As we have seen earlier in the chapter, the British authorities consistently stated that no authority could be established in New Zealand without a prior cession of Māori sovereignty.\textsuperscript{215} McHugh argued that the British authorities saw this as a legal necessity, stemming both from long-standing British imperial precedent, and the ‘scope of jus gentium, the law of nations’.\textsuperscript{216} While acknowledging that this law ‘was not enforceable as between independent states’, McHugh argued strongly that this ‘was not regarded as impairing or lessening the sense of obligation that British imperial authorities felt to follow that law’.\textsuperscript{217}

It was the particular combination of the circumstances just described – the perceived civilising advantages of Crown Colony government for Māori, the perceived need for peace and order between and within the Māori and settler communities, the entitlement of settlers in a settled colony to a representative assembly, and the need for a cession of Māori sovereignty – that determined the process adopted by the British authorities for establishing sovereignty in New Zealand. McHugh argued that the authorities did not apprehend any incompatibility between the designation of the prospective colony as ‘settled’ and ‘the strong insistence upon Māori consent to Crown sovereignty’.\textsuperscript{218} However, he noted, the courts had determined that, in ‘settled’ colonies, the Crown had to provide British settlers with representative government unless it gained legislative authority from Parliament to do otherwise.\textsuperscript{219}

The British authorities therefore planned to negotiate with Māori to gain their consent to a cession of sovereignty, and subsequently introduce a bill to Parliament which, once passed, would establish New Zealand as a settled colony under Crown Colony government. However, we have already seen that the departure of the Company ship Tory in mid-1839 forced an immediate response, and so posed a dilemma, as the British had no time to negotiate a treaty and then introduce legislation to Parliament. As we have noted, a way out of this dilemma was found when it was realised that New Zealand could be added to the existing Crown Colony in New South Wales.\textsuperscript{220} This avoided the need for Imperial legislation to establish government in a new colony.

Lord Normanby’s instructions reflected not only the constitutional arrangements the British envisaged for the new colony but also significant aspects of the process by which British sovereignty would be established in New Zealand. Hobson was to ‘treat’ with Māori in

the recognition of Her Majesty’s sovereign authority over the whole or any part of those Islands which they may be willing to place under Her Majesty’s dominion.

Whichever territories may be ‘acquired in sovereignty by the Queen in New Zealand’ would then become a ‘dependency to the Government of New South Wales’. At the conclusion of this process, ‘the powers vested by Parliament in the Governor and Legislative Council of the older settlement’ would be ‘exercised over the inhabitants of the new colony’.

McHugh argued that this was a process that envisaged British sovereignty being established through a
series of ‘jurisdictional measures’. These were, in other words, measures designed to establish British authority to make and enforce laws over ‘different segments of the islands’ inhabitants’, including ‘those who were its subjects already’ and other Europeans in New Zealand, as well as ‘those that were not but about to agree to enter those ranks (Maori).’ Entering into a treaty with Māori would meet Britain’s self-imposed condition prior to asserting sovereignty, but the assertion of sovereignty itself would be an entirely independent step. Through this process, McHugh argued, the power to make and enforce laws would be established over all people in the territory where British sovereignty had been established.

Exactly what part a treaty would play in this process would remain to be seen. We note, however, that while British plans envisaged that Māori would be theoretically subject to the Crown’s law-making authority, Normanby’s instructions to Hobson placed more emphasis on the need to control British settlers. McHugh noted that this was the critical message Hobson was to convey to Māori when convincing them to agree to the recognition of Crown sovereignty:

The instructions made it plain that sovereignty, whether over parts or perhaps the entirety [of New Zealand], was pressed less by considerations of the active management of Māori internal affairs. Lawless British subjects were a key concern and the protection of Māori from them . . . necessitated their consent to British sovereignty.

McHugh referred to the portion of the final instructions, quoted earlier in the chapter, in which Hobson was told to point out to Māori ‘the dangers to which they may be exposed by the residence amongst them of settlers amenable to no law or tribunals of their own’: There would be no possibility of offering ‘any effectual protection unless the Queen be acknowledged as the sovereign of their country’. In other words, in explaining the meaning and effect of a treaty, Hobson was to tell Māori that what mattered most to the Crown was the authority to make and enforce laws over Europeans.

All this says nothing, of course, about the Māori understanding of te Tiriti, and the way that Hobson and the missionaries went on to communicate what the British meant by ‘sovereignty’. We deal with these matters in subsequent chapters.

6.9 The French ‘Threat’ – Impetus for Action?

After its defeats in the Seven Years War (which concluded in 1763) and the Napoleonic Wars (which concluded in 1815), and the loss of many of its colonial possessions, France hoped to re-establish itself as a leading imperial power. It could not match Britain’s naval or trading might, but in some parts of the globe it held its own, for instance with its 1830s whaling fleet in the South Pacific. It signalled its ambitions in the Pacific in other ways too, both sponsoring scientific voyages (such as that of Dumont D’Urville from 1826 to 1829) and helping establish Catholic missions. The first such mission in New Zealand was founded in 1838 by Bishop Jean Baptiste Pompallier. More broadly, France was endeavouring to establish a network of shipping bases around the world as a potential springboard for further imperialism. These activities definitely unsettled British settlers in the South Pacific; we have already described the ‘French scare’ occasioned by the visit of a French corvette, La Favorite, to the Bay of Islands in 1831 (see section 3.8.3).

As noted, Wards, writing in 1968, considered that the catalyst for Colonial Office action in 1839 was the threat of French intervention in New Zealand. In addition to the ongoing interest in New Zealand from the likes of Baron Charles de Thierry, he noted that the French Government had its first discussions about the formation of a company to colonise New Zealand in June 1839. A French whaler, Jean François Langlois, had ‘purchased’ land at Banks Peninsula and sold his claim to the Nanto-Bordelaise Company which, in turn, formally approached the French Government for support in October 1839. Wards thought France was running on a ‘remarkably parallel’ track to Britain in this regard, albeit ‘behind in the race’. The discussions between the French colonisers and government were reported in the French press and, in Wards’s view, clearly had an impact in London.

He contended that the
shift in plan by the Colonial Office in mid-1839 for how government was to be established in New Zealand (from presenting a Bill to Parliament to instead using the Royal prerogative to extend the jurisdiction of New South Wales) was entirely explicable in terms of this French threat:

The reason for this, it seems undeniable, was that a Bill would mean a debate, which would attract the attention of France in particular and the United States more remotely. Interference by either, in New Zealand itself, could put an end to the peaceful acquisition of New Zealand. There was no other threat from any quarter to the plans being formulated. Moreover, in the evidence that has survived only the fear of French intervention can reasonably be adduced to explain the decision itself, and at the same time Hobson’s complementary procedures later in New Zealand.\textsuperscript{226}

Wards noted as further evidence on this point that all drafts of Hobson’s instructions mentioned the possibility of interference by a foreign power.\textsuperscript{227}

Subsequent scholars downplayed the idea that French interest in New Zealand provided the impetus for British action.\textsuperscript{228} Ward, in 1973, argued that Ward’s belief that this was the case was based ‘on tenuous evidence’. Wards should have focused on ‘the despatch of the New Zealand Company’s ships to Cook Strait’, he implied.\textsuperscript{229} A few years later, Adams rejected the idea that the Colonial Office feared French attention being drawn by the publicity that would flow from a parliamentary debate. Instead, he argued (as we have noted above), that Stephen proposed – and Normanby agreed – in early June 1839 that publicity be courted in order to counter the advertisements being placed by the Company, and the Colonial Office arranged with Coates that a question be asked in Parliament about the Government’s plans for New Zealand on 25 June. ‘The real reason’, wrote Adams, ‘the idea of a Bill was discarded in favour of letters patent [the idea of establishing British sovereignty through an extension of New South Wales] was simply that the change achieved the Colonial Office’s purpose’ more quickly than would otherwise have been the case.\textsuperscript{230} Dr John Owens, writing in \textit{The Oxford History of New Zealand} in 1981, likewise concluded that

Fears of French or American intervention, actively canvassed in New South Wales and by the New Zealand Association in Britain, do not appear to have played much part in the calculations of British officials.\textsuperscript{231}

Dr Sonia Cheyne reiterated this position in 1990, maintaining there was ‘no evidence’ that fears of French intervention played any part in the Government’s actions.\textsuperscript{232}

Whatever the truth of this matter, the idea of a ‘race’ between Britain and France to acquire New Zealand has nevertheless had an enduring appeal, because it makes for such a good story. Belich, in 1996, made much of this in the introductory paragraph to his chapter dealing with the treaty in \textit{Making Peoples}. He began by describing the 1839 plans of a colonisation company in an unnamed great European power to set forth for New Zealand and make a treaty with Māori, who would be civilised by land purchase and the application of European laws. He told of the secret plans designed ‘to steal a march on a rival power’, and of the company’s first ship setting sail and planting the colony in New Zealand. The denouement is that the reference is in fact not to the British in Wellington but the French at Akaroa.\textsuperscript{233} Belich considered that it was both the Company as well as ‘the new, real, French threat [that is, the 1839 colonisers rather than de Thierry] that triggered the shift from partial to full sovereignty’.\textsuperscript{234}

McHugh echoed this conclusion in his evidence, stating that the annexation of the whole of New Zealand arose as an option mainly because of ‘the impulsive action of the New Zealand Company spreading and intensifying British settlement to the southern parts’ but also because of ‘anxieties over the designs of the French’.\textsuperscript{235} In his evidence presented to us, Ward reiterated that officials were not influenced by fears of French intervention during ‘the six crucial months of policy formation regarding New Zealand’ from April to September 1839. However, he added that

fears of such intervention were very much alive among British settlers and missionaries in the region, and the British public was quickly excited by any evidence of it. These attitudes could not have been unknown to Hobson and Gipps.\textsuperscript{236}
French plans to colonise the South Island have been given the fullest attention by Professor Peter Tremewan. In his book *French Akaroa*, Tremewan considered not whether French ambitions had influenced Britain to act but whether British plans had spurred on or deterred the French. He contended that there was a race, and that, if not ‘for a few delays in the implementation of French plans, New Zealand could have had a British North Island and French South Island’. Ultimately, while the race was ‘quite . . . close’, the French had been too slow, and were already defeated before their colonising ship arrived in July 1840, weeks after Hobson’s proclamations. ²³⁷

So was the French ‘threat’ a motivation for the British Government to set out in 1839 to acquire sovereignty in New Zealand? We consider that, while the Company’s venture was the most immediate and significant impetus, the backdrop of French ambitions was an important contextual factor. This conclusion reflects the current consensus among historians, which was not challenged by the witnesses who appeared in our inquiry.
6.10 Conclusion
The two years following the formation of the New Zealand Association in early 1837 had seen a marked shift in British policy towards New Zealand. Initially, the opposition mounted by the missionary societies – emboldened by the recommendations of the Select Committee on Aborigines – was met with approval by the Colonial Office and its political masters. Glenelg in particular agreed that the Association, and its Wakefield-inspired plans for systematic colonisation, should not be granted official approval, leaving New Zealand instead to the work of the missionaries. Busby’s 16 June 1837 dispatch, however, was a game-changer: on its arrival in Britain in December 1837, even Glenelg was inclined to agree that a significant increase in British authority in New Zealand would be needed. The question was what form this would take and whether systematic colonisation would play any role in British plans.

For a full year, a range of possibilities for an increased British presence in New Zealand appeared to be on the verge of implementation. Busby’s dispatch had swayed Glenelg to contemplate the offer of a charter to the New Zealand Association, though with strict conditions. But once that possibility evaporated, and the British Parliament had firmly rejected the Association’s Bill, the Government was left with a problem that had no clear solution. Glenelg eventually broke the deadlock by fixing upon a scheme involving the exercise of jurisdiction over settlers, headed by a British Consul – a solution that contemplated significantly less British authority than the terms he had earlier offered to the Association. It was ironic, then, that this decision was immediately undermined by the man he proposed to appoint as Consul: Captain William Hobson. When approached, Hobson argued that nothing less than Britain’s acquisition of sovereignty over the whole country, coupled with a plan for systematic colonisation (in effect, if not in name), would do. When the Tory set sail, the British authorities saw greater reason to agree with Hobson, who was after all to be their man on the ground in New Zealand.

Britain’s shift to adopting a plan for the establishment of a settlement colony in New Zealand was a development of the utmost significance. Not only had the British Government abandoned its long-held reluctance to bring New Zealand within its formal empire, and the more limited goal of exerting just enough authority to control wayward subjects, but it had also abandoned any practical opposition to systematic colonisation. Yet, rather than endorse the New Zealand Company, the Government had done something quite different: its plan to establish Crown Colony government in New Zealand included provisions for sovereignty to be established across the entire country and for progressively expanding colonisation by its own hand.

However, a consistent thread of British policy throughout this entire period was that any form of jurisdiction established in New Zealand would require the consent of Māori, who were recognised as possessing some form of sovereign capacity. Britain had previously acknowledged New Zealand’s independence, and this remained the case after the British Government decided to establish a Crown Colony in New Zealand. Hobson was thus instructed to treat with the aborigines of New Zealand for the recognition of Her Majesty’s sovereign authority over the whole or any part of those Islands which they may be willing to place under Her Majesty’s dominion.

The instructions declared that any cession by Māori of their sovereignty and recognition by them of British sovereignty were essential precursors to the establishment of Crown Colony government in New Zealand. Their plans envisaged that – through the exercise of that form of government – the Crown would possess the authority to make and enforce laws over all people in territories where sovereignty had been ceded, though there would be a period of accommodation for customary law as Māori eased into their new status as British subjects. Although Normanby stated in the instructions that he was ‘not unaware of the difficulty’ Hobson would encounter in obtaining consent, he did not acknowledge failure as an option.

In the following chapters, we look at how Hobson went about conveying Britain’s intentions to the rangatira of the Bay of Islands and Hokianga, and how far an agreement was reached through the treaty into which they entered.
Notes

1. The Reform Act was the common name for the Representation of the People Act 1832, which broadened access to the franchise to significant numbers of the English and Welsh middle class.

2. Document A18, p 97


6. Document A18, p 89; Burns, Fatal Success, pp 40–41

7. Olssen, Mr Wakefield and New Zealand as an Experiment in Post-Enlightenment Experimental Practice, p 211

8. Document A18, pp 89–90; Burns, Fatal Success, p 42

9. Document A18, pp 90–93; see also Burns, Fatal Success, p 43


11. Document A18, p 96

12. Ibid

13. Burns, Fatal Success, pp 31–33


17. Adams, Fatal Necessity, p 90

18. Document A18, pp 97–98; see also doc A18(g), p 1079

19. Document A18(g), p 1087


22. Adams, Fatal Necessity, p 93

23. Document A18, pp 95, 99–100


25. Edward G Wakefield and John Ward, The British Colonization of New Zealand; Being an Account of the Principles, Objects and Plans of the New Zealand Association, together with Particulars concerning the Position, Extent, Soil and Climate, Natural Productions, and Native Inhabitants of New Zealand (London: John W Parker, 1837)


27. Ibid, p 102

28. Ibid, pp 102–103

29. This letter was sent the same day as a separate one to Glenelg from Dr Thomas Hodgkin, a leading physician who had just played a key role in the formation of the Aborigines Protection Society. Like Coates, he argued that the Association’s plans for New Zealand would inevitably attract more settlers and see Māori subjugated: doc A18, pp 105–106.


32. Adams, Fatal Necessity, p 102

33. Ibid, pp 99–100

34. Document A21, pp 44–45; see also doc A18, pp 111–112

35. Adams, Fatal Necessity, pp 101, 103

36. Ibid, pp 94–99

37. Ibid, pp 99–100


39. Adams, Fatal Necessity, p 103

40. Ibid, pp 103–104; doc A18, pp 112–113; doc A18(e), p 692

41. Adams, Fatal Necessity, pp 104–106

42. Professor Alan Ward, for example, observed that ‘historians concur that a key shift of thinking occurred in mid-December 1837’: doc A19, p 49. With regard to the 20 December meeting, he added (p 50): ‘From this point on the die was cast. Some kind of British controlled colonisation of New Zealand, from England, was going to be promoted.’

43. Adams, Fatal Necessity, p 102

44. Ibid, p 107

45. Ibid, pp 110–111

46. Ibid, pp 111–112

47. Document A18, pp 114–115

48. Ibid, p 115

49. Adams, Fatal Necessity, pp 112–113; doc A18, pp 115–116

50. Adams, Fatal Necessity, pp 86; doc A18, p 122


54. Adams, Fatal Necessity, pp 114–115

55. Belich, Making Peoples, p 183
56. Adams, Fatal Necessity, pp 115–117
57. Document A18, pp 121–122. Loveridge dated the Earl of Devon's proposal as 30 May, but this must have been inadvertent, as he referred to evidence presented in April and May and had the date 30 March in his footnote.
58. Adams, Fatal Necessity, p 93
59. Document A18, p 118
60. Ibid, pp 118–119
61. Ibid, pp 119–121
62. Ibid, pp 123–126
63. Palmer, The Treaty of Waitangi, p 46
64. Adams, Fatal Necessity, p 120; doc A18, p 127
65. Adams, Fatal Necessity, pp 120–122
66. Ibid, p 118
67. Document A18, p 123
68. Adams, Fatal Necessity, pp 123–124
69. Orange, The Treaty of Waitangi, p 26; Moon, Te Ara ki te Tiriti, p 94
70. Document A18, p 123
71. Adams, Fatal Necessity, pp 123, 125; doc A18, p 133
72. Document A18, p 131
73. Document A21, pp 52–53
74. Document A18, p 131. Adams took a different view, suggesting that Coates's letter was 'unlikely [to have] stimulated the announcement, since it contained nothing very new': Adams, Fatal Necessity, p 125.
75. Adams, Fatal Necessity, pp 121, 124–125
76. Ibid, p 118
77. Ibid, p 130
78. Ibid, p 131
80. Document A18, p 132
81. Ibid, pp 132–133
82. Ibid, pp 133–134
83. Document A18, p 134; see also Adams, Fatal Necessity, p 126
84. Document A18, p 134
85. Ibid, p 135
86. Ibid, pp 134–135
87. Adams, Fatal Necessity, p 126
88. Document A18, p 137
89. Ibid, pp 135–137; Adams, Fatal Necessity, pp 126–127
90. Adams, Fatal Necessity, p 127
91. Document A18, p 137
92. Ibid, p 138
93. Ibid
94. Adams, Fatal Necessity, p 128
95. Document A18, p 139
96. Ibid, pp 138–139
97. Ibid, p 139; Adams, Fatal Necessity, p 128
98. Adams, Fatal Necessity, p 126. In Paul Moon, Hobson: Governor of New Zealand 1840–1842 (Auckland: David Ling Publishing Ltd, 1998), p 45, Moon remarked that: 'How much this unwillingness to accept the appointment was a case of game-playing by Hobson is difficult to say, but what is certain is that the alternative to the appointment to New Zealand – an early retirement – would have left him financially much worse off.'
100. Document A18, p 141
102. Document A18, p 140
103. Ibid. Ward, who had the benefit of reading Loveridge's report before filing his own, referred to the document as an 'uncirculated draft' probably of late December 1839: doc A19, pp 54, 56.
104. Document A18, p 140; doc A17, p 125
105. Document A21, p 57
106. Ibid, pp 56–57
108. Ibid, p 150
109. Document A18, p 142
110. Adams, Fatal Necessity, pp 134–135. There were also difficult domestic issues that must have caused significant distraction, including the resignation and reinstatement of the Melbourne Government in May 1839. The ministry had resigned after failing to gain sufficient support for its Bill to suspend the Jamaican constitution, whereupon Queen Victoria invited Sir Robert Peel to form a new government. However, he asked that the Queen replace some of her ladies in waiting, a number of whom were the wives or relations of leading Whig politicians (including Normanby’s wife). The Queen refused and Peel declined the invitation, allowing Melbourne to return to the prime ministership: Palmer, The Treaty of Waitangi, pp 47; Adams, Fatal Necessity, p 134; John Prest, ‘Sir Robert Peel’, in Oxford Dictionary of National Biography, http://www.oxforddnb.com/view/article/21764, accessed 21 August 2014.
112. Adams, Fatal Necessity, p 137. It should be noted that the Colonisation Association was not the only such organisation circulating New Zealand at this time. As Loveridge remarked, interest in New Zealand 'intensified as it became more and more likely that the British Government would . . . probably impose the Crown's authority over British settlements (at least)'. One such example was 'The Scots New Zealand Company', which issued a prospectus in August 1839: doc A18, p 145 n 411.
123. Document A18, pp 147–148
126. Adams, Fatal Necessity, pp 151–152
127. Document A18, p 150 n 423; doc A21, p 60; Palmer, The Treaty of Waitangi, p 48
128. This message did not in fact reach New Zealand before Hobson did, but the CMS missionaries in New Zealand had received the news before his arrival via Bishop Broughton in New South Wales and through the corresponding message reaching their WMS counterparts: doc A18, pp 151–152.
129. Ibid, pp 150–151
130. Ibid, p 152
131. Ibid
132. His letter to Labouchere is simply dated ’August 1839’, but through deduction Loveridge concluded that it must have been written on 1 August: doc A18, p 154 n 438. McHugh thought that the letter was written on or around 1 or 2 August: doc A21, p 59 n 138.
133. See doc A18, pp 153–162. The course of this correspondence has been the cause of some confusion. The Orakei Tribunal, for example, wrote that ’Lord Normanby’s Instructions were dated 14 August 1839. Immediately on receiving them Captain Hobson wrote to the Under Secretary of the Colonial Department seeking elucidation on some aspects. Lord Normanby responded to Hobson’s enquiries the following day, 15 August 1839.’ See Waitangi Tribunal, Report of the Waitangi Tribunal on the Orakei Claim, 2nd ed (Wellington: Brookier and Friend, 1987), p 193.
136. Document A18, pp 154–159
137. The Marquis of Normanby to Captain Hobson, 14 August 1839, BPP, 1840, vol 33 [560], pp 37–42 (IUP, vol 3, pp 85–90)
138. Ibid, p 37 (p 85)
139. Ibid
140. Ibid
141. Ibid
142. Ibid, pp 37–38 (pp 85–86)
143. McLintock, Crown Colony Government in New Zealand, p 50
144. Moon, Te Ara ki te Tiriti, pp 109–110
145. Orange, The Treaty of Waitangi, p 30
146. Adams, Fatal Necessity, pp 155–156
147. The Marquis of Normanby to Captain Hobson, 14 August 1839, BPP, 1840, vol 33 [560], p 38 (IUP, vol 3, p 86)
148. Document A21, p 60
149. The Marquis of Normanby to Captain Hobson, 14 August 1839, BPP, 1840, vol 33 [560], p 38 (IUP, vol 3, p 86)
150. Document A18, pp 155–156
152. Document A18, p 156
154. Ibid, p 39 (p 87)
155. Ibid
156. Ibid, p 40 (p 88)
157. Ibid
158. Ibid
159. Ibid, p 41 (p 89)
160. Ibid
161. Ibid, p 42 (p 90)
162. Captain Hobson to the Under Secretary of the Colonial Department, 1 August 1839, BPP, 1840, vol 33 [560], pp 42–44 (IUP, vol 3, pp 90–92). The letter was dated simply ’August 1839’ but, as Loveridge pointed out (doc A18, p 154), other correspondence from the time shows that it was written on 1 August.
163. Captain Hobson to the Under Secretary of the Colonial Department, 1 August 1839, BPP, 1840, vol 33 [560], p 42 (IUP, vol 3, p 90)
164. Ibid, p 44 (p 92)
166. Ibid, p 44 (p 92)
167. Ibid
169. Moon, Te Ara ki te Tiriti, pp 115–116. McLintock even criticised Hobson’s judgement on this point because ’In some ways the southern Maoris were more civilised than those of the north.’ McLintock, Crown Colony Government in New Zealand, p 52 n 4. Belich, for his part, noted the inevitable ability of far-flung correspondents to manipulate the Colonial Office – whose ’officials saw through specific misinformation’ but which was ’ultimately a blind giant’ – into believing colonial myths: Belich, Making Peoples, p 186.
170. Adams, Fatal Necessity, p 157
171. Ward thought it ’unlikely’ that officials would not have communicated this view to Hobson: doc A19, p 58.
172. Document A18, pp 159–162
175. McLintock, Crown Colony Government in New Zealand, pp 51, 53
178. Ibid, pp 29–30
180. Adams, Fatal Necessity, p 154
181. Ibid, p 166
182. Ibid, p 167. Moon argued the same in 2002, albeit from the perspective that Britain sought authority only over its own settlers anyway, even in the treaty itself. He cautioned, in this regard, against what he said would be misinterpretation of Normanby’s remark that Māori would benefit from British law applying to them. Here, he said, Normanby was referring to national independence rather than tribal sovereignty – that is, the statement amounted merely to confirmation of the British right to enter New Zealand and control its own subjects. As he put it, ‘The mana and sovereignty of each tribe and sub-tribe undoubtedly remained unaffected by these statements.’ That was because ‘No national system of rule was in operation by Maori at this time, so the British were essentially asking for permission to acquire a type of sovereign rule which Maori would not have to sacrifice, as they did not possess it’: Moon, Te Ara ki te Tiriti, pp 110–112.
183. Orange, The Treaty of Waitangi, p 31
184. Ibid, p 31
185. Belich, Making Peoples, p 186
186. Waitangi Tribunal, Report on the Orakei Claim, pp 146–147
188. Waitangi Tribunal, Report on the Muriwhenua Fishing Claim, p 177; Waitangi Tribunal, Muriwhenua Land Report, p 117
191. Ibid, at 682
193. Document A19, p 71
194. Document A19(a), p 77
195. Document A18, pp 165–166
196. Ibid, pp 166–168
197. Ibid, pp 168–170
198. Ibid, p 170
201. Ibid, p 183
204. Burroughs, ‘Imperial Institutions and the Government of Empire’, p 176
205. Ibid, p 177; see also Gavin McLean, The Governors and Governors-General (Dunedin: Otago University Press, 2007), pp 20–21
207. Stephen to Labouchere, 15 March 1839, CO 209/4, pp 326–327. McHugh interpreted the statement as: ‘on the one hand, the protection of Maori and recognition of their rights of sovereignty and ownership, and, on the other, facilitation of British sovereign authority over and within the British community’; doc A21, p 90.
208. Document A21, p 91
209. Ibid, p 75
210. Ibid, p 77
211. Ibid, p 86
212. Ibid, p 89
213. Ibid, p 89
214. The Marquis of Normanby to Captain Hobson, 14 August 1839, BPP, 1840, vol 33 [560], p 40 (IUP, vol 3, p 88)
215. Document A21, p 80, 90
216. Ibid, pp 7–17
217. Ibid, p 15
218. Ibid, pp 88–89
219. Ibid, pp 46 n 101, 58; McHugh, ‘The Aboriginal Rights of the New Zealand Maori at Common Law’, fols 124, 132–144; Stanley A de Smith, Constitutional and Administrative Law, 3rd ed (1971, repr New York: Penguin Books, 1977), pp 113–115. In his evidence, McHugh noted that Stephen acknowledged the accepted interpretation of the law – established in the 1774 decision Campbell v Hall – that only Imperial legislation could ‘enlarge the constituent power to include a non-representative assembly for the Crown colony’; the Crown’s prerogative powers could be used to erect a representative assembly once sovereignty in a territory had been acquired, but no more.
220. The Marquis of Normanby to Captain Hobson, 14 August 1839, BPP, 1840, vol 33 [560], pp 38, 40 (IUP, vol 3, pp 86, 88)
221. Document A21, p 81
222. Ibid, p 60
223. Ibid


226. Ibid, pp 25–26

227. Ibid

228. Earlier scholars had also rejected the idea of French activity prompting British intervention. In 1948, for example, John Ward wrote that ‘There is no evidence in Foreign Office or Colonial Office papers to suggest that fear of French action played any part in inducing the British decision to establish a government in New Zealand’: Ward, British Policy in the South Pacific (1786–1893): A Study in British Policy towards the South Pacific Islands Prior to the Establishment of Governments by the Great Powers (Sydney: Australasian Publishing Co, 1948), p 114.

229. Ward, A Show of Justice, p 33

230. Adams, Fatal Necessity, p 152


233. Belich, Making Peoples, p 179

234. Ibid, p 187

235. Document A21(a), p 2

236. Document A19, pp 60, 70

CHAPTER 7

THE NEGOTIATION AND SIGNING OF TE TIRITI

7.1 Introduction
In this chapter, we describe the key events in the process of drafting, debating, and signing the treaty at Waitangi, Waimate, and Mangungu in February 1840. Effectively, three negotiations took place. The first was between Captain William Hobson and his assistants over the drafting and finalisation of the English and Māori texts of the treaty. The second was an oral debate between Hobson and his missionary agents, on the one hand, and the rangatira assembled both at Waitangi and Mangungu, on the other. Lastly, the rangatira also debated among themselves whether they should sign Hobson's treaty. Significantly, there was no negotiation between the rangatira and the representatives of the British Crown over the wording of the treaty itself.

Very little is recorded in documents about what the rangatira said to each other about the treaty. However, reasonable yet imperfect records exist about both how the treaty was drafted and what was debated between the rangatira and the officials. In this chapter, we allow the recorded voices and actions of the participants to the treaty to speak for themselves as much as possible. We defer discussing interpretations of what was said and done to chapters 8 and 9. We make our own conclusions about what was said and done in chapter 10.

We conclude the chapter by briefly describing two matters that followed the initial signings of the treaty. The first is the further acquisition of signatures after February 1840. The second is Captain Hobson's proclamation of sovereignty over both islands in the middle of this process, in May 1840. We also note Governor Sir George Gipps's attempt, in February 1840, to persuade rangatira then in Sydney to sign a treaty (in English) he had prepared after Hobson's departure for New Zealand. While these chiefs were Ngāi Tahu, this episode is relevant to our considerations because it sheds light on Gipps's likely advice to Hobson over the content of the latter's own treaty text. Finally, we discuss the translations of the Māori text back into English that were made both soon after te Tiriti was signed and in the following years and decades.

7.2 Hobson's Time in Sydney, 24 December 1839 to 18 January 1840
Equipped with his final instructions, Hobson sailed for New Zealand on board HMS Druid on 25 August 1839, arriving in Sydney on Christmas Eve after a voyage of 121 days. The New Zealand Company's ship the Tory, which had left England on 12 May, made the journey to New Zealand in a record 96 days. Thus, when Hobson was setting sail,
Colonel William Wakefield was already initiating his land ‘purchases’ with Māori in the Cook Strait area. By the time that Hobson reached Sydney, the first of the New Zealand Company’s fleet of six immigrant ships, the Aurora, was less than a month away from arriving at Port Nicholson.

It was private land transactions that preoccupied Hobson upon his arrival. He reported with his instructions to Gipps, who had been growing concerned about the consequences of the claims of various Sydney businessmen to have acquired vast tracts of New Zealand land. On 6 January, Gipps scuttled an auction in Sydney of 2,000 acres of Bay of Islands land by warning that the Crown might not recognise any purchases made. A week later, Hobson met a deputation of indignant colonists, who demanded to know what right the British Government thought it had to interfere in ‘a free and independent state’. Hobson replied that the 1835 declaration had not been understood by Māori at the time, had never been put into effect, and applied only to the northern part of the North Island. But, while it was ‘an experiment wh[ich] had failed’, the British Government of course still recognised the chiefs’ independence. Moreover, Hobson reassured the deputation – as Secretary of State for War and the Colonies Lord Normanby had instructed him to – that the Government had no intention of dispossessing any purchasers whose land had been obtained fairly. When asked if there was an intention to ‘colonize the whole of New Zealand’, he said he hoped that it ‘might be accomplished’.

Gipps then acted upon Normanby’s instructions by drawing up three proclamations, dated 14 January 1840. These were not issued until after Hobson’s departure for New Zealand several days later so that they might be announced more or less concurrently on either side of the Tasman. They declared that:

- the boundaries of New South Wales were expanded to include ‘any territory which is or may be acquired in sovereignty by Her Majesty . . . within that group of Islands in the Pacific Ocean, commonly called New Zealand’, as provided for in the Letters Patent issued in Britain on 15 June 1839;
- Gipps had sworn Hobson in as Lieutenant-Governor on the basis of the latter’s commission, issued in Britain on 30 July 1839, to act in that capacity over any such territory so acquired; and
- the Crown would recognise no private purchases of land made from Māori after 14 January 1840, and would not accept the validity of any purchases made prior to that date until an investigation had taken place and a Crown title issued.

The Sydney land speculators were most alarmed by these statements. New Zealand was not yet a British possession and Hobson was, in the words of historian Edward Sweetman, who wrote about these events in 1939, a ‘purely theoretical Lieut[enant]-Governor’. The land buyers resorted to Sydney’s leading lawyers, who concluded that bona fide purchases in a foreign country made prior to such a proclamation could not be invalidated.

We return in chapter 10 to the Crown’s intentions behind these proclamations, and the date upon which the British considered sovereignty technically passed in New Zealand. Suffice it to note here that, despite subsequent events, the date of 14 January continued to have a particular status.

In all, while awaiting the preparation of HMS Herald, his onward ship to New Zealand, Hobson remained in Sydney for nearly four weeks. Normanby had instructed him to select the individuals he needed as subordinate officers from amongst the New South Wales or New Zealand settlers. Gipps obliged by providing Hobson with four police troopers, a sergeant, and what Peter Adams called ‘a threadbare establishment of second-rate New South Wales civil servants’ to serve in his colonial administration – a far cry from the 67 members of staff Hobson had requested. The officers provided were George Cooper (Treasurer), Felton Mathew (Surveyor-General), Willoughby Shortland (Police Magistrate), and James Freeman (Chief Clerk). This party sailed for New Zealand on 18 January, with another clerk, Samuel Grimstone, following in March, along with five further mounted police.

7.3 Hobson’s Arrival in the Bay of Islands

HMS Herald entered the Bay of Islands on the morning of 29 January, Mathew noting Hobson’s anxiety at the possibility that they might encounter a French warship:
Just beyond [Paihia] the harbour, that is to say, the anchorage, is shut in by Kororareka Point, which rises abruptly from the water, and on its summit is another flagstaff; with the French Tricolor flying. The sight of this made our Governor look rather blue, for he begins to fear that the French may have anticipated us, and that perhaps L’Artemise is lying at anchor in the harbour. If it should prove so, Lord help us, for if it came to a squabble L’Artemise would sink us in a moment...

The Herald anchored off Kororāreka and Busby came on board soon after. Hobson handed him a letter from the British Government announcing that the position of British Resident was terminated. Busby nevertheless dutifully assisted Hobson with his immediate tasks, composing invitations first to the Europeans of Kororāreka to gather the following day to hear Hobson read his commissions and proclamations, and second to the confederated chiefs to meet Hobson at Busby’s residence the following Wednesday (5 February).

Whereas Normanby had envisaged Hobson landing as British Consul, and progressively proclaiming himself Lieutenant-Governor over any lands acquired in sovereignty from the chiefs, Hobson decided to assert this higher status from the outset. This may have stemmed from his knowledge of Rete’s 1834 ‘cession’ to the Crown of 200 to 300 acres near Busby’s Waitangi residence (see chapter 3). Hobson appears to have believed that through this cession – though the land was now reoccupied by Māori – British sovereignty had been established in one (admittedly small) corner of the country. In any event, Busby disapproved, telling Hobson that ‘the land was not ceded in that sense by the natives’ and that Hobson should act as Consul until he had obtained a cession of territory ‘by amicable negotiations with the free concurrence of the native chiefs.’ Captain Joseph Nias of HMS Herald also refused to fire the 13-gun salute for a lieutenant-governor to mark Hobson’s arrival on shore in his gold lace, instead firing the 11 guns befitting a consul. But Hobson, while irritated by this, was undeterred, and proclaimed before 300 settlers and 100 Māori assembled at the Kororāreka church that his duties as Lieutenant-Governor had begun. He referred to himself in this proclamation as ‘His Excellency William Hobson, Esq, Lieutenant-Governor of the British Settlement in Progress in New Zealand.’

Hobson’s preference to be seen as a lieutenant-governor rather than a mere consul was viewed by Samuel Martin, a would-be land purchaser in New Zealand and a fierce government critic, as motivating Hobson to acquire sovereignty. As Martin wrote in a letter of 25 January 1840:

Captain Hobson is required by his instructions to endeavour to obtain the cession of sovereignty with the intelligent consent of the natives; and it is understood that if he cannot obtain it in that manner, he is not to assume the functions of Lieutenant-Governor, but merely those of British Consul, in New Zealand. In the event of obtaining the cession of sovereignty, New Zealand is to become a dependency of this Colony [New South Wales]; – Sir George Gipps being, as he now is, Governor-in-Chief; and Captain Hobson, Lieutenant-Governor of New Zealand, to act under Sir George Gipps’ instructions.

The difference between Governor and Consul is so great, both in point of salary, dignity, and power, that there is very little reason to doubt that Captain Hobson will, right or wrong, endeavour to place himself in the former position; and, being a naval man, he is not likely to be very nice as regards the means.

At the Kororāreka church, Hobson also declared that the boundaries of New South Wales were extended to include any parts of New Zealand which ‘is or may be’ acquired in sovereignty. In a second proclamation he announced – in accordance with Gipps’s Sydney edict – that no land titles would be recognised by Britain as valid unless derived from or confirmed by a grant from the Crown, and that henceforth private land purchases from Māori would be regarded as null and void. As in Sydney, the local land purchasers reacted with dismay, but they were partly reassured in this instance by Busby, who was himself a considerable purchaser of Māori land. Busby advised them to have faith in the fairness of the British Government. Some settlers, however, sought to undermine Hobson’s work by telling local Māori the Kāwana...
planned to make them taurekareka (slaves) of the Queen.\textsuperscript{18} This was a recurrent theme: we saw in chapter 3 how Europeans suggested to the rangatira that plans to enslave Māori lay behind the establishment of Marsden's mission in 1814 and Busby's arrival as British Resident in 1833.

In the meantime, Busby had circulated an invitation to each of the confederated chiefs to meet Hobson at Waitangi on 5 February (see above). The letter explained that 'Tenei ano tatu ki a koe; na, tenei ano tetahi kaipuke manawa kua u mai nei, me tetahi Rangatira ano kei runga, no te Kuini o Ingarani ia, hei Kawana hoki mo tatou. Na, e mea ana ia, kia huihuia katotia mai nga Rangatira o te Wakaminenga o Nu Tiren, a te Weneri i tenei wiki tapu e haere ake nei, kia kitekite ratou i a ia. Koia ahau ka mea atu nei ki a koe, e hoa, kia haere mai koe ki kone ki Waitangi, ki taku kainga ano, ki tenei huihuungia. He Rangatira hoki koe no taua Wakaminenga tahi. Heoi ano, ka mutu tatu,

Naku,
Na tou hoa aroha,
Na te PUHUPI

30 January 1840

My dear friend,

I make contact with you again. A war ship has arrived with a chief on board sent by the Queen of England to be a Governor for us both. Now he suggests that all the chiefs of the Confederation of New Zealand, on Wednesday of this holy week coming, should gather together to meet him. So I ask you my friend to come to this meeting here at Waitangi, at my home. You are a chief of that Confederation.

And so, to conclude,
From your dear friend,
Busby.\textsuperscript{19}

7.4 The Drafting of the Treaty and te Tiriti

Having issued his proclamations, Hobson's next task was to prepare the agreement to place before the chiefs at the 5 February meeting. It does not appear that either the Colonial Office or Gipps provided Hobson with a draft to work from. We note, however, Loveridge’s view expressed in 2006 that there was a ‘good case to be made that [Gipps] provided Hobson with a rough outline of a Treaty before the latter left Sydney’. Loveridge reached this conclusion on the basis of the similarities between the initial English drafts of the treaty and Gipps’s own attempted treaty with Māori visiting Sydney in February 1840 (see section 7.11):
It is difficult to believe that Hobson in New Zealand in early February, and Gipps in Sydney in mid-February, independently arrived at exactly the same format, formula and (to a significant extent) wording for a treaty with Māori. Lord Normanby’s instructions obviously played a major role in shaping both of these draft treaties, but they alone cannot account for all of the parallels between the two documents.\(^{21}\)

In any event, it is clear that Hobson and Busby knew by and large what the treaty should contain. Its eventual articles bore a striking similarity to those in earlier agreements negotiated with tribal rulers in west Africa, such as the 1825 Sherbro treaty in Sierra Leone (where the CMS and the Clapham Sect\(^{22}\) had established a refuge for emancipated slaves). Writing in 1991, Professor Keith Sorrenson observed that ‘there is very little in the Treaty, at least in its English text, that had not already been expressed in earlier treaties or statements of British colonial policy.’\(^{23}\)

In our inquiry, by contrast, Loveridge thought that there was a lack of evidence that the west African treaties had ‘any direct influence on New Zealand’s’ and that there was ‘in fact no need to go beyond Normanby’s instructions when seeking the origins of the English text.’\(^{24}\)

But other scholars endorse the idea that Hobson was well aware of the African precedents. Dr (later Professor) Paul Moon concluded in his biography of Hobson that it was beyond chance that the Treaty of Waitangi followed so closely from these examples [Sherbro and the 1826 treaty with Soombia Soosoos and Tura]. Hobson, at some point, would have been made familiar with them, probably while in Australia in 1839/40.\(^{25}\)

Dr Matthew Palmer concurred, reasoning that,

> Given the similarities to the English version of the Treaty of Waitangi, I suspect that a text of the Treaty of Sherbro made its way informally to Hobson through one of the myriad linkages between the CMS, the Clapham Sect and the Colonial Office.\(^{26}\)

While these observations may be true of articles 1 and 3, it must be noted that the article 2 text that very closely resembled the Sherbro treaty came from Busby – and it is not clear when and where Busby was made familiar with such clauses. In any event, we agree with Sorrenson’s conclusion that there was ‘what one might call a treaty language that was in fairly widespread use, ready to be applied wherever a crisis on one of the frontiers of empire needed to be resolved’ through cession.\(^{27}\)

A number of researchers have sifted through the Waitangi treaty’s convoluted drafting. Two of the most notable efforts have been those of Ruth Ross, in her 1972 *New Zealand Journal of History* article ‘Te Tiriti o Waitangi: Texts and Translations’, and Dr Phil Parkinson,
some three decades later, in his 2005 publication entitled ‘Preserved in the Archives of the Colony’: The English Drafts of the Treaty of Waitangi. Ross was perhaps the first historian to grapple with the authorship and textual changes across several drafts of the English version, while Parkinson undertook what he described as a ‘forensic’ examination of material that had appeared in the years since Ross’s article was published, making use in part of ‘the principle of filiation, the derivation of one text from another by descent’. His work was prompted in part by the discovery of the so-called ‘Littlewood’ treaty document in 1992 (see section 7.12) and the need to establish its provenance.  

That there remains no perfect unanimity amongst scholars about the drafting process only reinforces the complexity of any aspect of the treaty’s history. Beyond a certain point, however, a summation of the intricate detail is for our purposes not vital. With that in mind, we offer the following summary. Initially it seems that Hobson dictated a first draft of the treaty to Freeman while both were on board HMS Herald. Ross and Dr (later Dame) Claudia Orange considered that Hobson then penned a second draft preamble himself, although Professor Dame Anne Salmond and Parkinson believed that this occurred later in the process.  

In any event, Hobson became too ill to leave the ship, and on 31 January had Cooper and Freeman deliver the prepared notes to Busby, along with a request for his view as to their suitability. Busby thought them inadequate – there was no land guarantee, for example – and, with the officials’ encouragement, he made some amendments. His main contribution was indeed to article 2; he had no hand at all in the preamble. Busby resubmitted this draft to Hobson on either 3 or 4 February.

Busby’s article 2 changes were retained intact, although Hobson and his officials removed his rather wordy explanatory clause that followed the third article (and which had included a limitation of the treaty’s application to the area north of Hauraki). According to Parkinson and Salmond, Hobson now also considerably extended his own preamble so that it referred to the rapid increase of immigration and the dangers of lawlessness. In later years, Busby let it be known that he had essentially drafted the treaty, a statement which Ross found to be a distortion. His reputation was later redeemed somewhat by Orange, who concluded that ‘it becomes clear that the essentials of the English text of the treaty came from Busby and that his claim that he “drew” the treaty is not altogether an exaggeration’. But Parkinson echoed Ross, and called Busby ‘an untrustworthy witness’ and ‘by nature a self-promoter’, and in 2006 Loveridge argued that Busby’s claims to have been the principal author of the treaty were ‘more or less a complete fabrication’. Parkinson did allow, however, that Busby was almost entirely responsible for the English text of article 2.

At 4 pm on 4 February, Hobson then took the new draft to Henry Williams. He asked him to produce a Māori-language version and bring it the next morning to Busby’s residence, where it would be read to the assembled chiefs at 10 am. Sorrenson noted that indigenous-language versions of treaties were not used in British (or American) treaty-making in North America, Africa, or Asia, although some were in the Pacific. Presumably, the local tradition of rendering important documents into Māori (such as he Whakaputanga), as well as the missionaries’ efforts to advance Māori literacy, made the production of a written, Māori text axiomatic. In any event, Parkinson wondered why Hobson sought out Williams rather than Busby for this job. He noted that Busby was perfectly competent in te reo for the task, and pondered whether Williams seemed ‘less compromised’ than Busby, given the latter’s speculation in land. Alternatively, Parkinson wondered whether Hobson felt that the ‘courtesies to Busby had gone quite far enough’. Whatever the reason, Hobson chose Williams, who was assisted by his 21-year-old son Edward, who, having been raised in New Zealand, was a fluent speaker of the local dialect. The translation, however, was a particular challenge: Williams himself later recalled (somewhat enigmatically) that ‘it was necessary to avoid all expressions of the English for which there was no expressive term in the Maori, preserving entire the spirit and tenor of the treaty’.  

Williams was nevertheless ready and willing to take up the challenge. The Bishop of Australia, William Broughton, had written to him on 10 January 1840 as follows:
You will without doubt have heard of the arrival of Captain Hobson, and of his destination for New Zealand, where he is to exercise, it is supposed, more ample powers than were conferred upon the British resident. . . . Among his first duties will be that of endeavouring to obtain from the Chiefs a voluntary recognition of Her Majesty's sovereignty over the territory; and so far as that endeavour shall prove successful, the clergy of the United Church of England and Ireland who may be resident within the limits of that territory will belong to the Diocese of Australia, and be subject to the jurisdiction of the Bishop . . . Upon the fullest consideration my judgment inclines me very strongly to recommend to you, and through you to all the other members of the mission, that your influence should be exercised among the chiefs attached to you, to induce them to make the desired surrender of sovereignty to Her Majesty.\textsuperscript{36}

Busby inspected Williams's translation in the morning and made only one amendment, substituting the word 'whakaminenga' for 'huihuinga' to describe the confederation.\textsuperscript{37} Williams readily accepted this. Williams's son-in-law and biographer, Hugh Carleton, told the House of Representatives in 1865 that an alteration was made to the Māori version during the discussion at Waitangi on 5 February, and that the missionary Richard Taylor had written out a new copy that evening; this was the one signed the next day. We do not know what change was made, as Williams's original draft – which Taylor wrote he kept 'for my pains' – has not been located. It may well have been the change suggested by Busby and agreed to in the morning.\textsuperscript{38} As we shall see in chapter 9, some claimants contended that the change stemmed from the rangatira rejecting the proposed cession of 'mana' in a first draft of \textit{Te Tiriti}.

Much greater confusion surrounds the 'official' English version. Hobson forwarded four copies to his masters in Sydney and London. Two copies were dated 5 February and included the preamble contained in the draft dictated to Freeman; the other two were dated 6 February and had Hobson's separately drafted preamble. One of the first two versions made no mention of forests and fisheries, but otherwise all four versions had the same articles, drawing heavily from Busby's draft. Ross concluded that the fact that these various composite texts were forwarded at different times to Hobson's superiors (to Gipps and the Secretary of State for War and the Colonies in February, and to the latter again in May and October 1840) – in each case as if they were the official version that was translated into Māori or was itself translated from the Māori – 'suggests a considerable degree of carelessness, or cynicism, in the whole process of treaty making'.\textsuperscript{39} Parkinson, who explained the theoretical process for sending dispatches and duplicate copies of documents – and how regularly this was departed from, with confusing results – agreed with Ross, and added that 'there may also have been an element of too many cooks spoiling the broth'.\textsuperscript{40}

The full texts, in Māori and English, are set out below. The versions we give are taken verbatim from schedule 1 to our governing legislation, the Treaty of Waitangi Act 1975, although we reverse the order in which they appear in the legislation (where the English text is set out first). The English version is the same as the sheet signed at Waikato Heads and Manukau in March and April 1840, and the Māori version is the same as that signed at Waitangi (as well as elsewhere in the north), although in both instances there are minor discrepancies. These are case differences, variations in Hobson's name and title, spelling differences, and differing uses of commas.\textsuperscript{41} A scribal error by Taylor in the first line of the Waitangi sheet ('taua' instead of 'tana') has been ignored in all reproductions of the text that we have seen.\textsuperscript{42}

The treaty text first appeared in legislation in the schedule to the Waitangi Day Act 1960, but in English only. That version is practically identical to that in the Treaty of Waitangi Act 1975.\textsuperscript{43} The New Zealand Day Act 1973, which replaced it, followed suit, and it was not until the Treaty of Waitangi Act 1975 that the Māori text was included. However, the text was poorly copied and contained a series of errors.\textsuperscript{44} As a result, section 4 of the Treaty of Waitangi Amendment Act 1985 substituted the current Māori text in its place, as set out on page 346.\textsuperscript{45}

Ultimately, these small discrepancies are not important, for the debate about the meaning and effect of \textit{Te Tiriti} and the Treaty hinges on more substantive issues than these.
The Treaty of Waitangi – the Text in Māori

Ko Wikitoria, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohunga ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanohō hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani-kia wakaaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu-na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana.

Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roira Nawi he Kapitana mo nga wahi katoa o Nu Tirani e tukua aiane, amua atu ki te Kuini e mea atu ana i kia nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

Ko te Tuatahi

Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu-te Kawanatanga katoa o o ratou wenua.

Ko te Tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu-ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua-ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Ko te Tuatoru

Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini-Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

(Signed) WILLIAM HOBSON,
Consul and Lieutenant-Governor.

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.

Ko nga Rangatira o te wakaminenga.
The Treaty of Waitangi – the Text in English

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty’s Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty’s Sovereign authority over the whole or any part of those islands – Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty’s Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

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

Article The Second
Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article The Third
In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

W HOBSON Lieutenant Governor.

To page 348
Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

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

[Here follow signatures, dates, etc.]

7.5 Te Tiriti and the Treaty: The Language

We proceed here through te Tiriti and the Treaty article by article, noting the most important features of the language drafted or approved by Hobson (in English), and chosen by Williams (in Māori) to convey its meaning and intent. At the same time, we also make use of six modern back-translations of the Māori text to convey a clearer sense of Williams’s choice of words. These are those of Professor Sir Hugh Kawharu from 1989, which is well known and often cited;46 Salmond and Merimeri Penfold from 1992, which was commissioned by the Tribunal in its Muriwhenua Land inquiry; Manuka Henare in his 2003 doctoral thesis; McCully Matiu and Professor Margaret Mutu in a book in 2003;47 and Dr Patu Hohepa and Rima Edwards in their 2010 evidence before us.48 Henare as well as Salmond and Penfold referred to their translations as ‘historical-semantic’, meaning they attempted to capture the sense made of it by the chiefs at the time. We consider earlier back-translations – particularly those made in the 1840s – at the end of this chapter.

We make this preliminary review as a preface to our more substantial consideration of the treaty’s language in chapters 8 and 9. The significance of the words used in both texts has been subject to intense analysis in recent decades, and we summarise this debate in those chapters.

We note at the outset Hohepa’s description of the text in Māori as a relatively simple document for the chiefs to understand, notwithstanding the fact they did not have access to written copies before the 5 February meeting:

Because the Māori draft was read out in the morning of 5th February, and explained, and chiefs’ reactions permitted, then again that night, and then again the next morning, the 6th February, and again the draft was discussed, they would have understood what had been written and read. Let me lay out the linguistic reality of what they discussed. It was a draft of 20 sentences, with less than 400 words and particles. Only 13 words, all nouns, were transliterations from English and either already understood or would be simple to understand: Wikitoria, Kuini, Ingarani, Nu, Tirani, Kawanatanga, Wiremu, Hopihana, Kapitana, Roiara, Nawi, Kawana and Pepuere. Such a draft would hardly be a matter that needed two days of intensive wananga to comprehend.49

Before proceeding, it is important to acknowledge that no translation of a substantial text from one language to another – especially languages as different as English and Māori – is straightforward. As Professor Bruce Biggs put it with respect to sovereignty, ‘How can one hope to translate, in a word or phrase, a concept which lawyers require whole books to define?’50 Biggs explained that translators tend to follow one of two common strategies to overcome the challenges: first, they might use a word in the target language that has a distinct meaning and redefine it to
fit the meaning of the word in the source language. Biggs called this the ‘Humpty-Dumpty principle’ in reference to that character’s statement in Lewis Carroll’s *Through the Looking Glass*: ‘When I use a word it means exactly what I choose it to mean, neither more nor less.’ An example of this might be the missionaries’ use of the word ‘muru’ for the English ‘forgive’. Secondly, translators might introduce into the target language a word derived from the source language, rather than searching for an equivalent. Williams of course did this with ‘kawanatanga’.

As Biggs showed, both approaches have difficulties. The difficulties are exacerbated, of course, because – as Hohepa explained – English and Māori are not linguistically or geographically connected in any way, and are ‘as radically different as chalk and cheese’. He made this point through a detailed structural linguistic comparison. We do not relate that here but accept his point that the two languages have almost nothing in common grammatically.

### 7.5.1 The preamble

As Orange put it, the preamble as drafted in English by Hobson was

> a convoluted expression of the Queen’s desire to protect the Maori people from the worst effects of British settlement and to provide for her own subjects, by appointing Hobson to obtain ‘sovereign authority’, and to establish a ‘settled form of Civil Government’.

Dr Grant Phillipson noted that the preamble reflected Normanby’s instructions and made similar expressions of ‘paternal protection’ to those made previously in the name of William IV. Williams’s translation of it into Māori is notable for several reasons. First, ‘just rights and property’ was rendered as ‘o ratou rangatiratanga, me to ratou wenua’, which Kawharu, Salmond and Penfold, and Hohepa translated back into English as ‘their chieftainship and their land’. Henare, by contrast, put it as ‘their full authority as leaders and their country’, and Matiu and Mutu similarly called it ‘their paramount authority and their lands’. Edwards, who in this part of his evidence was offering a summary explanation rather than a word-for-word translation, put it as ‘their authority and their lands’. The word ‘functionary’ was translated by Williams as ‘kai wakarite’, which Kawharu and Hohepa translated back as ‘administrator’, Salmond and Penfold as ‘mediator’, and Henare as ‘negotiator or adjudicator’. Edwards did not offer a specific translation, but described Hobson’s role as sitting with the rangatira ‘to make decisions together’.

Williams also used the verb ‘tuku’ three times to convey equally the Queen’s sending of Hobson and the chiefs’ cession of territory, and the word ‘ture’ to refer both to the law generally and the treaty’s articles specifically. We return to the significance of these terms in chapter 9. Perhaps most importantly, both ‘sovereign authority’ and ‘Civil Government’ were translated by Williams as ‘kawanatanga’. Kawharu and Hohepa translated this back in both cases as ‘government’; Henare and Salmond and Penfold used ‘Governorship’, and Matiu and Mutu used ‘governance’. Edwards translated ‘kawanatanga’ back in both instances as ‘Parent Governor on the basis of love’. Ross argued that Williams’s translation of these terms represented the problems he faced as translator and showed how adequately (or otherwise) he overcame them, and Orange described it as an example of his simplifications.

### 7.5.2 Article 1

The English text described an unreserved and absolute cession of sovereignty by the chiefs (from both the confederation and independent tribes) over their lands, while the Māori version had them conveying (‘tuku rawa atu’) ‘te Kawanatanga katoa o o ratou wenua’. As with the preamble, this was translated back by Kawharu as ‘the complete government over their land’, by Henare as ‘all the Governorship of their country’, by Salmond and Penfold as ‘all the Governorship of their lands’, by Matiu and Mutu as ‘the complete governance over their land’, and by Edwards as ‘Parent Governor on the basis of love’. But in this case, Hohepa used governorship (‘total governorship of their lands’) rather than ‘government’.

Williams’s use of ‘kawanatanga’ to translate ‘sovereignty’ here and in the preamble is probably the single most important and controversial aspect of the entire treaty.
Suffice it for us to make the following comments at this juncture. The word ‘kāwanatanga’ is formed in the usual way from the combination of a stative – the transliteration of governor, ‘kāwana’ – together with the nominalising suffix, ‘tanga’, to form an abstract noun. Kāwanatanga was therefore a neologism, although, as Phillipson pointed out, Māori familiarity with the concept of a ‘kāwana’ stretched back to the first encounter with Kāwana Kingi in 1793. By 1840, of course, Bay of Islands and Hokianga rangatira had dealt with the New South Wales kāwana on many occasions (see chapter 3).

The chiefs were also familiar with the term ‘kāwana’ from the New Testament, where it was used to describe the Roman prefect Pontius Pilate. In fact, the word ‘kāwanatanga’ had been in use by the missionaries during the 1830s as a translation for both ‘governance’, in the order for morning service, and ‘authority’, in 1 Corinthians 15:24. But while ‘kāwana’ or ‘kāwanantanga’ had been used by the missionaries to convey notions of God’s power and authority, so equally had ‘rangatiratanga’, particularly in the context of the ‘kingdom of God’ or the ‘kingdom of Heaven’. Phillipson noted that the complex use of these words in the Bible and Anglican liturgy had not yet been the subject of thorough study, and perhaps should be. As it happens, Waiohau Te Haara, the former Bishop of Te Tai Tokerau, provided us with evidence on the subject in 2010. He calculated that ‘kāwana’ or ‘kāwanatanga’ was used in about 160 verses in the Bible, and generally meant a role subordinate to a higher ruler such as a king or a prince. The term usually used for such a ruler, he found, was ‘rangatira’.

Another precedent for ‘kāwanatanga’ was, of course, its use in he Whakaputanga to translate ‘function of government’. As we explained, this was understood by the rangatira as a power which could only be exercised under their authority (see section 4.7.2). We return to the implications of the use of ‘kāwanatanga’ in he Whakaputanga for te Tiriti in chapter 10.

7.5.3 Article 2
In the English text the full, exclusive, and undisturbed possession of various physical (as well as ‘other’) properties, including forests and fisheries, was guaranteed not only to the chiefs but also to collectives (families and tribes) and individuals, with ownership allowed to be either group-based or individual. The ‘proprietors’ could choose to sell their lands at an agreed price to the Queen, on whom the chiefs had conferred the ‘exclusive right of pre-emption’. As Phillipson pointed out, the vague reference to ‘proprietors’ avoided any presumption as to who had the actual authority to sell. In the Māori text, ‘te tino rangatiratanga’ over whenua, kainga, and ‘o ratou taonga katoa’ was likewise guaranteed to rangatira as well as hapū and ‘tangata katoa’. Kawharu translated this authority back into English as ‘the unqualified exercise of their chieftainship over their lands, villages and all their treasures’; Salmond and Penfold cast it as ‘unfettered chiefly powers’ over ‘their lands, their dwelling-places and all of their valuables’; Henare called it ‘full authority and power of their lands, their settlements and surrounding environs, and all their valuables’; Hohepa translated it as ‘the absolute unfettered chieftainship over their lands, villages and treasures’; Edwards called it ‘the absolute governance of all of their lands their homes and all that belongs to them’; and Matiu and Mutu called it ‘the unqualified exercise of their paramount authority over their lands, villages and all their treasures’.

Williams translated pre-emption, which was a ‘tuku’ to the Queen, as ‘hokonga’, a word commonly used to mean buying and selling (or trading). Kawharu back-translated Williams’s pre-emption text simply as the chiefs agreeing to sell land to the Queen at agreed prices, rather than being able to sell land only to the Queen. Salmond and Penfold put it in similar terms, as a ‘release’ to the Queen of ‘the trading of those areas of land whose owners are agreeable’. Henare called it ‘the exchange of those small pieces of land, which the proprietors of the land may wish to make available according to the custom of the exchange of equivalence’. Hohepa referred to the Queen’s ‘right to have those lands the owner agrees to exchange at a price agreed to’ by the seller and the Queen’s agent. Edwards said the chiefs ‘let to the Queen the purchase of those
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pieces of land that the person who owns the land agrees to and for the price as agreed to. And Matiu and Mutu put it that the chiefs would 'allow the Queen to trade for [the use of] those parcels of land which those whose land it is consent to, at an agreed price.' As we shall see, the Crown's assumption of an exclusive right of purchase arising from article 2 is another of the more controversial aspects of the treaty. Ross also contended that Hobson failed to convey the message properly in English, arguing that 'pre-emption' means a right to make the first offer, rather than the sole right to buy. We return to the issue of the English meaning of 'pre-emption' in chapter 8.

7.5.4 Article 3
The third article extended to all Māori ('the Natives of New Zealand') the Queen's 'royal protection' and imparted 'all the Rights and Privileges of British Subjects'. Williams rendered this in Māori as a tuku to them by the Queen of 'nga tikanga katoa rite tahi kia ana ki nga tangata o Ingarani'. Oranga felt that article 3 presented Williams with the 'least difficulty' and that his translation was 'a reasonable equivalent of the English'. Kawharu translated the Māori back into English as 'the same rights and duties of citizenship as the people of England', and Hohepa cast it as 'all the rights, duties laws and obligations exactly the same as those she gives the people of England'. Salmond and Penfold put it as 'exactly the same customary rights as those she gives to her subjects, the people of England', and Henare's translation was very similar. Matiu and Mutu translated as 'all the same entitlements [according to British law] as her people of England', while Edwards cast it as 'all the customs similar to those of her people that is the people of England'. In other words – unlike Kawharu and Hohepa – Salmond and Penfold, Henare, Edwards, and Matiu and Mutu did not consider that a sense of having duties or obligations, as well as rights or entitlements, had been conveyed. Oranga's view appears to align with the latter perspective, because she commented that the wording was silent on the responsibilities that went with rights, like obeying laws and paying taxes. She drew a parallel with the pre-emption clause, in that much clearly depended on how the written text was explained verbally.

For the extension of protection, Williams used the verb 'tiaki'. Kawharu, Henare, and Matiu and Mutu translated this back into English simply as 'protect', but Salmond and Penfold used 'care for'; as Salmond argued that being a 'kaitiaki' had added significance. Hohepa and Edwards both used 'look after'. We return to Salmond's point below.

7.5.5 Postscript
The English text concluded with a statement to the effect that the chiefs fully understood the Treaty and entered their signatures or marks 'in the full spirit and meaning thereof'. There is no particular significance in Williams's translation of this. Salmond saw important symbolism in the use of tohu or marks on the document – another subject we return to in chapter 9.

7.6 Ngā Whaikōrero o Waitangi
7.6.1 The scene
In anticipation of the following day's hui at Waitangi, groups of Māori began assembling at the Bay of Islands from 4 February. At nine o'clock on the morning of 5 February, which dawned beautifully fine, Hobson arrived at Busby's residence with Nias. He made his way directly into a meeting with Busby and Williams to examine the latter's translation. At this time waka were converging on Waitangi from all directions. Across the Bay, too, settlers were arriving by boat, and many vessels adorned with the flags of their respective countries stood at anchor. On the lawn outside Busby's house, sailors from HMS Herald had erected a large marquee – perhaps measuring 150 feet by 30 feet – using ships' spars and sails. It too was decorated with bunting. As the conference proceeded inside the residence, Māori grouped according to their hapū affiliation sat in discussion. The New South Wales police troopers paraded in full uniform, settlers mingled, and vendors offered the crowd a variety of refreshments including liquor, pies, meat, and bread. The Union Jack fluttered above the tent. It was, in the words of William Colenso, who wrote the fullest account of the day's proceedings, a 'spectacle of the most animated description', where 'Everything
Phillipson noted that the scene must have been reminiscent of both the day in 1834 when the New Zealand flag was adopted and the 1835 signing of the Whakaputanga. Only one change was made to the Treaty as a result of the discussion of Williams’s translation. As noted, Busby suggested replacing the word ‘huihuinga’ with ‘whakaminenga’ to more accurately describe the confederation of chiefs, and this Williams agreed to. Busby evidently felt it important that there be consistency with the wording of the Whakaputanga. Hobson let it be known that he was not to be disturbed during his conference with Busby and Williams, and had two police troopers posted on the door to this effect.

But at 10.30 am the French Roman Catholic bishop, Jean Baptiste Pompallier, bedecked in his ecclesiastical robes, swept past them and into the house. He was followed by one of his priests, Father Louis-Catherin Servant. This event caused a stir among the watching Māori, one of whom was heard by Colenso to say, ‘Ko ia ano te tino rangatira! Ko Pikopo anake te hoa mo te Kawana’ (which Colenso translated as ‘He, indeed, is the chief gentleman! Pikopo (Pompallier) only is the companion for the Governor’). This comment was no doubt designed to be heard by the CMS missionaries, who were deferentially standing aside. It certainly did provoke them, given the intense inter-mission rivalry between the Catholics and Protestants, as we discussed in chapter 5. Colenso thus gathered his colleagues together to go inside the house and demonstrate to the watching Māori their equality with the Bishop.

Before they could do so, however, an announcement was made that Hobson would hold a levee inside the house to meet any settlers who had not yet made his acquaintance, with a line to pass in one door and out the other. This event was over soon enough but caused the missionaries further consternation, because they could not bring themselves to file past while the Bishop remained inside. They faced a further dilemma when Hobson emerged from the house and, arm in arm with Nias, walked behind the troopers to the tent, for Pompallier and Servant quickly fell in behind him. Taylor tried to place himself in between, but the Bishop kept too close to Hobson. The missionaries could not tolerate walking behind Pompallier; Taylor asserted, for example, that he would ‘never follow Rome’. They then faced further humiliation inside the tent, where Pompallier and Servant took up seats to Hobson’s and Busby’s left, leaving them with mere standing room behind Williams, who sat...
to Hobson’s right. Indeed, they were persuaded to take up this position in support of Williams only on the prompting of Police Magistrate Shortland.

Colenso described the scene inside the tent as ‘interesting and impressive’. At one end were a raised platform and a table covered with the Union Jack. (The flag flying outside had been lowered when the meeting began, which Orange thought a recognition that the chiefs were yet to cede authority to the Crown.) At noon, Hobson and Nias took their seats on the dais, with the others arranging themselves around them. Aside from those aforementioned, Taylor stood beside Williams; the Wesleyan missionaries Samuel Ironside and John Warren, who had arrived late, found a place next to Pompallier; Hobson’s officials and the officers of HMS Herald stationed themselves as best they could – some here and there on the platform and some immediately before it; and Shortland acted as master of ceremonies. Hobson, Nias, and the officers were all in full uniform; the CMS missionaries in plain black dress; and Pompallier was resplendent in his button-down purple cassock, gold Episcopal cross, and ruby ring. The Pākehā settlers, for the most part well dressed, stood around the sides of the tent, with national flags strung up above them. Amongst them were the land-jobbers, who looked ‘like smugglers foiled in a run, or a pack of hounds lashed off their dying prey’. Aside from a five-yard clear space reserved for orators in front of the table, Māori sat on the ground in the middle. As Colenso put it:

In front of the platform, in the foreground, were the principal Native chiefs of several tribes, some clothed with dogskin mats made of alternate longitudinal stripes of black and white hair; others habited in splendid-looking new woollen cloaks of foreign manufacture, of crimson, blue, brown, and plaid, and, indeed, of every shade of striking colour, such as I had never seen before in New Zealand; while some were dressed in plain European and some in common Native dresses.

Felton Mathew also found the scene remarkable, writing that he would remember it all his life. He estimated that some 400 people were crowded into the tent, their numbers evenly split between Māori and Pākehā.

7.6.2 The speeches
As noted, the fullest written account of the proceedings at Waitangi on 5 and 6 February 1840 was made by William Colenso. His notes taken at the time (which he said were checked by Busby the following month) were published by him much later in life, in 1890. There are other eyewitness accounts by the likes of Williams, Hobson, Busby, Mathew, Taylor, Ironside, William Baker, Robert Burrows, James Kemp, John Bright, Captain Robertson, Pompallier, and Servant, but none approaches that of Colenso – who understood both languages – for detail.

Yet, there is still much that is clearly missing from Colenso’s notes. Loveridge, in summing up the problems confronting the historian of the Treaty signing, referred to:

the lack of reliable, let alone complete records of what Hobson and the missionaries actually said to Māori at Waitangi on the 5th and 6th of February in 1840. It is in my opinion abundantly clear that Colenso’s account of their statements, questions and answers is seriously inadequate in the extent of its coverage, and that some of the material given is not dependable. Comparison with other accounts, such as they are, makes this clear, but these accounts do not remedy the deficiencies in Colenso’s notes. To some extent they compound the problem, as in the case of Henry Williams’ report that an informal meeting took place on the evening of the 5th at which the missionaries explained the proposed Treaty to a number of chiefs ‘clause by clause, showing the advantage to them of being taken under the fostering care of the British Government’, and Bishop Pompallier’s reports that he had discussed with chiefs the idea of Maori recognising ‘a great European chief’. We have no record whatsoever of these discussions other than these brief references. As far as Waitangi is concerned, we are left with little more than a very rough outline of what happened. I have not dealt in detail with the other northern meetings, at Waimate, the Hokianga and Kaitaia, but the European records in relation to these hui appear to be little better and often worse than those for Waitangi, and (as Dame Anne Salmond found when commissioned by the Muriwenua Tribunal to investigate the question) there are no contemporary records in Maori or by Maori of these events.
Similarly, Salmond made the following observations about the written reports of the speeches at Waitangi, which she noted were 'produced in two ways':

First, some reports (Colenso’s, for example) were made from notes jotted down at the time in longhand, and subsequently expanded, in which case those problems associated with retrospective accounts – accuracy, loss of detail, subsequent interpretation or elaborations – arise. Second, others were written from memory later that day or perhaps several days, weeks or in some cases years after the event (as in the case of Henry Williams’s reminiscences). All of the accounts of the speeches, as I have mentioned, appear to be synoptic paraphrases, rather than literal transcripts. None of the usual rhetorical flourishes of Maori oratory (tauparapara, waiata, whakatauki, for example) are evident in any of the translations, and yet is inconceivable that they were not part of the speeches on this important occasion.

To further complicate matters, some reporters (eg Colenso), having ‘written up’ their original jotted notes in a first draft form, later added extensive material from their own memories of what had been said, or from those of other Europeans who had been present. In Colenso’s case, his amended, expanded and edited draft was also edited again for publication many years later. Furthermore, some of the reporters condensed the content of the speeches far more than others, and the accounts by different reporters on the essential arguments made by particular speakers do not always agree.

Before proceeding, we need to say more about Colenso’s account. For a start, there are a range of differences between his 1840 notes (which were not available to researchers before 1981, when the manuscript was purchased at auction by the Alexander Turnbull Library) and his 1890 published history. Salmond summed up the differences between the two versions, which in the 1890 history included more formal language, added context and details, and elaborated rhetoric in the speeches. Importantly, in our view, they also included the following:

- Comments and one entire speech by Busby have been added, evidently as the result of edits added by Busby at Colenso’s invitation, which Colenso ‘faithfully copied (ipissima verba), inserting them where Mr Busby had placed them,’ on a manuscript copy other than the one that has survived; and a speech by Henry Williams, perhaps also added as the result of a similar invitation.

Overall, however, Salmond believed that none of these changes ‘seriously altered the gist of any of the speeches that were given, with the exception of those by Busby and Williams, and possibly those by Heke and Nene’. The differences between the two documents were also considered by Loveridge, who set out a full comparison of the two texts. He concluded from this that the 1890 history was ‘a fairly accurate transcript’ of the 1840 notes.

Notwithstanding this conclusion, Loveridge in particular urged caution in the use of Colenso’s account, despite it being ‘more or less the only one by an insider which describes the proceedings on the 5th and 6th of February from beginning to end’. As we have seen, he regarded it as unreliable in places, and remarked that ‘Just because Colenso does not mention something, does not mean it did not happen.’ That Loveridge exercised this caution in his report is evident in his comments such as ‘or so Colenso recorded this speech’ or ‘So Colenso’s account would have us believe’. Salmond did not adopt the same sceptical tone, but did – in noting the differences between Hobson’s and Colenso’s accounts of Tāmātia Waka Nene’s kōrero (see below) – suggest that this was ‘another useful reminder of the futility of expecting Colenso’s manuscript or published accounts to literally replicate what was said at Waitangi.

We add that the claimants have their own oral tradition of the events at Waitangi, including an account of a meeting held between Williams and the chiefs at which the former submitted a draft that had the chiefs ceding their mana. We discuss the claimants’ kōrero of these events in chapter 9. Here, then, with the general point about the gaps in the written record still in mind, we proceed through the accounts of the verbal negotiation at
Waitangi, noting any major inconsistencies or deficiencies in the evidence as we do so.

Hobson began by addressing the chiefs, with Williams interpreting sentence by sentence. Colenso recorded Hobson's statement as follows:

Her Majesty Victoria, Queen of Great Britain and Ireland, wishing to do good to the chiefs and people of New Zealand, and for the welfare of her subjects living among you, has sent me to this place as Governor.

But, as the law of England gives no civil powers to Her Majesty out of her dominions, her efforts to do you good will be futile unless you consent.

Her Majesty has commanded me to explain these matters to you, that you may understand them. The people of Great Britain are, thank God! free; and, so long as they do not transgress the laws, they can go where they please, and their sovereign has not power to restrain them. You have sold them lands here and encouraged them to come here. Her Majesty, always ready to protect her subjects, is also always ready to restrain them.

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

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

I will give you time to consider of the proposal I shall now offer you. What I wish you to do is expressly for your own good, as you will soon see by the treaty.

You yourselves have often asked the King of England to extend his protection unto you. Her Majesty now offers you that protection in this treaty.

I think it not necessary to say any more about it, I will therefore read the treaty.99

Hobson himself told Gipps in his dispatch written that evening that he had explained to [the rangatira] in the fullest manner the effect that might be hoped to result from the measure, and I assured them in the most fervent manner that they might rely implicitly on the good faith of Her Majesty's Government in the transaction. I then read the treaty, a copy of which I have the honour to enclose; and in doing so, I dwelt on each article, and offered a few remarks explanatory of such passages as they might be supposed not to understand. Mr H Williams, of the Church Missionary Society, did me the favour to interpret, and repeated in the native tongue, sentence by sentence, all I said.100

In an April 1840 letter to Major Thomas Bunbury, Hobson similarly wrote that he had explained in the fullest manner the reason that Her Majesty had resolved with their consent to introduce civil institutions into this Land[,] that the unauthorized settlement of British Subjects here had rendered such a measure most essential for their Benefit, and I offered a Solemn pledge that the most perfect good Faith would be kept by Her Majesty's Government that their Property their Rights and Privileges should be most fully preserved. I then read the Treaty and explained such parts of it as might not be very intelligible to their untutored minds and I invited the Chiefs to offer any observations or remarks, or to ask explanation of any part they did not clearly understand.101

Despite his claims to have been comprehensive, it appears that Hobson's opening explanation was relatively brief for such an important occasion. He then read aloud the English text of the Treaty. Writing to his wife the following day, Mathew described Hobson's speech as 'fus-tian'102 – a departure from the usually solemn and respectful accounts of Hobson's address. He gave the following account of this address in his journal:

He [Hobson] set forth briefly but emphatically, and with strong feeling, the object and intention of the Queen of England in sending him hither to assume the government of these Islands, provided the native chiefs and tribes gave their consent thereto. He pointed out to them the advantage they would derive from this intercourse with the English, and the necessity which existed for the Government to interfere for their protection on account of the number of white people who had already taken up their abode in this country. He then caused to be read to them a treaty which had been
prepared, by which the native chiefs agreed to cede the sovereignty of their country to the Queen of England, throwing themselves on her protection but retaining full power over their own people – remaining perfectly independent, but only resigning to the Queen such portion of their country as they might think proper on receiving a fair and suitable consideration for the same.  

Phillipson stressed the importance of Mathew’s description of Hobson’s speech, as we shall see in chapter 9.

When Hobson had finished reading the English text, he turned to Williams and asked him to read out (in Colenso’s words) ‘the translation of the same’. Williams described this moment as follows:

In the midst of profound silence I read the treaty to all assembled. I told all to listen with care, explaining clause by clause to the chiefs; giving them caution not to be in a hurry, but telling them that we, the Missionaries, fully approved of the treaty, that it was an act of love towards them on the part of the Queen, who desired to secure to them their property, rights, and privileges. That this treaty was as a fortress for them against any foreign power which might desire to take possession of their country, as the French had taken possession of Otiati [Tahiti].  

Colenso made no comment about Williams’s ‘clause-by-clause’ explanations; neither did Mathew, who could follow only what was said in English. In fact, the closest we get to some detail on exactly what Williams said is his own explanation in 1847 to Bishop Selwyn, who, as a result of the ongoing furore about the meaning of ‘pre-emption’, had requested ‘in writing what you explained to the Natives and how they understood it’. Williams wrote:

Your Lordship has requested information in writing of what I explained to the natives, and how they understood it. I confined myself solely to the tenor of the treaty.

That the Queen had kind wishes towards the chiefs and people of New Zealand,

And was desirous to protect them in their rights as chiefs, and rights of property,

And that the Queen was desirous that a lasting peace and good understanding should be preserved with them.

That the Queen had thought it desirable to send a Chief as a regulator of affairs with the natives of New Zealand.

That the native chiefs should admit the Government of the Queen throughout the country, from the circumstance that numbers of her subjects are residing in the country, and are coming hither from Europe and New South Wales.

That the Queen is desirous to establish a settled government, to prevent evil occurring to the natives and Europeans who are now residing in New Zealand without law.

That the Queen therefore proposes to the chiefs these following articles:

Firstly,—The Chiefs shall surrender to the Queen for ever the Government of the country, for the preservation of order and peace.

Secondly,—the Queen of England confirms and guarantees to the chiefs and tribes, and to each individual native, their full rights as chiefs, their rights of possession of their lands, and all their other property of every kind and degree.

The chiefs wishing to sell any portion of their lands, shall give to the Queen the right of pre-emption of their lands.

Thirdly,—That the Queen, in consideration of the above, will protect the natives of New Zealand, and will impart to them all the rights and privileges of British subjects.

As Phillipson noted, however, this account does not explain how, or even whether, Williams explained kāwanatanga, pre-emption, and other matters.

Years later, Busby gave his own account of events at Waitangi. His summary of what was said by Hobson and Williams grouped the two men’s messages together:

Captain Hobson through Mr Williams explained to the Chiefs, that it was not in the power of the Queen to prevent her subjects coming to New Zealand and settling there if they felt so disposed – nor was he able, as long as the Sovereignty belonged to the natives to control the excesses of Her subjects, or to regulate their conduct, that the only way in which this could be effected, was by their ceding their rights of Sovereignty to the Queen who would then be able to afford protection to them, as well as to her own subjects.
and through him as her Lieut. Governor to put an end to the evils which had so long existed. The Missionaries present, both of the Church and Wesleyan Societies, as well as the late Resident [Busby], advised the Chiefs to accept the proposal and to execute the treaty.  

After Williams had finished, the floor was opened for the chiefs to respond. Before they did so, they greeted Hobson by shaking hands. Busby took his opportunity, and made a brief speech in which he assured the chiefs that Hobson had come not to take their land but to secure them in possession of what they had not already sold. He added that any land found not properly to have been acquired from them would be returned. Phillipson described Busby's words as 'far-reaching assurances' about the Crown's intentions in respect of pre-treaty transactions, but insufficient to quell Māori discontent on the subject, as we shall see.

The first chief to speak was, as per custom, Te Kēmara of the host Ngāti Rāhiri hapū. Te Kēmara was a senior Ngāpuhi tohunga who had signed he Whakaputanga in 1835. As Mathew put it:

After a while one ferocious looking chief started up and commenced a long and vehement harangue, in which he counselled his countrymen not to admit the Governor, for if they did so they would inevitably become slaves and their lands would pass from them. Then, addressing the Governor, he said:—

If you like to remain here it is well, but we will have no more white people among us lest we be over-run with them, and our lands be taken from us.

In Colenso's account, Te Kēmara suggested that Hobson might be welcome to stay if he was on an equal footing with the chiefs, not that he demanded that no more settlers should arrive:

If thou stayest as Governor, then, perhaps, Te Kemara will be judged and condemned. Yes, indeed, more than that – even hung by the neck. No, no, no; I shall never say 'Yes' to your staying. Were all to be on an equality, then, perhaps, Te Kemara would say 'Yes;' but for the Governor to be up and Te Kemara down – Governor high up, up, up, and Te Kemara down low, small, a worm, a crawler – No, no, no.

Having thus rejected the idea of Hobson's supremacy, Te Kēmara then switched his attention to his loss of land:

O Governor! my land is gone, gone, all gone. The inheritances of my ancestors, fathers, relatives, all gone, stolen, gone with the missionaries. Yes, they have it all, all, all. That man there, the Busby, and that man there, the Williams, they have my land. The land on which we are now standing this day is mine. This land, even this under my feet, return it to me. O Governor! return me my lands. Say to Williams, 'Return to Te Kemara his land.' Thou' (pointing and running up to the Rev H Williams), 'thou, thou, thou bald-headed man – thou hast got my lands. O Governor! I do not wish thee to stay. You English are not kind to us like other foreigners. You do not give us good things. I say, Go back, go back, Governor, we do not want thee here in this country. And Te Kemara says to thee, Go back, leave to Busby and to Williams to arrange and to settle matters for us Natives as heretofore.'

Te Kēmara's request for Hobson both to go and to return the lands stolen by Busby and Williams was, on one level, contradictory, and was even more so in Colenso's published account than in his notes. The latter did not include the reference to leaving Busby and Williams 'to arrange and settle matters for us Natives as heretofore' – an odd request, when Te Kēmara was also asking Hobson to make Williams return him his land. But perhaps both these apparent contradictions are explicable if Te Kēmara had the power to influence Williams and Busby, and if his reference to the arrangement applying 'heretofore' was to he Whakaputanga. In any event, Colenso's 1890 memory of Te Kēmara's statement seems correct. As Captain Robertson told the Sydney Herald a couple of weeks after Te Tiriti's signing, Busby pointed out that the best proof of the goodwill of the Natives towards himself [Busby] and Mr Williams, was expressed by the very Chief
who had caused the discussion, who was of opinion that the country should remain as it was, and he would be satisfied to be guided, as heretofore, by the advice and counsel of Mr Williams and himself (Mr B).\textsuperscript{116}

Te Kēmara's speech was the first of a number of barbs directed at land purchasing by the missionaries.\textsuperscript{117} The next speaker, Rewa, was similarly forthright. Rewa was a senior chief of Ngāi Tawake, who in 1831 had brought home rumours from Sydney of an imminent French invasion (see chapter 3). He had signed both the 1831 petition to William IV and he Whakaputanga in 1835, and was closely linked to Pompallier. After opening in English with a humorous ‘How d’ye do, Mr Governor?’, he reverted to Māori and spoke more bluntly:

This is mine to thee, O Governor! Go back. Let the Governor return to his own country. Let my lands be returned to me which have been taken by the missionaries – by Davis and by Clarke, and by who and who besides. I have no lands now – only a name, only a name! Foreigners come; they know Mr Rewa, but this is all I have left – a name! What do Native men want of a Governor? We are not whites, nor foreigners. This country is ours, but the land is gone. Nevertheless we are the Governor – we, the chiefs of this our fathers’ land. I will not say ‘Yes’ to the Governor’s remaining. No, no, no; return. What! this land to become like Port Jackson and all other lands seen [or found] by the English. No, no. Return. I, Rewa, say to thee, O Governor! go back.\textsuperscript{118}

In his dispatch written to Gipps that evening, Hobson recorded that Rewa had said

Send the man away; do not sign the paper; if you do you will be reduced to the condition of slaves, and be obliged to break stones for the roads. Your land will be taken from you, and your dignity as chiefs will be destroyed.

Hobson suspected that Rewa’s opposition was inspired by Pompallier, whose influence over the proceedings we will discuss at section 7.6.4.\textsuperscript{119} As Loveridge pointed out, Hobson’s account of Rewa’s speech accorded more with other observations than with Colenso’s. Captain Robertson of the \textit{Samuel Winter}, for example, also referred to unnamed chiefs being worried that, if they signed the treaty, they would become slaves, hewers of wood and drawers of water, and be driven to break stones on the road . . . their greatest apprehension was that they would be made slaves, and that soldiers would be sent among them.\textsuperscript{120}

Busby also recalled that some of the rangatira ‘brought up the old story’ that signing te Tiriti might lead to them having to ‘break stones on the road’, and Williams wrote closer to the time that

The Popish Bishop has been endeavouring to poison the minds of the Natives but has not succeeded. Many of the Chiefs hung back for some time having been told that they would be sent to break stones as the convicts of Port Jackson & to labour as they do.\textsuperscript{121}

Pompallier himself conveyed to Captain Lavaud of the French Navy (who was en route to Akaroa to act as the representative of the French colonists from the Nanto-Bordelaïse Company about to arrive there) in July 1840 that Rewa had said (as translated from the French):

Chase away this white chief; what has he come here to do? To take away the freedom which you now enjoy. Do not believe in his words, do you not see that henceforth you will be mere slaves? That soon he will be employing you to make roads and break stones on the highways?\textsuperscript{122}

The next speaker was another important northern alliance chief, Moka, the younger brother of Rewa and Wharerahi, based near Kororareka. He was the only chief known to have been present when Hobson read his land proclamation in the church on 30 January.\textsuperscript{123} He echoed the first two speakers’ concerns about land loss, but unlike them portrayed Hobson as powerless to intervene:
Let the Governor return to his own country: let us remain as we were. Let my lands be returned to me – all of them – those that are gone with Baker. Do not say, ‘The lands will be returned to you.’ Who will listen to thee, O Governor? Who will obey thee? Where is Clendon? Where is Mair? Gone to buy our lands notwithstanding the book [Proclamation] of the Governor.

Upon hearing Williams’s translation of this, Hobson felt it necessary to interject. He contended that all lands unjustly held would be returned; and that all claims to lands, however purchased, after the date of the Proclamation would not be held to be lawful.

Williams translated this back into Māori, whereupon Moka continued:

That is good, O Governor! That is straight. But stay, let me see. Yes, yes indeed! Where is Baker? where is the fellow? Ah, there he is – there, standing! Come, return to me my lands.

Moka stepped up to the platform, where Charles Baker stood, awaiting a reply. Baker’s response was, ‘E hoki, koia?’ which Colenso translated as ‘Will it, indeed, return?’ Moka thereupon announced, “There! Yes, that is as I said. No, no, no; all false, all false alike. The lands will not return to me.”

At this point in the proceedings, a settler
forward and complained that Williams's translations of the words of both the rangatira and Hobson were incomplete. He suggested that a Mr Johnson, whom Colenso noted was 'an old resident' of Kororāreka and a 'dealer in spirits, &c', could do the job instead. Hobson invited Johnson forward, and questioned him about both his knowledge of te reo Māori and the words that had not been interpreted. Johnson begged to be excused, saying that the missionaries could translate very well. But he did request that Williams speak more loudly, so that those at the back of the tent could hear, and that he translate everything the chiefs were saying, since ‘They say a great deal about land and missionaries which Mr Williams does not translate to you, Sir’. In his published account in 1890 (but not in his notes taken at the time), Colenso added in a footnote that this latter comment can only have referred to the chiefs ‘immense amount of repetition’, because Williams ‘translated fairly’.

With the leave of Hobson, Williams and Busby then addressed the settlers in English, and defended their land purchases. Williams’s justifications for his sizeable holdings were that:

- the title would be investigated by the commissioners and that others would do well to have ‘as good and honest titles . . . as the missionaries’;
- the missionaries deserved some reward for having ‘laboured for so many years in this land when others were afraid to show their noses’;
- his 11 children were all born in the colony; and
- when he died it would be seen that there was not very much to go around his large family.

Busby then denied that Te Kēmara and Rewa had accused him of ‘robbing’ them of their land, as a settler had just alleged. His own justifications were that he had bought only land which Māori had pressed him to buy; that his income during his government employment had been scarcely enough to provide for his family; that he had not made any ‘extensive purchase’ until he was out of office and had found that, after 15 years’ government service, no further provision was to be made for him and his family; and that he had set aside inalienable reserves – 30 acres for each individual of the families from whom he had bought – for Māori ‘habitations and cultivations’.

There is no suggestion in the written record that anyone translated these protestations of innocence into Māori for the benefit of the assembled rangatira.

After this interlude, two southern alliance chiefs from Kawakawa spoke in support of Hobson, and thus in direct contrast to the three northern alliance rangatira who had preceded them. As Phillipson noted, this was the reverse of the earlier pattern, in which it was the northern alliance under Hongi Hika that had pursued an alliance with the Crown. In any event, the first of the Kawakawa chiefs to speak was Tamati Pukututu of Te Uri-o-Te-Hawato, who had previously signed he Whakaputanga:

This is mine to thee, O Governor! Sit, Governor, sit, a Governor for us – for me, for all, that our lands may remain with us – that those fellows and creatures who sneak about, sticking to rocks and the sides of brooks and gullies, may not have it all. Sit, Governor, sit, for me, for us. Remain here, a father for us, &c. These chiefs say, ‘Don’t sit,’ because they have sold all their possessions, and they are filled with foreign property, and they have also no more to sell. But I say, what of that? Sit, Governor, sit. You two stay here, you and Busby – you two, and they also, the missionaries.

The second Kawakawa chief to speak was Matiu, of Te Uri-o-Ngongo. Salmond believed him to have been literate and mission-trained. He said:

O Governor! sit, stay, remain – you as one with the missionaries, a Governor for us. Do not go back, but sit here, a Governor, a father for us, that good may increase, may become large to us. This is my word to thee: do thou sit here, a father for us.

The respite for Hobson was brief. Opposition to him continued in the speech by Kawiti of Ngāti Hine, a powerful southern alliance chief who had signed he Whakaputanga and was a staunch opponent of selling land to Pākehā. But his concern was not with land sales so much as with who would have authority, and the dangers Māori faced from the potential arrival of British troops:
No, no. Go back, go back. What dost thou want here? We native men do not wish thee to stay. We do not want to be tied up and trodden down. We are free. Let the missionaries remain, but, as for thee, return to thine own country. I will not say ‘Yes’ to thy sitting here. What! to be fired at in our boats and canoes by night! What! to be fired at when quietly paddling our canoes by night! I, even I, Kawiti, must not paddle this way, nor paddle that way, because the Governor said ‘No’ – because of the Governor, his soldiers, and his guns! No, no, no. Go back, go back; there is no place here for the Governor.\[32\]

The next chief to speak was Wai of Ngāi Tawake, who had also signed he Whakaputanga.\[33\] He very much doubted Hobson's ability to control Pākehā settlers, whose insults he had suffered only recently:

To thee, O Governor! this. Will you remedy the selling, the exchanging, the cheating, the lying, the stealing of the whites? O Governor! yesterday I was cursed by a white man. Is that straight? The white gives us Natives a pound for a pig; but he gives a white four pounds for such a pig. Is that straight? The white gives us a shilling for a basket of potatoes; but to a white he gives four shillings for a basket like that one of ours. Is that straight? No, no; they will not listen to thee: so go back, go back. If they would listen and obey, ah! yes, good that; but have they ever listened to Busby? And will they listen to thee, a stranger, a man of yesterday? Sit, indeed! what for? Wilt thou make dealing straight?\[34\]

At this juncture, three Pākehā (a hawker and pedlar from Kororāreaka named Jones, a young man, and the man who had previously complained) all spoke up from different parts of the tent, calling both for the speeches to be interpreted for the settlers to hear and for them to be interpreted correctly. The reluctant Johnson was again asked to come forward, and this time – with Hobson's approval – he interpreted Wai's speech, after first stating that 'it was great lies'. Again, there is no suggestion that his interpretation was translated back into Māori for the benefit of the chiefs.

The next rangatira to speak was Pumuka of Te Roroa, based at Te Haumi. In Salmond's view he was the first chief of 'major importance' to speak in favour of Hobson. He said:

Stay, remain, Governor; remain for me. Hear, all of you. I will have this man a foster-father for me. Stay, sit, Governor. Listen to my words, O Governor! Do not go away; remain. Sit, Governor, sit. I wish to have two fathers – thou and Busby, and the missionaries.\[35\]

Pumuka was followed by Wharerahi, a leading northern alliance chief, the elder brother of Rewa and Moka, and a signatory of both the petition to King William IV and he Whakaputanga. Unlike his siblings, Wharerahi echoed Pumuka in support of Hobson. In Salmond's view, this helped to 'turn the tide of the debate', given his status as tuakana to two of Hobson's leading opponents. Wharerahi said:

Yes! What else? Stay, sit; if not, what? Sit; if not, how? Is it not good to be in peace? We will have this man as our Governor. What! turn him away! Say to this man of the Queen, Go back! No, no.\[36\]

Next, an unnamed Waikare chief attempted to make a speech along the same lines as Wai, to the effect that Pākehā were cheating Māori when bartering for pigs. But he was rather overlooked while a 'commotion and bustle' took place as Tāreha and his son Hakiro, of Ngāti Rēhia from Kororāreaka, attempted to clear space in front of the platform. As Colenso put it, they were seeking to make room to give their 'running speeches in, à la Nouvelle-Zélande'. Hakiro spoke first – not for himself but on behalf of the great Ngāti Rēhia chief Titore, who had died in 1837:

To thee, O Governor! this. Who says 'Sit'? Who? Hear me, O Governor! I say, no, no. Sit, indeed! Who says 'Sit'? Go back, go back; do not thou sit here. What wilt thou sit here for? We are not thy people. We are free. We will not have a Governor. Return, return; leave us. The missionaries and Busby are our fathers. We do not want thee; so go back, return, walk away.
Hakiro’s powerful speech was more than matched by the performance of his father, not least because Tāreha was such a big man and formidable presence, with a ‘deep sepulchral voice’. But Tāreha also dressed for effect, wearing what Colenso described as ‘a filthy piece of coarse old floor-matting, loosely tied round him, such as is used by the commonest Natives merely as a floor mat under their bedding.’ The purpose behind this was, in Colenso’s view, ‘to ridicule the supposition of the New-Zealanders being in want of any extraneous aid of clothing, &c, from foreign nations.’ To this effect, Tāreha also held a bunch of dried fern root. He said:

No Governor for me – for us Native men. We, we only are the chiefs, rulers. We will not be ruled over. What! thou, a foreigner, up, and I down! Thou high, and I, Tareha, the great chief of the Ngāpuhi tribes, low! No, no; never, never. I am jealous of thee; I am, and shall be, until thou and thy ship go away. Go back, go back; thou shalt not stay here. No, no; I will never say ‘Yes.’ Stay! Alas! what for? why? What is there here for thee? Our lands are already all gone. Yes, it is so, but our names remain. Never mind; what of that – the lands of our fathers alienated? Dost thou think we are poor, indigent, poverty-stricken – that we really need thy foreign garments, thy food? Lo! note this. (Here he held up high a bundle of fern-roots he carried in his hand, displaying it.) See, this is my food, the food of my ancestors, the food of the Native people. Pshaw, Governor! To think of tempting men – us Natives – with baits of clothing and of food! Yes, I say we are the chiefs. If all were to be alike, all equal in rank with thee – but thou, the Governor up high – up, up, as this tall paddle (here he held up a common canoe-paddle) and I down, under, beneath! No, no, no. I will never say, ‘Yes, stay.’ Go back, return; make haste away. Let me see you [all] go, thee and thy ship. Go, go; return, return.138

Although he did not name him, Mathew also appears to have recorded aspects of the translation of Tāreha’s speech. Mathew wrote that an unnamed chief had told Hobson:

Go, return to your own country. Mr Busby has been shot at. You will be shot at, perhaps killed. Mr Busby could do nothing, but you are a Man of War, Captain, and if you are killed the soldiers will come and take a terrible vengeance on our countrymen.139

Tāreha was probably recalling the bloody retaliation by the likes of the French in 1772 and the whalers who wounded Te Pahi after the Boyd was burned in 1809. He may also have been thinking of more recent incidents, such as the revenge wrought by soldiers from Sydney on board the man-of-war HMS Alligator in 1834 for the earlier attack by Ngāti Ruanui on (and kidnapping of) survivors of the wrecked Harriet in Taranaki (see section 3.9.4).

Captain Robertson also described Tāreha as having ‘worked himself up to a frenzy.’140 The next chief’s speech, however, was in sharp contrast. Rāwiri Taiwhanga, a
corruptulent! and one who was of a noble race of carrion ancestors. It was he of the puissant arm (ten pounds to the square inch), Tarry-ah (the old Na-poo-ee chief, whose tribe were followers of the Pi-ky-po); not he, he did not tarry long before his ire bellowed forth, and yet in compass as if the pipes had been narrowed by asthma. He made no welcomes, although great in – and out. ‘Why should the Mow-rees be tou-rakaraka (ie slaves)? Why was (what I may word as) he to be the Great Little, that the Par-kee-ah chief might be the Little Great. He wanted no governor; let him go home. Did he not know that Busby (the former representative of England) had close to him the gun of the Mow-ree? (Mr B was shot at by the natives.) Could not guns shoot now as then?’ and much more complimentary matter, which I verily thought made the captain’s uniform look a shade bluer; then the leviathan stamped about, and foamed at the mouth like an unemptied tankard: he verily resembled a piece of animated boiled beef, which, had it threatened in ire an offender’s head, full soon had ‘Hope withering fled, and Mercy sighed farewell.’

A particularly colourful account of Tāreha’s speech was given by the traveller John Bright:

There was a rush, and a wide space cleared, and in bounded a huge mass of flesh, enveloped in a dirty mat of native manufacture; his eyes blearing with age, tall, erect, but, oh! so
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literate and pro-missionary Christian convert of Ngāti Tautahi at Kaikohe, spoke cheerfully in favour of Hobson. Like Rewa, he began in English, saying ‘Good morning, Mr Governor! very good you!’ then continued in Māori:

Our Governor, our Father! Stay here, O Governor! Sit, that we may be in peace. A good thing this for us – yes, for us, my friends, Native men. Stay, sit. Do thou remain, O Governor! to be a Governor for us.  

Despite this show of approval, Phillipson felt that the mood of the hui, galvanised as it was by Tāreha’s kōrero, was still running firmly against Hobson. The next series of speakers, however, all spoke in favour of Hobson and his Tiriti, and are generally regarded as having changed the course of the debate decisively. The first of these speakers was another literate Kaikohe and Ngāti Tautahi rangatira, Hōne Heke, also a signatory to the Whakaputanga in 1835. Colenso recorded his speech as follows:

‘To raise up, or to bring down? to raise up, or to bring down? Which? which? Who knows? Sit, Governor, sit. If thou shouldst return, we Natives are gone, utterly gone, nothinged, extinct. What, then, shall we do? Who are we? Remain, Governor, a father for us. If thou goest away, what then? We do not know. This, my friends,’ addressing the Natives around him, ‘is a good thing. It is even as the word of God’ (the New Testament, lately printed in Māori at Paihia, and circulated among the Natives). ‘Thou to go away! No, no, no! For then the French people or the rum-sellers will have us Natives. Remain, remain; sit, sit here; you with the missionaries, all as one. But we Natives are children – yes, mere children. Yes; it is not for us but for you, our fathers – you missionaries – it is for you to say, to decide, what it shall be. It is for you to choose. For we are only Natives. Who and what are we? Children – yes, children solely. We do not know: do you then choose for us. You, our fathers – you missionaries. Sit, I say, Governor, sit! a father, a Governor for us.’

Colenso noted that Heke’s final words were pronounced ‘with remarkably strong and solemn emphasis, well supported both by gesture and manner.’ Such was the stir around the tent after his speech that the words of Hakitara, a Te Rarawa chief who spoke next in favour of Hobson, were rather drowned out.

We should note, however, that there is an element of doubt as to whether Heke’s speech was in favour of Hobson or not. Burrows wrote that Heke ‘gave a lot of trouble’ at Waitangi, and the Wesleyan missionary Samuel Ironside said that Heke was violent in his harangue against Captain Hobson, vociferating repeatedly in his native style, ‘Haere e hoki’ (‘Go, return’). Tamati Waaka came to me and said his heart was pouri...
(grieved) with Heke’s violence, and the way Captain Hobson was being treated. ‘Well,’ I said, ‘if you think so, say so[‘]: whereupon Tamati sprang up and made his speech.\textsuperscript{144}

William Baker, the eldest son of the missionary Charles Baker, would have been about 11 years old in 1840.\textsuperscript{145} In 1865, when a Native Department official, he attempted to compile an accurate list of Tiriti signatories; and in 1869 he wrote:

I remember distinctly being present during the whole of the meeting, that Hone Heke Pokai was very violent in his language, though he is not mentioned by Captain Hobson. . . . A war of words ensued between Tamati Waaka Nene, who came in at this crisis, and Heke, the result of which was that Waaka ‘removed the temporary feeling that had been created’.\textsuperscript{146}

Salmond suspected that Colenso, who was ‘not fully versed in the rhetorical conventions of Maori oratory, simply misunderstood the import of Heke’s speech’. She suggested that Heke’s words may have been intended ironically, and that he should perhaps ‘be counted amongst those who spoke against the Governor, and not for him’. The issue is difficult to resolve. Busby, as we shall see, was confident enough about Heke’s feelings to call him forward first to sign the document the following day. Williams, looking back, recalled that Heke told the people that ‘he fully approved, as they needed protection from any foreign power, and knew the fostering care of the Queen of England towards them. He urged them to sign the treaty.’ Taylor also recorded Heke as having spoken in favour of Hobson (even describing him as the first to do so), although he was presumably reliant on Williams’s translation.\textsuperscript{147}

More so than even Heke, however (if we accept that Heke spoke in te Tiriti’s favour), the next speaker is regarded as having swung the mood at Waitangi behind Hobson and his Tiriti. This was Tāmati Waka Nene, a powerful rangatira of Ngāti Hao at Hokianga but with great influence too at the Bay of Islands, who had signed both the petition to King William and he Whakaputanga. Along with his elder brother, Patuone, he had arrived during Heke’s kōrero.\textsuperscript{148} Because of its perceived importance, a number of witnesses took careful account of Nene’s speech. Colenso’s version was as follows:

‘I shall speak first to us, to ourselves, Natives’ (addressing them). ‘What do you say? The Governor to return? What, then, shall we do? Say here to me, O ye chiefs of the tribes of the northern part of New Zealand! what we, how we?’ (Meaning, how, in such a case, are we henceforward to act?) ‘Is not the land already gone? is it not covered, all covered, with men, with strangers, foreigners – even as the grass and herbage – over whom we have no power? We, the chiefs and

Tāmati Waka Nene. Nene is usually regarded as having made the decisive speech at Waitangi, influencing the rangatira in favour of signing te Tiriti.
Natives of this land, are down low; they are up high, exalted.
What, what do you say? The Governor to go back? I am sick,
I am dead, killed by you. Had you spoken thus in the old time,
when the traders and grog-sellers came — had you turned
them away, then you could well say to the Governor, “Go
back, ’and it would have been correct, straight; and I would
also have said with you, “Go back;” — yes, we together as one
man, one voice. But now, as things are, no, no, no.’ Turning to
His Excellency, he resumed, ‘O Governor! sit. I, Tamati Waka,
say to thee, sit. Do not thou go away from us; remain for us
—a father, a judge, a peacemaker. Yes, it is good, it is straight.
Sit thou here: dwell in our midst. Remain; do not go away. Do
not thou listen to what [the chiefs of] Ngapuhi say. Stay thou,
our friend, our father, our Governor.’

Hobson’s account of Nene’s speech was quite different:
At the first pause Neni came forward and spoke with a
degree of natural eloquence that surprised all the Europeans,
evidently turned aside the temporary feeling that had
been created. He first addressed himself to his own coun-
trymen, desiring them to reflect on their own condition, to
recollect how much the character of the New Zealanders had
been exalted by their intercourse with Europeans, and how
impossible it was for them to govern themselves without fre-
quently wars and bloodshed; and he concluded his harangue
by strenuously advising them to receive us and to place con-
fidence in our promises. He then turned to me and said, ‘You
must be our father! You must not allow us to become slaves!
You must preserve our customs, and never permit our lands
to be wrested from us!’

Mathew gave another significant account of the speech:
Things had thus assumed a very unfavourable appearance
and the current was running strongly against us,151 when
a powerful chief named ‘Nina’ [Nene] rushed into the tent
attended by other chiefs and followers, and commenced an
address to his countrymen in a strain of fervid and impasioned
elocution such as I never before heard, and which
immediately turned the tide in our favour. He commenced by
saying:—

Let the Governor remain. Say to him, ‘You are welcome.’
The English have long been settled amongst us and we
like them. They give us clothes and other things which we
require, and since they have been here they have put a stop
to the bloody wars which we used to have, and preserved
us from eating each other. The English have more power
and dignity than we have, and we shall derive dignity from
them settling amongst us. If we do not let the English remain
and acknowledge Queen Victoria, other white people — the
French, or Americans — will come amongst us and make us
slaves. We do not like the French or Americans, we will not
have them. Therefore my speech is, Let us take the English
who will protect us. Let us say to the Governor, ‘Remain, you
are welcome.’

This speech produced a great effect, and was followed by
others in the same strain which caused a complete revulsion
of feeling amongst the natives and an evident inclination in
our favour.152

Bright provided a fourth notable version:

Soon after this large fire had gone out [a reference to
Tāreha’s speech], a mild-looking, middle-aged man, with a
deportment as if he felt he was a gentleman, quietly entered
the arena, and rested awhile on a wooden spear, which was
the Mow-rees’ ancient weapon; he smiled on all around. The
storms were laid still, and a general calm suppressed the ris-
ing excitement. He looked as if he felt glad to see those he
looked upon, and as if wishing them well. It was Nay-nay, a
chief from Ho-ki-an-ga; esteemed by the white men, and to
his own race known as one who dared to fight as well as to
talk of peace. His voice was slow at first; nor needed he to
raise it high, no sound intruded on it. ‘Friends! whose pota-
toes do we eat? Whose were our blankets? These (his spear)
are thrown by. What has the Mow-ree now? The Par-kee-ah’s
gun, his shot, his powder. Many moons has he been now in
our war-rees (houses); many of his children are also our chil-
dren. He makes no slaves. Are not our friends in Port Yackson
(Sydney)?— plenty of Par-kee-ahs there; yet make no Mow-
ree slave there. What did we before he came – fight! lots of
fight! Now we can plant our grounds, and he will bring plenty
My reason for accepting Governor Hobson was to have a protector for this Island. I thought of other nations – of the French . . . If the Governor had not been drawn ashore (the Queen’s protection solicited) then our lands would have become the Pakeha’s by purchase. Each man would have said, Here is my land. He would have had a knife as payment, and the land would have become the Pakeha’s. But when the Governor came, the land was placed under the protection of the law, as it was enacted that he alone should purchase . . . My object in accepting the Governor was that I might have a protector . . .

Nene was followed as speaker at Waitangi by his brother Patuone, another signatory of both the petition to King William and He Whakaputanga. He also spoke emphatically in favour of Hobson:

What shall I say on this great occasion, in the presence of all those great chiefs of both countries. Here, then, this is my word to thee, O Governor! Sit, stay – thou, and the missionaries, and the Word of God. Remain here with us, to be a father for us, that the French have us not, that Pikopo [Bishop Pompallier], that bad man, have us not, remain, Governor. Sit, stay, our friend.

While he may possibly have been confusing Patuone with Nene, Lavaud (on the basis of information from Pompallier) provided extra particulars of Patuone’s address in a report to the French Government in 1843:

Finally he arrived, and spoke at length in favour of Mr Hobson, and explained, by bringing his two index fingers side by side, that they would be perfectly equal, and that each chief would similarly be equal with Mr Hobson.

The speaking rights now returned to the hosts, and so Te Kēmara rose again and said:

No, no. Who says ‘Stay’? Go away; return to thine own land. I want my lands returned to me. If thou wilt say, ‘Return to that man Te Kemara his land,’ then it would be good. Let us all be alike [in rank, in power]. Then, O Governor! remain.
But, the Governor up! Te Kemara down, low, flat! No, no, no. Besides, where art thou to stay, to dwell? There is no place left for thee.\footnote{159}

Busby noted here in Colenso’s account that he (Busby) had interposed at this point and said ‘my house would be occupied by the Governor’. Busby added that this had ‘served to produce the change in his demeanour’, since Te Kēmara was the local rangatira.\footnote{160} Colenso continued:

Here Te Kemara ran up to the Governor, and, crossing his wrists, imitating a man hand-cuffed, loudly vociferated, with fiery flashing eyes, ‘Shall I be thus, thus? Say to me, Governor, speak. Like this, eh? Like this? Come, come, speak, Governor. Like this, eh?’

At this moment, according to Hobson, Te Kēmara was reproached by one of the chiefs and his attitude instantly changed.\footnote{161} Colenso recorded:

He then seized hold of the Governor’s hand with both his and shook it most heartily, roaring out with additional grimace and gesture (in broken English), ‘How d’ye do, eh, Governor? How d’ye do, eh, Mister Governor?’ This he did over, and over, and over again, the Governor evidently taking it in good part, the whole assembly of whites and browns, chief and slave, Governor, missionaries, officers of the man-o’-war, and, indeed, ‘all hands’, being convulsed with laughter.\footnote{162}

Hobson himself remarked that the conclusion to Te Kēmara’s speech ‘occasioned amongst the natives a general expression of applause, and a loud cheer from the Europeans, in which the natives joined.’ It was now 4 pm, and the hui had been under way for around six hours.\footnote{163} Mathew recorded that the decision to break up at this point came from the rangatira, who wanted to discuss matters privately. One of the chiefs told Hobson, ‘Give us time to consider this matter. We will talk it over amongst ourselves. We will ask questions and then decide whether we will sign the Treaty.’ Hobson then announced that the meeting would reconvene two days hence, on Friday 7 February. He was given three cheers, and all dispersed.\footnote{164}

\subsection*{The evening of 5 February}

Hobson and the officers of \textit{HMS Herald} made their way from Busby’s house down to the beach, where their launch was pulled up on shore. Colenso accompanied Hobson, and they discussed the printing of the treaty. As they reached the boat, an elderly Māori who had just arrived from the interior rushed up to Hobson and stared at him, exclaiming, ‘Auee! he korohēke! Ekore e roa kua mate’. Hobson demanded to know from Colenso what the man said, and while Colenso at first fudged a response, Hobson pressured him into a truthful answer. Colenso wrote:

So, being thus necessitated (for there were others present who knew enough of Maori), I said, ‘He says, “Alas! an old man. He will soon be dead!”’ His Excellency thanked me for it, but a cloud seemed to have fallen on all the strangers present, and the party embarked in silence for their ship.\footnote{165}

That afternoon, according to Colenso, a rather botched gifting of tobacco was made to the assembled Māori, who themselves took over the distribution from the officer in charge. The result was, as Colenso put it, that ‘some got a large share, and some got little, and others none at all, and the whole incident led to a great deal of ill feeling. Indeed, Colenso described the mood as so tense that some participants left the hui early, fearing a repeat of the bloody fight that broke out during an unsuccessful mediation hosted by Busby at Waitangi between Te Hikutū and Whananaki Māori in 1836 (see chapter 4).\footnote{166}

That evening the rangatira camped on the Paihia side of the Waitangi River mouth at Te Tou Rangatira (where Te Tii Marae is now located), and debated whether to sign \textit{te Tiriti}.\footnote{167} The grog-sellers and traders of Kororāreka did their usual best to turn them against it. But the chiefs looked to the missionaries for advice, and Williams and his colleagues readily provided it. Williams recalled that

There was considerable excitement amongst the people, greatly increased by the irritating language of ill-disposed Europeans, stating to the chiefs, in most insulting language, that their country was gone, and they now were only tau-rekareka (slaves). Many came to us to speak upon this new
state of affairs. We gave them but one version, explaining clause by clause, showing the advantage to them of being taken under the fostering care of the British Government, by which act they would become one people with the English, in the suppression of wars, and of every lawless act; under one Sovereign, and one Law, human and divine.²⁶⁸

Samuel Ironside may have been one of the missionaries present. He wrote in his diary on 10 February that

The Governor’s proposal was to me very fair, & calculated to benefit the natives, so I gave it my sanction believing a regular colonization by government certainly much better than the irregular influx of convicts & runaway sailors, which infests the country at present.²⁶⁹

Others besides the missionaries may have attempted to persuade the chiefs to sign te Tiriti. United States Consul James Clendon, for example, told a visiting American naval commander the following month that he had advised the chiefs accordingly, and ‘it was entirely through his influence that the treaty was signed’.²⁷⁰

In the meantime, the missionaries were becoming concerned that the chiefs would all leave Waitangi without signing te Tiriti because of a shortage of food. The large group camped by the river mouth had brought with them little to eat, and the food distributed to them at the end of the first day’s meeting had gone only so far. Colenso wrote that some rangatira were saying they would be ‘dead from hunger’ if they had to wait at Waitangi until the Friday for the signing. The missionaries were anxious that the crowd not disperse, particularly as a trip to Kororareka in search of fresh supplies would bring them into contact with Pākehā eager to turn them against the treaty. Taylor therefore sent Hobson a message suggesting that the hui reconvene the following day. In his reply, Hobson appeared to Taylor to concur, in part perhaps because he attached the existing rough sheets of te Tiriti and asked Taylor to copy out Williams’s translation onto one new, large sheet of parchment. As we have noted, Taylor recorded that he then ‘sat up late copying the treaty on parchment and kept the original draft for my pains’. With Hobson’s approval apparently obtained, a message was also sent to the rangatira to convene in the morning.²⁷¹

7.6.4 Pompallier’s influence

It is not clear whether Pompallier’s advice was sought on the evening of 5 February, but we do know that he spoke with several chiefs before the Waitangi meeting convened. On 14 May 1840, he wrote (as translated) to his superior in the Church that

The natives wanted to ask me what they should do, whether to sign or not sign. Here I would enlighten the chiefs about what was involved for them and then leave them to make their own decision, remaining politically neutral myself, telling them that I was in this country with my men to work for the salvation both of those who would not sign and those who would sign. When someone proposed to buy land from them and they consulted me about whether or not to sell, I would tell them that it depended on what they wanted. Now they were asking me if it was good to cede or not cede their independence, it is theirs, once again it depends on their wishes.²⁷²

According to Lavaud:

A few Catholic chiefs, before the assembly, went often to consult him [Pompallier] and to ask what they ought to do, but he was extremely reserved about this matter; he limited himself to answering thus: ‘It is for you to consult your material interests and decide; if it concerned the salvation of your souls, then I would direct you; but here it is only a question of knowing whether it is preferable for you to recognize and obey a great European chief, rather than to live as you have lived until now. I am not sent among you to become involved in such questions. I will add, however, that you must give mature consideration before deciding, for the Europeans are strong.’²⁷³

It seems, however, that Pompallier was not quite the disinterested observer he made himself out to be. As we have noted, that was certainly Williams’s and Hobson’s suspicion. In his dispatch to Gipps written at the end of the day’s proceedings on 5 February, Hobson wrote:
It was evident, from the nature of the opposition, that some underhand influence had been at work. The chiefs Rewewah [Rewa] and Jakahra [Hakiro ?], who are followers of the Catholic Bishop, were the principal opposers, and the arguments were such as convinced me they had been prompted. Indeed, when Rewa finally signed te Tiriti the next day (see section 7.6.5), he told Hobson that Pompallier ’had striven hard with him not to sign’.175

Dr Peter Low, who studied the evidence concerning Pompallier’s involvement, concluded that it was ‘very likely that when “enlightening” the chiefs Pompallier had said that signing would mean loss of independence and reduction of power’. His 14 May letter and comments to Lavaud certainly suggest he was far from neutral. In this letter Pompallier wrote that the treaty was ‘nothing other than a crude [attempt?] by England to take possession of New Zealand’ and that ‘the request for signatures was only a pretext, the annexation was decided on’. Lavaud noted Pompallier’s fear ‘that under the new regime his mission would be compromised’, and described Hobson’s declaration of sovereignty over the South Island, for which the French had their own plans, as a ‘tour d’escamotage’ or ‘conjuring trick’. Lavaud also noted Pompallier’s belief that Williams ‘did not always – and this was doubtless deliberate – convey well the thoughts of the people speaking’, and that after Te Kēmara had spoken, ‘a chief from the Williams party was prompted to follow’ him to ‘combat’ his contentions.176

Orange’s overall view on Pompallier was similar. She concluded that, ‘Even allowing for Maori exaggeration and national or sectarian jealousies, there was some justification for suspecting the French Bishop.’ But she clearly felt that Pompallier’s advice provided a useful counterpoint to that of the CMS missionaries. As she put it, ‘It is not surprising that the Kororareka chiefs, with Pompallier as their adviser, had demonstrated a more accurate grasp of the nature and effect of the treaty than most.’177

7.6.5 Waitangi, 6 February – the signing of te Tiriti

At 9.30 am on 6 February, the missionaries set out from Paihia on the mile-and-a-half walk to Waitangi. There they found some 300 to 400 Māori ‘scattered in small parties according to their tribes’ – a smaller gathering, in Colenso’s estimation, than the day before, but still a fair number. Colenso heard them ‘talking about the treaty, but evidently not clearly understanding it’. At this stage, there was no sign of Hobson and no indication on board the Herald that his arrival was imminent. At noon, a boat came ashore from the Herald with two of Hobson’s staff on board. They were most surprised to be informed that everyone onshore was waiting for Hobson, saying, ‘His Excellency certainly knew nothing about a meeting to be held there this day.’ There had clearly been a misunderstanding, or a breakdown in communication, notwithstanding Taylor’s impression the previous evening that Hobson had not only agreed to completing the meeting in the morning but had also asked that the treaty be written out anew that night in anticipation.

Hobson was quickly fetched from the ship, and arrived without the attendance of any of the ship’s officers. Other than his hat, he was dressed in civilian clothes rather than his naval uniform of the previous day. He assured the missionaries that ‘he had not the least notion of a meeting to be held this day’. He said, however, that he was willing to accept the signatures of any chiefs who had attended the previous day’s meeting, but that he would still need to follow through on his announcement that there would be a public meeting the following day. His hurried arrival was prompted in part by his fear that refusing the chiefs’ request ‘would probably have rendered nugatory the whole proceeding, by the dispersion of the tribes before they had attested their consent by their signatures’.181

The party then proceeded to the tent, and everyone took their places. The table at which the chiefs would sign te Tiriti was arranged, and Hobson stood and announced, ‘I can only receive signatures this day. I cannot allow of any discussion, this not being a regular public meeting.’ At this point a message was received that Pompallier and his assistant, Father Servant, wished to be present at the meeting and were waiting at Busby’s house. Hobson sent for them, and they duly took the same seats they had occupied the previous day. As he took his seat, Taylor noted, Pompallier ‘professed much pleasure in giving his aid’;

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Hobson's landing at Waitangi for the Treaty signing. In this depiction, a group of Māori appear to wait for Hobson near the beach below Busby's house. Owing to a misunderstanding, Hobson did not realise that the hui had reconvened on 6 February, and he left everyone onshore waiting till the late morning.
nonetheless, Taylor felt ‘assured he came either as a spy or to get himself acknowledged as an important personage before the natives, which I think he succeeded in doing.’

Williams then read te Tiriti aloud to the rangatira from the new parchment copy made by Taylor. According to Mathew, two unnamed chiefs then stated that ‘yesterday they had not understood the matter, but that now they had made enquiry and duly considered it, and thought it was good, and they would sign it.’ But before this could happen, Pompallier asked Hobson if some guarantee could be given of freedom of religious worship in New Zealand. Hobson turned to Williams and said:

‘The bishop wishes it to be publicly stated to the natives that his religion will not be interfered with, and that free toleration will be allowed in matters of faith. I should therefore thank you to say to them that the bishop will be protected and supported in his religion – that I shall protect all creeds alike.

Williams, who was infuriated by Pompallier’s ‘effrontery’, at first protested to Hobson that there was no point in such an announcement ‘if all are to have protection alike’, but Hobson requested that he indulge Pompallier’s request. Williams thus began interpreting for the chiefs but then hesitated, and Colenso urged him to ‘write it down first, as it is an important sentence.’ Williams concurred, and took up a pencil and paper, coming up eventually with the words ‘E mea ana te Kawana, ko nga whakapono katoa, o Ingarani, o nga Weteriana, o Roma, me te ritenga Maori hoki, e tiakina ngatahiia e ia.’ This meant ‘The Governor says the several faiths [beliefs] of England, of the Wesleyans, of Rome, and also the Maori custom, shall be alike protected by him.’ Colenso wrote that he himself had persuaded Williams to include the words ‘me te ritenga Maori hoki’ (‘and also the Maori custom’) as ‘a correlative to that “of Rome”’ – or, as Phillipson put it, ‘to stress the pagan apostasy of Roman Catholicism by equating it with Maori religion.’ The subtle insult may have bypassed Pompallier, for when he was handed the piece of paper he said, in English, ‘This will do very well.’ Williams recorded that he in turn ‘read out this document, which was received in silence. No observation was made upon it; the Maories, and others, being at perfect loss to understand what it could mean.’ Pompallier then left the meeting, no doubt wanting to dissociate himself from the rest of the proceedings. The sentence has become known as the ‘fourth article’ of te Tiriti, even though it was not included on the parchment copy.

The chiefs were invited to step forward and sign, but none made any move to do so. Busby then hit upon the idea of calling out the rangatira to sign by name, and began with Hōne Heke, whom Colenso considered to be
‘the most favourable towards the treaty’ of those present. Heke was advancing towards the table when Colenso made his own remarkable intervention in proceedings. He recorded his exchange with Hobson as follows:

Mr Colenso: ‘Will your Excellency allow me to make a remark or two before that chief signs the Treaty?’
The Governor: ‘Certainly, sir.’
Mr Colenso: ‘May I ask your Excellency whether it is your opinion that these Natives understand the articles of the treaty which they are now called on to sign? I this morning’ –
The Governor: ‘If the Native chiefs do not know the contents of this treaty it is no fault of mine. I wish them fully to understand it. I have done all I could do to make them understand the same, and I really don’t know how I shall be enabled to get them to do so. They have heard the treaty read by Mr Williams.
Mr Colenso: ‘True, your Excellency; but the Natives are quite children in their ideas. It is no easy matter, I well know, to get them to understand – fully to comprehend a document of this kind; still, I think they ought to know somewhat of it to constitute its legality. I speak under correction, your Excellency. I have spoken to some chiefs concerning it, who had no idea whatever as to the purport of the treaty.’

Mr Busby here said, ‘The best answer that could be given to that observation would be found in the speech made yesterday by the very chief about to sign, Hoani Heke, who said, “The Native mind could not comprehend these things: they must trust to the advice of their missionaries.”’

Mr Colenso: ‘Yes; and that is the very thing to which I was going to allude. The missionaries should do so; but at the same time the missionaries should explain the thing in all its bearings to the Natives, so that it should be their own very act and deed. Then, in case of a reaction taking place, the Natives could not turn round on the missionary and say, “You advised me to sign that paper but never told me what were the contents thereof.”’

The Governor: ‘I am in hopes that no such reaction will take place. I think that the people under your care will be peaceable enough: I’m sure you will endeavour to make them so. And as to those that are without, why we must endeavour to do the best we can with them.’

Mr Colenso: ‘I thank your Excellency for the patient hearing you have given me. What I had to say arose from a conscientious feeling on the subject. Having said what I have I consider that I have discharged my duty.’

Once again, there is no suggestion anywhere that this discussion was translated for the benefit of the assembled chiefs.

Loveridge found it odd that no other witnesses mentioned this exchange, noting particularly its absence from Felton Mathew’s relatively full account. He speculated that the conversation might in fact have been a more private discussion between Colenso and Hobson than Colenso’s account suggested. However, he acknowledged that it must indeed have taken place, since Busby and another CMS missionary read Colenso’s notes shortly afterwards and did not contradict them. Also, Colenso wrote to the CMS secretary in England on 13 February that

I believed, & do believe that the Natives did not fully understand what they signed; believing this & finding no other person would, I took upon me to address His Excellency at the Public Meeting, when the first person was called up to append his Name to the document I asked His Excellency whether His Excellency supposed that the Native Chiefs knew what they were about to do? &c &c His Excellency in reply stated, that he had done his best to enable them to understand the same &c &c.

Moreover, it seems that it would have been entirely in keeping with Colenso’s character to speak out at such a moment. His recent biographer, Peter Wells, wrote that, even though Colenso was merely a catechist and ‘unimportant . . . in the scheme of things’, he ‘often spoke up’ and ‘effectively ruined his own career trajectory by continually speaking up’. According to another biography, Colenso was ‘inflexible’, ‘self-righteous’, and an uncompromising critic of the missionary hierarchy. His debate with Hobson no doubt greatly displeased Williams; Colenso wrote in his journal that he (Colenso) spoke ‘much against the wishes of my missionary brethren’. Williams himself later wrote, perhaps in reference to Colenso’s interjection,
that ‘After some little discussion and trifling opposition’ the treaty-signing began. He added, ‘No chief raised any objection that he did not understand the treaty . . . though some held back under the influence of the Romish Bishop and his priests.’

With Colenso having backed down, Hōne Heke at last stepped forward and signed te Tiriti. He was followed by approximately 42 to 45 other chiefs (it is difficult to be certain from the marks and signatures on the parchment how many signed on 6 February itself), including some who had not been present during the previous day’s proceedings. Three were women: Takurua, Te Marama, and Ana Hamu. Williams noted that ‘ Certain chiefs under the influence of the Popish Bishop and Priests stood aloof’, and Hobson privately expressed his fear that they would not sign. But Williams ‘cautioned him against showing any anxiety’. Eventually, both Te Kēmara and Rewa signed. When Te Kēmara came forward, he explained to Hobson that Pompallier had told him ‘not to write on the paper, for if he did he would be made a slave’ (‘kei tuhituhi koe ki te pp [pukapuka] ki te mea ka tika taurekarekatia koe’). Rewa proved even more reluctant, but was eventually persuaded to sign by fellow rangatira and some of the CMS missionaries. As noted, he too told Hobson when he signed that Pompallier had strenuously counselled against it.

Carpenter felt sure that Hobson had been coached to say this by Williams. The meeting closed with Patuone presenting Hobson with a greenstone mere ‘expressly’ for Queen Victoria (no doubt as a gift from one rangatira to another) and three cheers being given for ‘the Governor’. At Hobson’s request, Colenso arranged the distribution of gifts to all the signatories. This went much better than the previous day’s handing out of tobacco, with Colenso giving each signatory two blankets, some potatoes, and a quantity of tobacco.

Overall, Colenso noted the absence of many chiefs ‘of the first rank’ amongst the signatories. Indeed, those whose names remained notably absent included Wai, Kawiti, Pōmare, Te Ururoa, Waikato, Wharepoaka, and Tāreha (although Tāreha’s son Mene appeared to sign on his behalf – see chapter 9 on this matter). Colenso also noted that none of the signatories had come from anywhere further away than Hokianga or Whangaruru. This was not enough to suppress Hobson’s sense of achievement. After dining on board the Herald with his officials and Patuone that evening, he gleefully wrote to Gipps that, as the acquiescence of these chiefs, 26 of whom had signed the declaration of independence, must be deemed a full and clear recognition of the sovereign rights of Her Majesty over the northern parts of this island, it will be announced by a salute of 21 guns, which I have arranged with Captain Nias shall be fired from this ship to-morrow.

As it transpired, it was as well for Hobson that the hui reconvened on 6 February, for the next day was extremely wet – so torrential was the rain, in fact, that it precluded even anyone leaving the ship. Colenso did not think a hui could have been held in such conditions and, if it had been necessary to wait until 8 February to resume proceedings, many of the chiefs would have given up and returned home. The 21-gun salute Hobson had requested had to be delayed until 8 February – Nias’s log recorded that the salute was fired at 1 pm ‘to commemorate the cession to Her Majesty of the rights of sovereignty of New Zealand.’ The idea of holding a further public meeting at Waitangi was quietly abandoned. The importance Hobson...
placed upon the signing at Waitangi is evident in the letter he wrote Bunbury on 25 April:

The treaty which forms the base of all my proceedings was signed at Waitangi on the 6th February 1840, by 52 chiefs, 26 of whom were of the confederation, and formed a majority of those who signed the Declaration of Independence. This instrument I consider to be *de facto* the treaty, and all the signatures that are subsequently obtained are merely testimonials of adherence to the terms of that original document.\(^{200}\)

7.7 **The Signing of te Tiriti at Waimate**

In search of further signatures, Hobson and his official party – including Nias, Henry Williams, and Charles Baker – rode inland from Waitangi on the morning of 10 February. They covered the 15 miles to the CMS mission station at Waimate by lunchtime, and were met by Taylor, the mission head, and his assistants George Clarke and Richard Davis. That evening a meeting was held at which six further rangatira signed te Tiriti.\(^{201}\) There is no record of anyone explaining the treaty’s contents, but it is likely
that those Waimate chiefs who had signed at Waitangi on 6 February (including Reweti Atuahaere, Wiremu Hau, and Hara) had already given an account of its provisions to those who had remained at Waimate.202

7.8 Ngā Whaikōrero o Mangungu
The next morning, Hobson and his party – without Williams and Baker, but now joined by Taylor and Clarke – set out for Hokianga. There, at the Wesleyan mission station at Mangungu on the upper reaches of the harbour, a large hui had been notified for the following day (12 February). The party’s journey from Waimate took them across cultivated land and through dense bush until they reached the settlement of Waihou, from where they travelled onwards in a flotilla of waka and brightly decorated boats provided by the local settlers and Wesleyan missionaries. They were even accorded a 13-gun salute as they passed the house of Thomas McDonnell, the Additional British Resident, at Hōreke. At four o’clock, they reached Mangungu, where Hobson addressed the local Pākehā and invited them all to attend the next day’s meeting.203

A large crowd gathered for the hui. Hobson wrote that 3,000 Māori, including some 400 to 500 rangatira of varying ranks, had assembled near the mission station. Taylor thought that the crowd attending the meeting itself totalled 500. A table and chairs were set out for the official party on the house’s veranda, and the rangatira were invited to gather on the lawn in front of them (a rather limited space before the land falls steeply down to the Hokianga Harbour). At first, it seems that they were reluctant to step forward – Hobson wrote that he was ‘mortified to observe a great disinclination on the part of the chiefs to assemble’. While the rangatira eventually did come forward, Hobson ‘could not fail to observe that an unfavourable spirit prevailed amongst them’.204

Hobson began in similar fashion to his address at Waitangi:

I entered into a full explanation to the chiefs of the views and motives of Her Majesty in proposing to extend to New Zealand her powerful protection. I then, as before, read the treaty [in English], expounded its provisions, invited discussion, and offered elucidation.

On this occasion, he had as his interpreter the Reverend John Hobbs, an experienced Wesleyan missionary and expert translator of Māori. Like their CMS counterparts, the Wesleyans were under instruction to give Hobson every assistance.205

Hobson’s foreboding about the chiefs’ general mood was borne out soon enough in their speeches, in which he encountered a ‘pre-determination to oppose me’. As he explained to Gipps:

The New Zealanders are passionately fond of declamation; and they possess considerable ingenuity in exciting the passions of the people. On this occasion all their best orators were against me, and every argument they could devise was used to defeat my object. But many of their remarks were evidently not of native origin, and it was clear that a powerful counter-influence had been employed.

Hobson indeed blamed ‘ill-disposed Europeans’ (in particular Pompallier, the trader Frederick Maning, and the escaped convict Jacky Marmon) for the chiefs’ opposition. But it seems that the initiative had been seized more by Hokianga Māori, who had solicited a range of opinions about te Tiriti in anticipation of Hobson’s visit. In summing up the day’s proceedings, Mathew wrote that the chiefs had displayed ‘much tact, good sense and eloquence’, and Orange described their speeches as demonstrating that they had taken the time to ‘become informed’ about the treaty’s ‘provisions and effects’. Several of the rangatira had accompanied the missionaries Ironside and Warren to Waitangi the week before. At one end of the spectrum, the likes of Nene and Patuone had already signed and now supported Hobson at Mangungu; at the other, rumours were circulating that the Queen had sent Hobson to take the country as Australia had been taken from the Aboriginals and that the chiefs (according to Hobbs) would ‘lose both their dignity and their country’.206
A more limited record than at Waitangi exists of the chiefs’ speeches at Mangungu, where a summary of them was made by Taylor. Taylor forwarded his account of both the Mangungu and Kaitaia hui to the CMS in October 1840, with his covering letter stating, ‘I send you a copy of the notes which I took at the two great meetings held at Hokianga and Kaitaia.’ Then, in January 1841, a near-identical but somewhat tidier account of the Mangungu speeches was published in *The New Zealand Journal* and described as

Notes of a Meeting at Hokianga, from the Original taken on the spot by [Willoughby] Shortland, Esq. rendered into Anglo-New Zealand, by Mr Wade, of the Church Mission, February 1840.

Later, Shortland sent a more abbreviated version as an attachment to a letter of 18 January 1845 to Lord Stanley (as well as an account of the Kaitaia speeches, which again was very similar to Taylor’s original notes). In the letter itself, Shortland wrote, ‘I noted down the speeches of the chiefs, copies of which I have the honour to enclose.’ But the notes Taylor sent the CMS and the Shortland versions seem far too similar to be of separate origin. While we cannot be certain, it is possible that Taylor took the notes and provided a copy to Shortland, who had them edited for clarity by Wade and then published them, claiming authorship himself. If this is correct, Shortland was convincing. Salmond, for example, told us that the ‘only’ record of the chiefs’ speeches was made by Shortland. 207

With all that in mind, we rely here on Taylor’s notes.
of the Mangungu speeches. Taylor himself would have relied on Hobbs’ translation, rather than the chiefs’ own words in Māori, for he was not sufficiently competent in the language to have translated them directly. Orange (who was aware of Taylor’s account, as well as Shortland’s, but did not note their striking similarity) reasoned that, because the hui lasted for hours, ‘Shortland and Taylor evidently recorded only the most significant speeches.’

The first speaker in response to Hobson was Makoare Taonui, the leading rangatira of the Popoto hapū in the district around Utakura and Hōreke since the death of his older brother Muriwai in 1828 (and thus, like Te Kēmara at Waitangi, the representative of the tāngata whenua at the hui). He began by asking for Hobson’s speech to be written down, to which Hobson replied that the treaty was indeed written and copies would be circulated. Taonui then spoke firmly against Hobson having any control over Māori:

We are glad to see the Governor let him come to be a Governor to the Pakeha’s as for us we want no Governor we will be our own Governor. How do the Pakehas behave to the black fellows of Port Jackson? They treat them like dogs, see a Pakeha kills a pig Black Fellow comes to the door eats the refuse.

Taonui, who had signed both the 1831 petition to King William iv and he Whakaputanga, had been to Sydney in 1830 and presumably seen the treatment of the Aboriginals first hand. His taking of the name Makoare may have happened after he worked his passage to Sydney on board the brig Governor Macquarie. He spoke up several times during the hui, as we shall see.

The next speaker was Wiremu Tana Papahia, a chief from Whirinaki further west along the southern shore of the harbour, who had also signed he Whakaputanga. In a classic illustration of the need for care in interpreting the chiefs’ words and actions, he too opposed Hobson, despite having already signed te Tiriti at Waitangi:

What is the Governor come for? He indeed! He to be high, very high, like Maunga Taniwa (the higher mountain my neighbourhood) and we low on the ground, nothing but little hillocks, no no no let us be equal. Why should one hill be high and another low? This is bad.

The third speaker was presumably Mohi Tāwhai, whom Taylor referred to as ‘Moses’. Tāwhai was a chief of Te Māhurehure (and another signatory to he Whakaputanga) who lived around the Waimā River. He also spoke more than once, but his first comment (at least as it was recorded by Taylor) was brief:

How do you do Mr Governor all we think is that you are come to deceive us. The Pakehas tell us so and we believe what they say, what else?

Taonui then spoke again, also briefly:

Let us know what has been said. We are not willing to give up our land. It is from Earth we obtain all things, from Earth is all our happiness. The land is our father. The land is our chieftainship we will not give it up.

The next speaker was Kaitoke, a Te Hikutū rangatira living at Whirinaki. His daughter had married Maning, who had taken up residence at Onoke, which was located at the tip of a neck of land in the mid-reaches of the harbour. Kaitoke had originally been based at Mangamuka, but had shifted after a dispute in 1837 with Patuone, Nene, and others over Kaitoke’s shooting of two Christian converts. His speech was reminiscent of that of Wai at Waitangi:

No no Mr Governor you shall not square out our land and sell it. See there you came to our country looked at it stopped, came up the river, and what did we do? We gave you potatoes, you gave us one fish hook that is all! We gave you land, you gave us one pipe, that is all! We have been cheated. The Pakehas are thieves, they tear one blanket, make two pieces sell it for two blankets. They buy a pig for one pound in gold sell it for three. They get a basket of potatoes for one sixpence sell it for two shillings. This is all they do steal from us this is all.
At this point, a chief, whom Taylor recorded as Maihai, said, ‘Very good! Let Queen Victoria be the great chief here. Yes. But let one of us, us natives go to England to be Queen there.’

Taonui then rose again and demonstrated what Salmon described as ‘an astute analysis of Imperial strategy’ and Orange called ‘shrewd perception’:

Ha. Ha. Ha. This is the way you do, first your Queen sends the missionaries to New Zealand to put things in order, gives them £200 a year. Then she sends Mr Busby to put up a flag, gives him £500 a year and £200 to give to us natives now she sends a governor and gives him £2000 a year.

Hobson was convinced that Taonui was being coached to make such statements by some meddlesome Pākehā, and so he replied, ‘Speak your own sentiments not what bad men have told you.’ Taonui had a ready answer for this, however: ‘I do. Have I not been at Port Jackson? I know Governors have salaries.’ Hobson recorded his own version of this exchange, which (it appears) confused Taonui with Papahia and omitted any reference to Taonui’s penetrating comeback:

Towards the close of day one of the chiefs, Papa Haiga, made some observations that were so distinctly of English origin, that I called on him to speak his own sentiments like a man, and not to allow others who were self-interested to prompt him: upon which he fairly admitted the fact, and called for the European who had advised him to come forward, and tell the Governor what he had told him.217

It was at this juncture, therefore, that Maning stepped forward from the back of the crowd. Hobson recorded their exchange as follows:

I asked his motive for endeavouring to defeat the benevolent object of Her Majesty, whose desire it is to secure to these people their just rights, and to the European settlers peace and civil government. He replied, that he conscientiously believed that the natives would be degraded under our influence; that, therefore, he had advised them to resist: admitting, at the same time, that the laws of England were requisite to restrain and protect British subjects, but to British subjects alone should they be applicable.

I asked him if he was aware that English laws could only be exercised on English soil. He replied, ‘I am not aware: I am no lawyer:’ upon which I begged him to resume his seat; and told the chiefs that Mr Manning had given them advice in utter ignorance of this most important fact; adding, ‘If you listen to such counsel, and oppose me, you will be stripped of all your land by a worthless class of British subjects, who consult no interest but their own, and who care not how much they trample upon your rights. I am sent here to control such people, and I ask from you the authority to do so.’

Hobson claimed that this pivotal exchange – which was not recorded by Maning himself in his later account (see below) – quite changed the course of the proceedings: ‘This little address was responded to by a song of applause; several chiefs, who agreed with me, sprung up in my support, and the whole spirit of the meeting changed.’218 Taylor did mention Maning’s contribution, although not Hobson’s rebuke. He also placed Maning’s entry earlier, after Mohi had spoken and before Taonui spoke for a second time. According to Taylor:

Here an interruption took place by a Mr Manning who on the Governor asking who had said so came forward and requested to explain what he had told them; he owned that he had told them to govern themselves and stated that he thought it would be best for them to do so but it would be good for them to allow the Governor to govern the Whites.

It is unclear just what motivated Maning to urge Hokianga Māori against the treaty – he may, for example, have been less concerned for Māori interests than for his own preference to live free of the restrictions of British authority.219 It is also a moot point whether he shrugged off Hobson’s rebuke or was humiliated by it.220 Either way, in his dispatch to Gipps, Hobson smeared Maning’s name, acknowledging he was ‘not of a degraded class’ but describing him nonetheless as ‘an adventurer, who lives with a native woman; has purchased a considerable
quantity of land and being an Irish Catholic is an active agent of the bishop. Maning may well have been an adventurer, but his land holdings were by no means considerable, and he was in fact of Irish Protestant stock and certainly no agent of Pompallier. He was suspected later in 1840 of fomenting trouble among Kaipara Māori and had to write Hobson ‘a grovelling letter’ denying the rumours. Unsurprisingly, when he applied for a government position in January 1841, he was turned down.221

Maning had the last word with Hobson, in a way, with the publication in 1862 of his A History of the War in the North of New Zealand against the Chief Heke. He wrote the account as if it were the recollections of an old chief (who is clearly based on Kaitoke), as told to an (anonymous) ‘Pakeha–Maori’, and it contains several pages relating to the signing of te Tiriti at Mangungu. These contrast with Hobson’s version of the signing in many ways – for example, by suggesting that the hungry and suspicious chiefs told Hobson they would not sign, and were in the act of leaving (as Hobson’s face turned ‘very red’), until some Pākehā went among them and told them that Hobson would pay them once they had signed. Then the chiefs ‘all began to write as fast as we could’.222

The reliability of this account has been questioned by historians, and Crown witnesses in particular also dismissed it as exaggerated and inaccurate. Parkinson, for example, called it ‘plainly a fabrication by Maning himself with some amusing literary touches’, and Professor Alan Ward added that he was ‘highly suspicious of anything Maning said or wrote’.223 Salmond, by contrast, argued that ‘on a number of key points it appears to be accurate, and perhaps more so than Hobson’s doggedly positive version of the proceedings’. It is true that Maning wrote about real events, but the question is whether he did so from his experiences at the time or from consulting others’ accounts. As Parkinson pointed out, Maning’s work was published many years later, and may well have drawn on Hobson’s and Taylor’s (or, as published, Shortland’s) accounts for some of its detail. Ward also thought the fact that A History of the War covered actual events did ‘nothing to enhance the worth of Maning’s so-called satire’.224

Our conclusion on Maning is that we simply do not know what he based his account on and, given what we know of his reputation, we think it wise not to place too much reliance on him.

In any case, after Maning had been put in his place by Hobson, the speeches continued. The next speaker was Ngaro. He was the first to speak in Hobson’s favour, and recognised that his might be a lone voice:

Welcome, welcome, welcome Governor. Here are the missionaries. They come to the land. They bought land and paid for it. Else I would not have had them. Come come. I will have the Governor, no one else perhaps will say yes but I Ngaro I will have him. That is all I say.
Mohi Tāwhai then spoke again, giving what Salmond regarded as ‘muted but sceptical’ support for Hobson:

Whence does the governor get his authority. Is it from the Queen? Whence is it. If it be from the Queen let him come what power has he? Well let him come let him stop all the lands from falling into the hands of the Pakehas, hear all ye Pakehas, perhaps you are Rum drinkers, perhaps not, hear what is said by us, I want all to hear. It is quite right for us to say what we think, it is right for us to speak, let the tongue of every one be free to speak. But what of it? What will be the end? Our sayings will sink to the bottom like a stone, but your sayings will float light, like the wood of the w[h]au tree and always remain to be seen. Am I telling lies?

Owens considered Tāwhai’s reference to the Māori words sinking like a stone to be ‘a prescient remark’, for ‘today the written treaty is constantly worked over for all the meaning which can be extracted’, while the ‘speeches and verbal understandings are only partially preserved and then only because they happened to be written down’. This is unfortunately even more true of Mangungu than Waitangi.

Kaitoke then also spoke a second time, calling for the rangatira to be permitted to ‘choose a Governor for ourselves’. He was followed by the chief Rangatira of Ngāti Oneone at Pākanae, the brother of Moetara, who had signed both the 1831 petition and he Whakaputanga. Rangatira also welcomed Hobson:

Welcome Mr Governor. How do you do. Who sold our lands to the Pakehas? It was we ourselves. By our own free will, we will let it go and it is gone, and what now? What good is there in throwing away our speech, let the Governor sit for us.

Mohi Tāwhai then spoke for a third time, saying,

Suppose the land has been stolen from us, will the governor enquire about it? Perhaps he will, perhaps he will not, if they have acquired the land by fair purchases let them have it.

Salmond made the point that, as with Rangatira’s reference to the ‘sale’ of lands, it is impossible to know what Māori terms were used to describe these land transactions. Salmond guessed that at this point Hobson assured the gathering that all land transactions would be inquired into and only those found to be fair would be upheld. Control and ownership of land was clearly becoming an issue of some importance at the hui, as it had at Waitangi.

Taonui then spoke for the last time, now expressing support for Hobson (which Salmond believed arose from Hobson’s likely reply to Mohi Tāwhai). He said:

Lo! now for the first time my heart has come near to your thoughts. How do you do, how do you do. I approach to you with my heart, you must watch over my children let them sit under your protection. Here is my land too you must take care of it. But I am not good for you to sell it. What of the land that is sold. Can my children sit down on it? Can they? Eh?

While Taonui was uncertain about ongoing rights of occupancy on land transacted with Pākehā, he would accept Hobson as a protector of his land. Taonui, Nene, Patuone, and Rangatira then sang Hobson a song of welcome.

Papahia then asked if it was right that two men should own all the land between north Cape and Hokianga, a reference in part to Taylor’s very recent ‘purchase’ of 50,000 acres at the northern tip of Muriwhenua. William Puckey explained that the land was held in trust by the CMS for Māori use and asked if Papahia could cite any case where the CMS had withheld land from Māori. Papahia replied, ‘It is only the work of the tongue. I do not know it myself. I will always ask the Governor if it be right.’

Nene himself spoke next, but only to repudiate the notion that he had made any agreement to sell land to de Thierry. He was followed by John King (or Hōne Kingi Raumati), a nephew of Muriwai. The latter had accepted the escaped convict, Jacky Marmon, by marrying him to John King’s daughter. Hobson suspected that Marmon was one of those actively undermining him, but John King in fact spoke in his favour:
My speech is to the governor this is what I have to say, it was my father, mine, it was Muriwai told me to behave well to the Pakehas, listen this is mine you came and found us poor and destitute. We; on this side say stay, sit here, we say welcome, let those on the other side say what they like. This is ours to you stay in peace. Great has been your trade with our land! What else do you come for but to trade? Hear me. I also brought you on my shoulders, I say come, come now it is for you to direct us and keep us in order. That is all mine to you. If any one steals any thing now there will be a payment for it. I have done my speech.

Salmond pointed out that it is impossible to know whether, in asking Hobson to ‘keep us in order’, King used for ‘us’ the inclusive pronoun ‘tātou’, meaning everyone (that is, settlers included, thus implying relations between settlers and Māori) or the exclusive pronoun ‘mātou’, meaning (in this case) Māori alone, including their internal affairs. 

Taylor recorded two more speeches. The first, by an unnamed chief, was also in favour of Hobson:

How do you do? Here am I a poor man, and what is this place? a poor place. But this is why you have come to speak to us to day let the Pakehas come. I have nothing to say against it. There is my place. It is good land, come and make it your sitting place you must stay with me, that is all.

The final speech was made by Daniel Kahika, who was mission-trained and literate. He said:

What indeed! Do you think I will consent to other people selling my land? No truly. If my land is to be sold it is for me to sell it myself. But no I will not sell my land, I do not like the Pakehas to teaze me to sell my land. It is bad I am quite sick with it. This is my speech.

The speeches had been under way from the morning until nearly six in the evening. Despite all the comments in the Lieutenant-Governor’s favour, it seems that the rangatira were still not ready to commit themselves. Hobson of course believed that his own rebuttal of Maning had been decisive, but Hobbs contended that – as at Waitangi – it was missionary influence that ultimately made the difference. For example, Hobbs later recalled how important had been the repeated assurances and promises he gave throughout the hui on Hobson’s behalf. These were that the Queen did not want the chiefs’ land; that her object was to control her subjects living in New Zealand and punish those guilty of crimes; and that, if the chiefs signed, they had Hobson’s ‘most solemn assurance’ (Hobbs’s emphasis) that ‘truth and justice would always characterize the proceedings of the Queen’s Government’. Hobbs explained in fact that a senior Christian chief turned to the missionaries at the conclusion of the speeches and asked for their opinion. The missionaries replied that the treaty would be good for Māori, and at that point the signing began.

The chiefs apparently stepped forward with such enthusiasm that Hobson had difficulty restraining ‘those who were disentitled by their rank from inserting their names’. The signing continued until midnight, when Hobson counted ‘upwards of 56 signatures’. As at Waitangi on 6 February, the exact number who signed that evening at Mangungu is uncertain. Orange, for example, calculated 70 in her 1987 book, albeit only with 43 witnessed, and in her 2004 Illustrated History suggested ‘sixty or more’ signatories and gave a list of 64 names. In any event, Hobson had surpassed his tally at Waitangi and was clearly pleased with himself.

7.9 The Events of 13 and 14 February 1840

Late on the night of 12 February, Hobson accepted a request from the chiefs to attend the feast he had arranged for them the next day, and so abandoned his plans to head westward to the harbour heads to raise the Union Jack. He recorded the scene as follows:

At 10 o’clock on the 13th, I went by appointment to the Howrogee [Hōreke], and there, 1000 as fine warriors as were ever seen, were collected in their best costume. The native war-dance, accompanied by those terrific yells which are
so well qualified to express the natural ferocity of the New Zealand character, was exhibited for my amusement; the guns from a small European battery were fired, and the natives discharged their muskets and dispersed under three hearty cheers from my party. The feast which I had ordered to be prepared, consisting of pigs, potatoes, rice, and sugar, with a small portion of tobacco to every man was partaken of by all in perfect harmony. It was estimated that of men, women, and children, there were 3000 persons present.  

Hobson wrote to Gipps on 17 February 1840 that, with the signing at Waitangi, 'the sovereignty of Her Majesty over the northern districts was complete.' The 'adherence of the Hokianga chiefs,' he added, 'renders the question beyond dispute.' Notwithstanding the efforts of Marmon, Maning, and Pompallier, he had 'obtained the almost unanimous assent of the chiefs,' with only two Hokianga rangatira refusing to sign.  

But Hobson’s boast was contradicted by an attempted withdrawal of support given the previous day. As his party was leaving Mangungu on 14 February, 'two tribes of the Roman Catholic Communion requested that their names might be withdrawn from the treaty.' Taylor gave a fuller account of what happened:

We had not proceeded much further before we were overtaken by a large canoe which brought a letter signed by 50 individuals stating that if the Governor thought that they
had received the Queen he was much mistaken and then they threw in the blankets they had received into our boat; the governor seemed much annoyed.240

Hobson ascribed this protest to ‘the same mischievous influence I before complained of’, reassuring Gipps that he ‘did not, of course, suffer the alteration’.241 Nicholson thought there were ‘strong indications’ that Kaitoke was behind the letter and that Maning had helped him write it,242 although it is not clear whether this notion is based on Maning’s History of the War or some other information.243 Maning’s old chief related that

we went ashore at the house of a Pakeha, and got a pen and some paper, and my son, who could write, wrote a letter for us all to the Governor, telling him to take back the blankets, and to cut our names out of the paper; and then my two brothers and my sons went back and found the Governor in a boat about to go away; he would not take back the blankets, but he took the letter. I do not know to this day whether he took our names out of the paper.244

We return to this important matter in chapter 10. We note that, just before embarking in his boat, Hobson had also been confronted by another dissatisfied signatory. As Taylor recorded:

The Governor was pestered with the chief who made such a favour of giving his name the night before; he wanted some more blankets . . . and then he asked for money, the Governor gave him 5s which he afterwards refused to take and they were left on the beach.245

7.10 Further Signatures are Gathered; Sovereignty is Asserted
After their trip to the Hokianga, Hobson and his party returned to the Bay of Islands, albeit leaving Nias in Waimate to recover from influenza. Hobson had Colenso print 200 copies of te Tiriti at Paihia, and began making his plans for obtaining signatures further south. He explained his intention to Gipps on 17 February:

to issue a proclamation announcing that her Majesty’s dominion in New Zealand extends from the North Cape to the 36th degree of latitude. As I proceed southward and obtain the consent of the chiefs, I will extend these limits by proclamation; until I can include the whole of the islands.

Hobson drew up the proclamation but then decided not to issue it, in case it ‘might operate unfavorably on my negotiations’.246 He may well have thought that it would have irritated rangatira who had not signed, such as those of Muriwhenua. In any event, his planned proclamation reflected the reality that, under British law, signatures on the treaty did not transfer sovereignty on their own, but had to be followed up by proclamation (see chapter 6).

On 17 February, Pōmare signed te Tiriti. This was an important development because, as Colenso noted, Pōmare was one of the several Bay of Islands chiefs of the highest rank who did not sign on 6 February. However, the visiting American naval commander, Charles Wilkes, thought that Pōmare had little understanding of what he was agreeing to sign and he likely saw his assent as something that would enhance his personal prestige.247 In any event, Pōmare’s signature was one of several that were made after the main signing ceremonies. Kawiti, for example, signed at a meeting with Hobson in May, although he was still angry about the botched distribution of tobacco at Waitangi on 5 February and fearful that, in adding his mark, he was signing away his land.248 Wai, by contrast, maintained his steadfast opposition and never signed.

Hobson set out in the Herald on 21 February, making first for the Waitematā Harbour, where he planned both to gather signatures and assess the prospects of the harbour for a future settlement. On 1 March, however, he was incapacitated by a stroke which paralysed his right side. After some signatures were obtained at Tāmaki-makaurau on 4 March, the Herald returned to the Bay of Islands so that Hobson could recuperate. He thus had to abandon his plans to circumnavigate the entire country, gathering signatures as he went, and instead Shortland arranged for others to organise signings. To this end, additional copies of the treaty were written and either sent out to
missionaries stationed near Māori communities or taken on extended journeys. In all, over a period of some six months, nine copies of the treaty (including one printed copy and one sheet with the treaty text in English) were signed at about 50 meetings around the coast of both islands by more than 500 rangatira. Only 39 rangatira signed the English text (at Waikato Heads and Manukau Harbour), it being the text offered for signature.²⁴⁹

Hobson himself recovered quickly but spent three weeks in convalescence at the Waimate mission station before returning to the Bay of Islands. There, he received further signatures, as we have seen. But in May he learnt that the New Zealand Company settlers at Port Nicholson had in March established their own ‘government’. They had done this without legal authority and knowing full well the Crown’s intentions regarding sovereignty. They had a written constitution, which had been drawn up in England in September 1839 and was ‘ratified’ in March 1840 by the signatures of the ‘Sovereign Chiefs of the district of Wanga nui Atera or Port Nicholson’. It is most unlikely that these rangatira understood its contents any better than they had William Wakefield’s parchment
The Negotiation and Signing of Te Tiriti

Hobson was alerted to this ‘government’ by a ship’s captain who had been confined at Port Nicholson in April 1840 for an infringement of its laws and had made straight for the Bay of Islands after escaping custody. Hobson regarded the Port Nicholson settlers’ actions as treasonable.

On 21 May, immediately upon receiving the news, Hobson responded with proclamations of Her Majesty’s sovereignty over the North Island by cession (in his accompanying dispatch he cited the ‘universal adherence’ of the chiefs) and over the South Island on the basis of Cook’s discovery. He also dispatched Shortland and a body of soldiers and mounted police to Port Nicholson to compel compliance.

The South Island proclamation took effect from that date – and had to be reissued because Hobson omitted the grounds for the assertion on sovereignty over the North Island by cession (in his accompanying dispatch he cited the ‘universal adherence’ of the chiefs) and over the South Island on the basis of Cook’s discovery. He also dispatched Shortland and a body of soldiers and mounted police to Port Nicholson to compel compliance.

PROCLAMATION.

IN the Name of Her Majesty VICTORIA, Queen of the United Kingdom of Great Britain and Ireland. By William Hobson, Esquire, a Captain in the Royal Navy, Lieutenant-Governor in New-Zealand.

WHEREAS, by a Treaty bearing Date the Fifth day of February, in the Year of Our Lord, One Thousand Eight Hundred and Forty, made and executed by me WILLIAM HOBSON, a Captain in the Royal Navy, Consul, and Lieutenant-Governor in New-Zealand, vested for this purpose with full Powers by Her Britannic Majesty, of the one part, and the Chiefs of the Conference of the United Tribes of New-Zealand, and the Separate and Independent Chiefs of New-Zealand, not Members of the Conference, of the other; and further ratified and confirmed by the adherence of the Principal Chiefs of this Island of New-Zealand, commonly called “The Northern Island”; all Rights and Powers of Sovereignty over the said Northern Island were ceded to Her Majesty the Queen of Great Britain and Ireland, absolutely and without reservation.

Now, therefore, I, WILLIAM HOBSON, Lieutenant-Governor of New-Zealand, in the Name and on the Behalf of Her Majesty, do hereby Proclaim and Declare, to all Men, that from and after the Date of these Presents, the full Sovereignty of the Islands of New Zealand, extending from Thirty-four Degrees Thirty Minutes North 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.

Given under my Hand at Government House, RUSSELL, Bay of Islands, this Twenty-first day of May, in the Year of Our Lord One Thousand Eight Hundred and Forty.

(Signed,) WILLIAM HOBSON, Lieutenant-Governor.

By His Excellency’s Command, (Signed,) WILLOUGHBY SHORTLAND, Colonial Secretary.

PAIHIA: Printed at the Press of the Church Missionary Society.

PROCLAMATION.

IN the Name of Her Majesty VICTORIA, Queen of the United Kingdom of Great Britain and Ireland. By William Hobson, Esquire, a Captain in the Royal Navy, Lieutenant-Governor of New-Zealand.

WHEREAS I have it in Command from Her Majesty Queen VICTORIA, through Her principal Secretary of State for the Colonies, to assert the Sovereign Rights of Her Majesty over the Southern Islands of New-Zealand, commonly called “The Middle Island”, and “Stewart’s Island”; and, also, the island commonly called “The Northern Island,” the same having been ceded in Sovereignty to Her Majesty.

Now, therefore, I, 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 North 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.

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(Signed,) WILLIAM HOBSON, Lieutenant-Governor.

By His Excellency’s Command, (Signed,) WILLOUGHBY SHORTLAND, Colonial Secretary.

PAIHIA: Printed at the Press of the Church Missionary Society.

Facsimiles of Hobson’s 21 May 1840 proclamations of sovereignty over New Zealand, which were printed at Paihia by the Church Missionary Society. In the haste to draw these up, the North Island proclamation wrongly referred to the treaty as being dated 5 February, while the proclamation covering the South and Stewart islands omitted any grounds for Hobson’s assertion.
### Signing locations of the Treaty of Waitangi

<table>
<thead>
<tr>
<th>Location</th>
<th>Date</th>
<th>Signatures</th>
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<tr>
<td><strong>Waitangi</strong></td>
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<tr>
<td>1 Waipu</td>
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<td>1b Waitangi</td>
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<td>1c Waitangi</td>
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<td>Russell</td>
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<tr>
<td></td>
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<td>6d Whakatane</td>
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<td>12</td>
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### Waitangi Tribunal, Sep 2014, NHarris

**Location**
- **7** Herald–Bunbury: 27 total
  - 7a Coromandel: 4 May 4
  - 7b Mercury Islands: 7 May 2
  - 7c Akaroa: 30 May 2
  - 7d Ruapehu: 10 June 3
  - 7e Otago: 13 June 2
  - 7f Cloudy Bay: 17 June 9
  - 7g Manua (offshore): 19 June 2
  - 7h Hawke’s Bay: 24 June 3
- **8** Henry Williams: 132 total
  - 8a Port Nicholson: 29 April 34
  - 8b Queen Charlotte Sound: 29 April 14
  - 8c Rangitoto Island: 5 May 13
  - 8d Kapiti: 11 May 13
  - 8e Waikanae: 11 May 4
  - 8f Otaki: 16 May 20
  - 8g Tawhirihoe: 19 May 8
  - 8h Manawatu: 21 May 3
  - 8i Motungarah: 21 May 7
  - 8j Wanganui: 23 May 10
  - 8k Waitomo: 31 May 4
  - 8l Motungarara: 4 June 2
- **9** East Coast: 41 total
  - 9a Turangi (Gisborne): 5 May and later 25
  - 9b Uawa (Tonga Bay): 16, 17 May 2
  - 9c Waipu (Whakawhitia): 25 May 7
  - (Rangitukia): 1 June 3
  - 9d Tokomaru: 9 June 4
the first copy he sent to London. However, the North Island proclamation was made retrospective to 6 February (Hobson wrongly wrote 5 February), with subsequent signings being characterised as ratification and confirmation. As noted, Hobson had written separately to Bunbury on 25 April that signatures added after 6 February were ‘merely testimonials of adherence to the terms of that original document’. As Orange pointed out, however, Hobson was still awaiting confirmation of many of the treaty signings, and his assertion that he himself had confirmed that South Island Māori were in an ‘uncivilized state’ (and thus not capable of making a treaty) was quite groundless. The Colonial Office was not to know any better, and when it received Hobson’s proclamations it published them on 2 October in the London Gazette. British sovereignty over New Zealand was thereby asserted, based, at least in respect of the North Island, on the cession of sovereignty in the treaty, notwithstanding the large areas of the country over which Māori had yet to cede kāwanatanga. Orange argued that the significant differences in meaning between the Māori and English texts had become quite apparent by this time, and ‘Hobson was surely aware of this’. But he made no mention of the matter when forwarding his proclamations.

Hobson did not know at the time he made the proclamations that Bunbury was shortly to gather the signatures of a number of important southern chiefs, including Tūhawaiki, Karetai, and Te Rauparaha (Henry Williams had also obtained Te Rauparaha’s signature a month before). Bunbury himself proclaimed British sovereignty over the South Island on 17 June on the basis of cession (although he failed to gather any signatures at Rakiura (Stewart Island), and had proclaimed sovereignty over it on 5 June by virtue of discovery). Hobson eventually learned of all the treaty signings and, on 15 October, dispatched his final report on the issue to London. He attached ‘certified’ copies of the English and Māori texts, and a list of 512 signatories. He did not draw attention to the fact that major inland areas of the North Island were not represented among the signatories, or that such important individual leaders as Te Wherowhero and Manuaining Te Heuhaeu had steadfastly refused to sign. Despite the apparent shortcomings in the negotiations, the Colonial Office was not minded to quibble.

When the two texts were printed in London in 1841, the Māori version was labelled ‘Treaty’ and the English version ‘(Translation)’. This of course contradicted the reality that the Māori text was a translation of the English. The practice may have stemmed from Henry Williams having certified that an earlier copy of the English text dispatched to the Colonial Office was ‘as literal a translation of the Treaty of Waitangi as the idiom of the language will admit of’. As we saw in chapter 4, when Busby dispatched the Declaration of Independence to Britain he also described it as a translation of the Māori text.

### 7.11 Gipps’s Sydney treaty

Shortly before Hobson had set sail for Tāmaki-makau-rau in February, Gipps was himself attempting to conclude a treaty with Māori some 1,200 nautical miles to the west. Having discussed Hobson’s instructions with him during the latter’s sojourn at Port Jackson, Gipps drew up a treaty of cession to be signed by the various Māori chiefs present in Sydney at the time. Despite his 14 January proclamation forbidding private purchases of Māori land, a dozen or so rangatira – mainly from Ngāi Tahu – were in Sydney to negotiate land deals with wealthy speculators. Gipps named 10 of them in his treaty as ‘John Towack, Towack, John White, Kicora, Ticowa, Tranymoricon, Terour, Shoubeton, Akee, and Adekee’. Edward Sweetman, who in 1939 wrote a book on Gipps’s treaty entitled The Unsigned New Zealand Treaty, thought the first five named were South Island chiefs and the other five were from the North Island. If that is so, the first five were presumably the Ngāi Tahu rangatira Tūhawaiki, Tohowaki, Karetai, Kaikoreare, and Tūkawa. It is not known who the North Island chiefs were, although ‘Terour’ looks rather like Taiaroa, a senior Ngāi Tahu rangatira, who was with his kinsmen in Sydney at the time.

The matter is of interest to us because Gipps had recently instructed Hobson, and how Gipps phrased his own document may give us an indication of the terms that
he expected Hobson to put to Māori at Waitangi. With the aid of an unnamed interpreter, Gipps met with five of the chiefs, including Tūhawaiki and Kareta, on 31 January. According to a report highly critical of Gipps the following day in the Sydney Colonist, the chiefs wished to know why Gipps would not allow transactions that they themselves approved of to go ahead, and Gipps in turn accused them of being put up to their views by the would-be purchasers of their land. Gipps then invited the chiefs to a garden party on 12 February. Seven of them attended; Kareta, Kaikoreare, and Tūkawa did not. There Gipps explained his treaty and gave each chief 10 sovereigns. The chiefs were to come back the following day to sign, but did not appear.

The chiefs had clearly been influenced by John Jones, the purchaser who had brought them to Sydney. On 14 February 1840, he wrote to the New South Wales Colonial Secretary, Deas Thomson, to advise that he would not tell the chiefs ‘to sign away their rights to the Sovereignty of the Crown, respectively owned by them, until my purchases are confirmed by the Crown.’ The following day, Tūhawaiki, Kaikoreare, Tūkawa, Taiaroa, Te Whaikai Pokene, Tohowaki, and Topi Patuki signed a deed conveying any land not yet sold in the South Island and Stewart Island to Jones, William Charles Wentworth, and three others, for a price of £240 and various annuities to be paid to the chiefs for the rest of their lives. Gipps was outraged by this naked disregard for his proclamation. He told the New South Wales Legislative Council on 9 July 1840 that Wentworth would ‘never get one acre, one foot, one shilling for the land which he bought under the proclamation.’

There remains a possibility that the chiefs rejected Gipps’s treaty for an additional and, for our purposes, more relevant reason. Gipps had, as he later told Lord Russell, wished the chiefs to sign ‘a declaration of their willingness to receive Her Majesty as their sovereign, similar in effect to the declaration which Captain Hobson was then engaged in obtaining from the chiefs of the Northern Island.’ But, as Dr (later Professor Dame) Judith Binney pointed out, Gipps’s treaty differed markedly from Hobson’s. For a start, of course, it was in English only. It also had the chiefs ceding ‘absolute Sovereignty in and over the said Native Chiefs, their Tribes and country’ to the Queen, and included an unambiguous statement that the chiefs would not ‘sell or otherwise alienate any lands occupied by or belonging to them, to any person whatsoever except to Her said Majesty upon such consideration as may be hereafter fixed.’ In exchange, the chiefs secured the Queen’s ‘Royal Protection,’ a guarantee that they would keep sufficient land out of the Crown’s purchases ‘for their comfortable maintenance and residence;’ and that the proceeds of the lands purchased from them would be spent on ‘their future education and instruction in the truths of Christianity.’ As Binney argued, these provisions ‘would be insufficient exchange for the transfer of real power. Gipps’s treaty was unambiguous in that respect.’

Of course, whether Gipps’s treaty was rejected in part because it did not guarantee the full, exclusive, and undisturbed possession of Māori lands (or some more accurate approximation of rangatiratanga) is a matter for conjecture. The chiefs may have been thinking solely of their deal with Jones, Wentworth, et al, and we have no idea how the agreement was explained to them in Māori. But it is doubtful that such a treaty, lacking the guarantees included in article 2 of te Tiriti, would have been agreed to at Waitangi (or elsewhere). Sweetman thought Gipps’s problem was that, unlike Hobson at Waitangi, he had ‘no powerful sympathetic CMS missionaries to smooth the way for him in dealing with the Maori chiefs.’ That is true, but those missionaries would probably have baulked at promoting Gipps’s treaty. We wonder how the treaty negotiations at Waitangi would have proceeded had Gipps accompanied his subordinate Hobson to New Zealand.

The full wording of Gipps’s treaty was as follows:

MEMORANDUM of an agreement entered into between His Excellency Sir George Gipps, Knight, Captain, General, and Governor-in-Chief of New South Wales and its Dependencies, on behalf of Her Majesty, Queen Victoria, and the undermentioned Chiefs of New Zealand.

WHEREAS John Towack, Towack, John White, Kicora, Ticowa, Tranymoricon, Terour, Shoubeton, Akee, and Adekee, Native Chiefs of the several Islands of New Zealand,
have expressed their willingness and desire that Her Majesty, Queen Victoria, of the United Kingdom of Great Britain and Ireland, should take them, their tribes, and their country under Her Majesty’s Royal Protection and Government. And whereas Her Majesty, viewing the evil consequences which are likely to arise to the welfare of the Native Chiefs and Tribes from the settlement among them of Her Majesty’s subjects, unless some settled form of civil government be established to protect the Native Chiefs and tribes in their just rights, and to repress and punish crimes and offences which may be committed by any of Her Majesty’s subjects, has been pleased to appoint William Hobson, Esq, Captain in Her Majesty’s Navy, to be Her Majesty’s lieutenant-governor in and over such parts of New Zealand as have been or may be acquired in sovereignty by Her said Majesty, Her heirs and successors, and has empowered the said William Hobson, Esq, to treat with the Native Chiefs accordingly, and it is expedient in compliance with their desire that a preliminary engagement, to be ratified and confirmed by the said Native Chiefs in manner hereinafter mentioned, should be immediately entered into between the said Sir George Gipps, Knight, on behalf of Her said Majesty, Queen Victoria, and the said Native Chiefs and Tribes.

It is therefore hereby agreed between the said parties that Her said Majesty, Queen Victoria, shall exercise absolute Sovereignty in and over the said Native Chiefs, their Tribes and country, in as full and ample a manner as Her said Majesty may exercise Her Sovereign authority over any of Her Majesty’s Dominions and Subjects, with all the rights, powers, and privileges which appertain to the exercise of Sovereign authority. And Her said Majesty does hereby engage to accept the said Native Chiefs and Tribes and Her Majesty’s subjects, and to grant Her royal protection to the said natives Chiefs, their tribes and country, in as full and ample a manner as Her Majesty is bound to afford protection to other of Her Majesty’s subjects and Dominions. And the said Native Chiefs do hereby on behalf of themselves and tribes engage, not to sell or otherwise alienate any lands occupied by or belonging to them, to any person whatsoever except to Her said Majesty upon such consideration as may hereafter fixed, and upon the express understanding that the said Chiefs and Tribes shall retain for their own exclusive use and benefit such part of their said lands as may be requisite and necessary for their comfortable maintenance and residence. And that out of the proceeds of the land which may be purchased from them adequate provision shall be made for their future education and instruction in the truths of Christianity. And the said Chiefs do hereby engage to ratify and confirm this agreement in the presence of their respective Tribes, and of Her Majesty’s said Lieutenant-Governor William Hobson, Esquire, or the Lieutenant-Governor of Her Majesty’s possessions in New Zealand for the time being. In testimony whereof the said Sir George Gipps, and the said Native Chiefs, have hereunto affixed their names and seals at Government House, Sydney, New South Wales, this fourteenth day of February, one thousand eight hundred and forty.
7.12 BACK-TRANSLATIONS

After te Tiriti was signed, a number of translations were made of it back into English. According to Parkinson, the demand for these translations came early on, particularly after Hobson had Colenso print copies of the treaty in Māori but not in English, thus provoking some anxiety on the part of British settlers who were yet to grasp what the treaty would mean. One who was particularly eager to gain a ‘true’ translation of te Tiriti was James Clendon, the United States Consul, who wanted a copy to send to his superiors in the State Department in Washington. In fact, as Parkinson pointed out, Clendon initially wanted to get an official copy of the English text, but was wrongly sent the Māori version by Hobson's officials. This was of no use to Clendon, who already had the printed copy in Māori. While he did not give up his quest for the official English text, Clendon turned instead to those proficient in Māori to tell him exactly what the Māori text said.

Clendon seems to have acquired three such translations: one by Busby; one by Gordon Brown, a timber merchant at Te Hōreke; and one by an anonymous translator. Clendon copied out Busby’s version and sent it off to Washington, while Busby’s original – which Busby had misdated ‘4 February’ – ended up in the hands of the family of Henry Littlewood, a Bay of Islands solicitor, and was lost until its rediscovery in 1992. These back-translations provide us with a picture of what Pākehā of the time who could write in Māori understood te Tiriti to mean, rather than what the chiefs themselves took it to mean. Salmond pointed out that a ‘valid back-translation’ actually required an ‘historical-semantic approach’, based on the understandings of both Henry Williams and the rangatira. However, as we have noted above, Clendon’s set of back-translations are valuable because they show that differences between the English and Māori texts were brought into sharp relief not long after the treaty’s signing.

There were several other notable back-translations of te Tiriti into English during the 1840s. Richard Davis wrote one that was not published until 1865, Dr Samuel Martin – a noted fierce government critic – published another as an appendix to a collection of his letters in 1845, and Edward Jerningham Wakefield included another in his book of the same year, *Adventure in New Zealand*. Then, in response to a request in 1847 from Bishop Selwyn for an explanation of how exactly he had explained the treaty to the chiefs, Henry Williams wrote what amounted to a partial translation of the Māori text (which we have quoted in full above at section 7.6.2).

In later years, te Tiriti continued to be translated back into English. When the issue of Māori rights to the foreshore at Thames arose in 1869, Walter Mantell — a member of the Legislative Council — asked for both an accurate translation of te Tiriti into English and a translation of the official English text back into Māori. The task was assigned to Thomas Young of the Native Department, whose work Orange believed would have been carefully scrutinised by his colleagues. In 1875, the *Evening Star* provided a back-translation of its own, explaining that

We have had frequently expressed to us a desire to see the terms of the treaty of Waitangi which is regarded by our Maori fellow countrymen as the ‘Magna Charta’ of their constitutional rights. We publish the text with the original signatures, and, with it, a translation in English, prepared with great accuracy, so as to express as clearly as possible the sense and spirit of the original.

There have also been occasional back-translations by important figures of specific words and phrases from te Tiriti. For example, in 1947 Professor James Rutherford defined kāwanatanga as ‘the sort of power that a British Governor had’ and rangatiratanga as implying the retention by the chiefs of ‘all their power authority and “mana” as rangatira over their people’ (see chapter 8). Notable as well is Āpirana Ngata’s 1922 translation, for Māori benefit, of the English text of the treaty into Māori. As if in a never-ending loop, Ngata’s translation and accompanying explanation were themselves translated into English in 1950 by Michael Rotohiko Jones, and the two texts were reprinted together. Rutherford went further in 1949 by providing a full back-translation of the Māori text, in which he translated kāwanatanga as ‘Governorship’ and tino rangatiratanga as ‘full chieftainship’.

With the advent in recent decades of a greater volume
of serious treaty scholarship, and especially after Ruth Ross’s article in 1972 drew historians’ attention to the importance of the Māori text, further back-translations have been made. We have already referred extensively to six of these at section 7.5. One of the best known is Kawharu’s of 1989. Others made prior to the commencement of our inquiry include the Salmond–Penfold translation produced for the Muriwhenua Land Tribunal in 1992; the translation produced by Matiu and Mutu in Mutu’s 2003 book Te Whānau Moana; an historical-semantic translation by Manuka Henare in his 2003 doctoral thesis; a ‘new synthesis’ by Parkinson of the various back-translations by Pākehā in the 1840s and 1860s; and a more literal translation again by Mutu in 2010. Our own inquiry of course spawned back-translations by Hohepa and Edwards. It seems that a back-translation was not prepared by Biggs, even though he engaged thoroughly with te Tiriti’s ‘controversial words’ in his 1989 essay ‘Humpty-Dumpty and the Treaty of Waitangi’ (see section 7.5). Dr (later Professor) James Belich for one regretted this, noting in 1990 that ‘Perhaps Biggs should translate the Treaty . . ., a task for which this tantalizingly brief essay suggests he is supremely well qualified’.

The existence of so many back-translations of te Tiriti into English, particularly in the period from the 1840s to the 1870s, is telling in and of itself. As Salmond argued,

“The fact that these ‘back-translations’ were requested by various authorities suggests a clear recognition by various European authorities that Te Tiriti and the Treaty in English were significantly different; and that they needed an accurate translation of the text in Māori that was read out, debated and actually signed, since this was the ‘real’ agreement with the rangatira.”

Phillipson, too, concluded that Williams’s very problems in translating Hobson’s text were the reason that ‘later commentators found the need to retranslate the Maori version of the Treaty, to convey in English what the Maori document had actually appeared to say in 1840’.

What, then, did the nineteenth-century back-translations say on what are arguably the matters of the most fundamental importance in the treaty: sovereignty and rangatiratanga? ‘Te Kawanatanga o te Kuini’ in the preamble, which was of course rendered as ‘Her Majesty’s Sovereign authority’ in the English text, was translated generally as ‘the Queen’s government’ or ‘the government of the Queen’. An exception to this rule was Busby, who translated ‘Kāwanatanga’ as ‘sovereignty’. He presumably did so because of his familiarity with the treaty’s English text, although Williams – who was equally familiar with the English text – himself wrote ‘government of the Queen’. Unsurprisingly, therefore, Busby rendered the chiefs’ cession in article 1 of ‘te Kawanatanga katoa o o ratou wenua’ (‘all the rights and powers of Sovereignty . . . over their respective Territories’ in the English text) as ‘the entire sovereignty of their country’. All but one of the other back-translations of the 1840s to 1870s instead had some equivalent of ‘all the government of their lands’.

The Evening Star’s was the other exception, translating kāwanatanga as ‘Chief-ruisership’.

In article 2, in which the chiefs were promised ‘te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa’ (‘the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties’ in the English text), Busby’s translation is again the exception. Where he had the chiefs being guaranteed merely ‘the possession of their lands, dwellings, and all their property’, other translators stressed the retention of chiefly authority:

- Anonymous: ‘the full chieftainship (or exercise of the power of chiefs) over their Lands, Villages and all their property’.
- Brown: ‘all their rights in their lands villages and other property’.
- Davis: ‘the entire supremacy of their lands, of their settlement, and of all their personal property’.
- Evening Star: ‘the full chieftainships of their respective territories, the full dominion of their lands, and all their property’.
- Martin: ‘the entire chieftainship of their land, of their settlements and all their property’.
- Wakefield: ‘the entire chieftainship of their lands, their villages and all their property’.

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Williams: ‘their full rights as chiefs, their rights of possession of their lands, and all their other property of every kind and degree’.

Young: ‘the full chieftainship of their land, their settlements and all their property’.

In 1860, too, Sir William Martin, the former chief justice (and no relation of Samuel Martin), stressed to the Government that ‘chieftainship’ had been guaranteed in te Tiriti. By contrast, he translated ‘kawanatanga’ as ‘governorship’.

As Parkinson concluded, Busby’s favour to his friend Clendon was ‘not a very good translation’. In at least one instance, Parkinson detected Busby not so much translating the Māori text as supplying ‘what he thought it should say.’ It seems to us that Busby was either consciously or subconsciously bridging the gulf between Williams’s Māori text and the pre-existing English text, to which he (Busby) had contributed.

According to Orange, Young’s 1869 translations reflected government policy, which was to impose its supremacy on Māori. The idea was that Māori would understand what they had ceded if they had a better translation of the original text than Williams’s ‘execrable’ effort (as Mantell described it), and the new Māori text was printed for this purpose. Young’s translation work is itself difficult to fault. He translated ‘all the rights and powers of Sovereignty’ as ‘nga tikanga me nga mana katoa o te Rangatiratanga’, thus suggesting to Māori that they had in fact relinquished their rangatiratanga, not retained it. The ‘possession’ of article 2 was rendered not as ‘rangatiratanga’ but as ‘tuturutanga’, which meant ‘absolute guarantee’.

Into the twentieth century, Ngata’s object was similar: in his view, Māori clung in protest to the Māori terms of the treaty, and he wanted to steer them ‘towards accepting the English treaty text’, as Orange put it. He thus wrote a ‘whakamarama’ for a Māori readership, but as Biggs observed it was ‘an apologia as much as an explanation’. Ngata set out (in Jones’s translation) that Māori ‘chieftainship’ (‘te mana rangatira’) was ‘limited in its scope to its sub-tribe, and even to only a family group’, while ‘government’ (or ‘kawanatanga’) meant ‘sovereignty’ or the ‘absolute authority’ of the sovereign and his or her parliament. Ngata called this authority in Māori ‘te tino mana’. Thus, with their agreement to article 1, wrote Ngata, the chiefs each ceded their ‘mana rangatira’ to the Queen, who thereby acquired the government of the Māori people. He finished his account with a word of advice to Māori who objected to the imposition of Pākehā laws: ‘Mehemea kei te he, kei te kino, me whakawatu atu ki o tatau tipuna nana nei i poroporoaki o ratau mana i o ratau ra e nui ana ano.’ (‘If you think these things are wrong and bad then blame our ancestors who gave away their rights in the days when they were powerful.’)

The messages of the Young and Ngata back-translations into Māori, therefore, were that Māori had essentially ceded what they thought they had retained. Even though Ngata was at the time an opposition member, this fitted the pattern of Crown appropriation to itself of the expressions used to define what Māori were guaranteed in Williams’s text of te Tiriti. As early as April 1840, for example, Hobson issued a proclamation warning the chiefs that evil Pākehā were stirring up trouble against ‘te rangatiratanga o te Kuini’. In a similar vein, Governors Hobson, FitzRoy, Grey, and Gore Browne were all styled (or styled themselves) ‘tino rangatira’ in government publications. And, at the Kohimārama conference in 1860, when translating Gore Browne’s speech into Māori, Donald McLean put ‘all the rights and powers of Sovereignty’ as ‘nga tikanga me nga mana Kawanatanga katoa’ and ‘sovereignty of the Queen’ as ‘te mana o te Kuini’.

7.13 Conclusion
Within a few days of arriving in the Bay of Islands in late January 1840, therefore, William Hobson had settled on a treaty text that had Māori ceding their ‘rights and powers of Sovereignty’ to the Queen. He had also had Henry Williams translate his text into Māori, and it was this translation that was put to the northern rangatira at Waitangi on 5 February. The drafting process had been conducted without delay, and the hui called before...
even a draft text was in train. The debate at Waitangi on 5 February, however, was not short, although our record of it is only partial. As a result of it, more than 40 rangatira signed te Tiriti the following day. Hobson claimed that these signatures were a ‘full and clear recognition’ of ‘the sovereign rights of Her Majesty over the northern parts’ of the North Island.

The Māori participants at the Waitangi hui, however, had been hardly emphatic in their embrace of Hobson, and not all had signed te Tiriti. But, through a process of debate, assurances, and discussions into the night on 5 February – all conducted in te reo Māori, in which the speakers focused on whether they should have a governor or not, and what standing he should have – the majority resolved to sign. They affixed their signatures or marks to a document that reserved to them their ‘tino rangatiratanga o o ratou whenua o ratou kainga me o ratou taonga katoa’, and under which they gave the Queen ‘te Kawanatanga katoa o o ratou whenua’.

Within only a few more days, Hobson had acquired another 70 or so signatures at further hui at Waimate and Mangungu. The hui at Mangungu proceeded similarly to that at Waitangi – suspicion and questioning from the rangatira were met by assurances and followed eventually by a decision to sign. But nor was there unanimity here, as a body of local people tried the next day to make it clear to Hobson that they had not ‘received the Queen’. Hobson dismissed this attempt, much as he had swept aside William Colenso’s concern at Waitangi that the rangatira there did not properly comprehend the treaty. Rather, he felt that ‘the sovereignty of Her Majesty over the northern districts’ was now ‘beyond dispute’.

Hobson intended to obtain further signatures throughout the country and make proclamations of sovereignty as he went, but his illness necessitated the delegation of the task of obtaining consent to a group of officials, military officers, missionaries, and traders. Their individual explanations of the treaty will have varied greatly, and these meetings are beyond the scope of our inquiry. But at a time when Hobson was yet to receive word of the treaty’s acceptance from most parts of the country, he did receive news that the New Zealand Company settlers had established their own governing body at Port Nicholson. He promptly proclaimed the Queen’s sovereignty over the North Island on the basis of the ‘cession’ at Waitangi on 6 February, backdating the proclamation to take effect from that date. He proclaimed the Queen’s sovereignty over the South Island on the basis of British ‘discovery’.

Soon enough, interested settlers – including James Clendon – wanted to know exactly what te Tiriti had said. This spawned a series of back-translations into English that at once revealed that Hobson’s text and Williams’s translation contained some significant differences. The process of translating te Tiriti back into English – and also of translating the Treaty in alternative ways into Māori – is one that has never stopped. Nor has the debate about the treaty’s meaning and effect both at the time it was signed and beyond. It is these diverse perspectives about the treaty that we turn to in the next two chapters.

Notes
1. As well as some later translations of the English text into Māori.
4. Normanby had provided a draft of the proclamation that Hobson was to issue upon landing in New Zealand, as Hobson had requested (see chapter 6), but left it up to Hobson and Gipps to ‘introduce any alterations which the facts of the case, when more clearly ascertained, may appear to you and him to prescribe’: The Marquis of Normanby to Captain Hobson, 15 August 1839, BPP, 1840, vol 33 [560], p 44 (IUP, vol 3, p 92).
5. The proclamations were printed in a supplement to the New South Wales Government Gazette and were repeated in the next issue of the Gazette: Supplement to the New South Wales Government Gazette of Wednesday, January 15, 1840, 18 January 1840, pp 65–66; New South Wales Government Gazette, 22 January 1840, pp 67–68. While Hobson may not have left until late on 18 January or even in the early hours of the next day (see below note 9), it seems that the supplement was not distributed until he was on his way.
6. Document A18, p 188
7. Sweetman, The Unsigned New Zealand Treaty, pp 58, 60

9. Parkinson, *Preserved in the Archives of the Colony*, p 12; Hill, *Policing the Colonial Frontier*, vol 1, pp 126–127. There is an element of confusion amongst both primary and secondary sources as to whether the *Herald* sailed on 18 or 19 January. On balance, we think it most likely the ship made a rather delayed departure late in the evening of the 18th.


12. According to Busby, Hobson’s initial plan was to read the proclamations at this location: doc A18, p 190. Loveridge suspected that the words ‘is or may be acquired in sovereignty’ in the Letters Patent and subsequent proclamations may indicate that the Colonial Office thought that sovereignty over this land had already been acquired. In fact, both Hobson, in his second proclamation of 30 January 1840, and Gipps, in his February 1840 ‘Unsigned Treaty’ (see section 7.11), wrote ‘as have been or may be acquired in Sovereignty’: doc A18, pp 189–191.


14. There is disagreement amongst the secondary sources about these numbers. Wards, for example, said that Hobson desired the 13 guns befitting a lieutenant-governor but Nias fired only the 11 due a diplomatic charge d’affaires, a compromise from the mere seven usually accorded a consul. Orange, McLintock, and Moon, by contrast, wrote that Hobson had requested 15 and received only 11, as per his rank of diplomatik chargé d’affaires, a compromise from the mere seven usually accorded a lieutenant-governor but Nias fired only the 11 due a dip-

15. There is no suggestion that any translation was attempted for this sizeable gathering of Māori.

16. Buick, *The Treaty of Waitangi*, pp 105–107; Adams, *Fatal Necessity* (for the number of settlers and Māori in attendance), p 158. McHugh felt that Hobson’s declaration, ‘if not ineffectual’, was ‘no more than a declaration of office which came into effect as and when the condition precedent to its effect was met’: doc A21, pp 62–63.

17. SMD Martin, *New Zealand: In a Series of Letters: Containing an Account of the Country both before and since its Occupation by the British Government: With Historical Remarks on the Conduct of the Government, the New Zealand and Manukau Companies: Also a Description of the Various Settlements, the Character of the Aborigines, and the Natural Products of the Country* (London: Simmonds and Ward, 1845), pp 78–79


19. Document A18, p 186


22. The Clapham Sect was a group of evangelical Christians based around a church in Clapham, London. The sect campaigned for the abolition of slavery between about 1790 and 1830, and its members included prominent individuals such as James Stephen and William Wilberforce: see Stephen Tomkins, *The Clapham Sect: How Wilberforce’s Circle Transformed Britain* (Oxford: Lion Hudson, 2010).


24. Document A18, p 195


28. R M Ross, ‘Te Tiriti o Waitangi: Texts and Translations’, NZJH, vol 6, no 2 (1972), pp 129–157; Parkinson, ‘Preserved in the Archives of the Colony’, editorial note, p 7. Aside from key accounts of the general treaty-making process such as that by Orange, another specific piece of work on the texts themselves is Brian Easton, ‘Was there a Treaty of Waitangi, and was it a social contract?’, *Archifacts* (April 1997), pp 21–49.


30. Salmond said that this occurred on either 2 or 3 February, but Orange simply said 3 February. There is a manuscript in Busby’s papers entitled ‘Draft of the Articles of a Treaty with the Native Chiefs Submitted to Capt Hobson 3rd Feby, 1840’ – see Parkinson, *Preserved in the Archives of the Colony*, p 22, and Ross, ‘Te Tiriti o Waitangi’, p 133. Parkinson thought this was the draft that Busby retained and that he then did a second draft that he gave to Hobson, and this was ‘presumably on 4 February’ (p 24).
31. Document A22, pp 5–6; Parkinson, 'Preserved in the Archives of the Colony', p 30. Parkinson believed that Hobson did not do this until he was in the company of Henry Williams on 4 February.


34. Parkinson, 'Preserved in the Archives of the Colony', p 30.

35. Ross, 'Te Tiriti o Waitangi', p 139. This well-known statement by Williams has been interpreted in different ways. Orange, for example, thought it just a reference to Williams having 'recast the English draft, as translators often do'. As we note below, however, Moon and Fenton argued that it 'cast doubt on Williams's sincerity and intention to translate the English text of the Treaty into a Māori text equivalent in meaning and function'. Whatever Williams's motivation, though, his statement does not actually make sense: see Orange, The Treaty of Waitangi, p 40; Paul Moon and Sabine Fenton, 'Bound to a Fateful Union: Henry Williams's translation of the Treaty of Waitangi into Māori in February 1840', Journal of the Polynesian Society, vol 111, no 1 (2002), p 55.


37. Ibid, p 12. Note that, in contrast to Williams's recollection published in Carleton, 'whakaminenga' was rendered as 'wakaminenga' in te Tiriti.

38. Ross did not seem to consider that Busby's alteration was the change in question. In fact, she remarked that not only was the nature of the change unknown, but that we do not know whether the chiefs were even informed about it. Orange, though, felt it likely that the change was indeed the one suggested by Busby, and that there was 'no evidence to support Ross's line of argument that there may have been another alteration'. See Orange, The Treaty of Waitangi, p 274 n 67, and Ross, 'Te Tiriti o Waitangi', p 133.

39. Ross, 'Te Tiriti o Waitangi', p 135. Ross actually counted five versions, but in her list of these one was described as a duplicate of the 16 February 1840 dispatch that is retained in the Archives in Wellington. Indeed, Orange (p 260) listed four copies sent by Hobson to his superiors and Ross, in her 1972 Victoria University paper 'The Treaty on the Ground' – the basis of her New Zealand Journal of History article of later the same year – wrote that she had identified four 'official' versions of the English text: Ruth Ross, 'The Treaty of the Ground' in The Treaty of Waitangi: Its Origins and Significance: A Series of Papers Presented at a Seminar Held at Victoria University of Wellington, 19–20 February, 1972 under the Auspices of the Department of University Extension of the University, University Extension Publication 7, 1972, p 16.

40. Parkinson, 'Preserved in the Archives of the Colony', pp 9–10, 28. We note that a shortage of paper and parchment, as well as available copyists, partly explains the variation Parkinson refers to.

41. These are as follows: 'Ko te Tuatahi' and 'Article the First' in the Act but 'Ko te tuatahi' and 'Article the first' in the originals; 'her Majesty' in the Act but 'Her Majesty' in the original; and 'Her Majesty Victoria' in the Act but 'Her Majesty Victoria' in the original; William Hobson in the Māori text and 'W. Hobson' in the English text in the Act but 'W. Hobson' in the Māori text and 'W Hobson' in the English text in the originals; 'Consul and Lieutenant-Governor' in the Māori text and 'Lieutenant Governor' in the English text in the Act but 'Consul & Lieutenant Governor' in the Māori text and 'lieutenant Governor' in the English text in the originals; 'Favour' in the Act but 'Favor' in the original; commas after 'Ingarani' and 'rangatiratanga' in the preamble in the Act but not in the original. In a couple of cases, the Māori text in schedule 1 aligns with the copy printed by Colenso at Paihia on 17 February. For example, the latter also has commas after 'Ingarani' and 'rangatiratanga' in the preamble and records Hobson's full first name. But in other respects its presentation differs.


43. The differences are that, in the 1960 Act, the article headings are capitalised and the first initial of Hobson's name is followed by a full stop ('W. Hobson').

44. For example, 'wakarita' instead of 'wakarite', 'kopu' instead of 'kupū', 'Ki' instead of 'Kā, and 'mona' instead of 'nōna'.

45. The 1975 Act rendered Hobson's name and title accurately in the Māori text; ironically, the 1985 amendment – while fixing mistakes – introduced those particular new ones.

46. We refer here not to Kawharu's literal translation but his 'reconstruction of the literal translation', which is very similar but rendered more readable. His two translations are appended to Kawharu, Waitangi, pp 319–321. As noted by Matthew Palmer, Kawharu's reconstruction has been praised both by the courts and by the Tribunal: Palmer, The Treaty of Waitangi, p 395 n 158.

47. McCully Matiu and Margaret Mutu, Te Whānau Moana: Ngā Kaupapa me ngā Tikanga – Customs and Protocols (Auckland: Reed, 2003), pp 221–224. This book is further subtitled 'The teachings of McCully Matiu kaumātua rangatira of Te Whānau Moana and Ngāti Kahu as told to Margaret Mutu'. The translation on pages 221 to 224 is clearly headed 'Translation by Margaret Mutu', but in a later publication Mutu referred to it as a translation of 'Matiu and Mutu': doc A24, p 29.

48. Hohepa noted, with respect to Kawharu, Salmon, Henare, and himself, that the fact that 'we are all from the University of Auckland at some time would suggest some kind of collusion which would not be true': doc D4, p 55.

49. Document D4, p 56.
50. Ibid, 'Humpty-Dumpty and the Treaty of Waitangi', p 303
51. Ibid, pp 304–305
52. Document D4, pp 11, 14–16
53. Orange, The Treaty of Waitangi, p 40; doc A1, p 274
55. Document A16, p 229; Matiu and Mutu, Te Whānau Moana, p 221
56. Document A25, p 65
58. Kawharu, Waitangi, p 321; doc D4, p 49; doc A22, pp 11–12; doc A16, p 230; Matiu and Mutu, Te Whānau Moana, pp 221–222. Kawharu used upper case for 'the Queen's Government' and lower case for 'a government' while Hohepa used upper case in both instances, preferring the definite article before the latter. Henare, by contrast, used lower case for 'governorship of the Queen' but upper case for 'Governorship' (without an article) in the second instance. Salmond and Penfold used upper case in both instances (and the definite article before the second occurrence). Matiu and Mutu used lower case in both instances (and also used the definite article before the second occurrence).
59. Document A25, p 66. In the first instance, Edwards used lower case (ie, 'parent governor'), but in the second used upper case.
60. Ross, 'Te Tiriti o Waitangi', p 139; Orange, The Treaty of Waitangi, p 40
61. Kawharu, Waitangi, p 321; doc D4, p 49; doc A22, p 12; doc A16, p 231; Matiu and Mutu, Te Whānau Moana, p 222; doc A25, p 67
62. See an explanation of this method of word construction in te reo Māori in doc A22, pp 11–12; doc A22, p 230; and Biggs, 'Humpty-Dumpty and the Treaty of Waitangi', p 310.
63. Document A1, p 273
64. Ibid, p 275; doc D1, pp 10, 71; doc B21, pp 8, 10–12
65. Ross, 'Te Tiriti o Waitangi', pp 140–141
66. Document A1, p 275
67. Document B21, pp 5, 8
68. Document A1, p 277
69. Kawharu, Waitangi, p 321; doc A22, p 12; doc A16, p 231; doc D4, p 49; doc A25, p 67; Matiu and Mutu, Te Whānau Moana, p 223. Ross's supposition was that there was no mention of ngahere or tauranga ika in the Māori text because forests and fisheries were not in the English draft given to Williams to translate: Ross, 'Te Tiriti o Waitangi', pp 141–142.
70. Document A24, p 29
71. Document A1, p 278; Kawharu, Waitangi, p 321; doc A22, p 12; doc A16, p 231; doc D4, p 49; doc A25, p 67; Matiu and Mutu, Te Whānau Moana, p 223
72. Ross, 'Te Tiriti o Waitangi', pp 144–145
73. Kawharu, Waitangi, p 321; doc D4, p 50
74. Document A22, p 12; doc A16, p 231
75. Matiu and Mutu, Te Whānau Moana, p 223; doc A25, p 68
76. Orange, The Treaty of Waitangi, pp 42–43
77. Kawharu, Waitangi, p 321; doc A22, pp 12, 21; doc A16, p 231; doc D4, p 50; doc A25, p 68; Matiu and Mutu, Te Whānau Moana, p 223
78. Document A22, p 23
80. Document A1, p 280
82. Taylor, it seems, was inside the house during the levee, standing to Hobson's left between Williams and Pompallier: see Richard Taylor, 'Journal', 5 February 1840, qMS 1985, ATL, Wellington
85. John Bright, Hand-Book for Emigrants, and others, Being a History of New Zealand, Its State and Prospects, Previous and Subsequent to the Proclamation of her Majesty's Authority; Also, Remarks on the Climate and Colonies of the Australian Continent (London: Henry Hooper, 1841), p 139
86. Colenso, The Authentic and Genuine History, p 15
87. Mathew, The Founding of New Zealand, p 33. Captain Nias thought the size of the crowd inside the marquee to be 600, with a total of 1500 people attending the occasion altogether. See 'Extract of a letter from an officer on board her Majesty's ship Herald, Captain Joseph Nias, 31 January 1840; reproduced in New Zealand Journal, 18 July 1840, p 170 and Buick, The Treaty of Waitangi, p 116. Captain Robertson of the Samuel Winter, reporting in the Sydney Herald of 21 February 1840, estimated that there had been 200 Māori and 100 Europeans in the tent ('Proclamation', Sydney Herald, 21 February 1840, p 2). Loveridge noted that one settler counted 'nearly a thousand natives, amongst them several of the Chiefs from this neighbourhood' at the meeting ('New Zealand', Sydney Herald, 24 February 1840), while another reported that 'about 1,000 natives – men, women, and children – were present . . . There were also about 300 or 400 Europeans' ('Correspondence' (letter dated 12 October 1840), New Zealand Journal, 13 March 1841 pp 68–69): see doc A18, p 191 n 540.
88. See Colenso, The Authentic and Genuine History, p 8, where he refers to Busby taking the notes with him on board the Eleanor bound for Sydney on 25 March 1840 and adding his own comments en route.
There is a slight doubt whether Colenso’s notes were made from Williams’s translation of the speeches or from a mental translation of the speeches in Māori by Colenso himself. Colenso wrote (in an observation added by him in 1890) that Williams had ‘translated fairly’, and there seems little doubt that Colenso could understand Māori, even if he was not, as Salmond put it, ‘among the recognised CMS “experts”’ in the language. But following the English would presumably still have been simpler for him, and he made relatively extensive notes about Hobson’s opening explanations but said nothing of Williams’s own ‘clause by clause’ explanation of the Treaty in Māori. That said, both Taylor and Captain Robertson referred to Williams speaking auditorially, and with respect to Colenso, therefore, Owens speculated that ‘Perhaps he sat on the floor and avoided Williams’ mumbling by making his own translations of Maori speeches’: Owens, The Hungry Heart: Journeys with William Colenso (Auckland: Random House, 2011), pp. 67–68.

As it happens, a 2011 masters thesis by Judith Ward took the interrogation of Colenso’s account a stage further. She noted that the contents of Colenso’s notes and published history were largely corroborated by others’ accounts. However, she argued that in 1840 Colenso had wished to pre-empt any criticism from Henry Williams of his speaking up before the treaty was signed on 6 February (see below) by sending the CMS an account of the hui that painted Williams in a bad light, particularly over Williams’s ability as a translator and the chiefs’ criticism of his acquisition of land. In 1890, by contrast, Colenso hoped to be reinstated as a practising minister and gain appointment to the Synod, and so he emended his account in order to win favour with the Anglican establishment (which included two of Henry Williams’s sons): Judith Ward, ‘Fact or Fiction? William Colenso’s Authentic and Genuine History of the Signing of the Treaty of Waitangi’ (MA thesis, Massey University, 2011).

The whaler Captain Robertson’s account of Hobson’s speech in the Sydney Herald of 21 February 1840 is very similar.

The Negotiation and Signing of Te Tiriti
110. As Te Kēmara’s descendant Maryanne Baker explained, ‘We spoke first as we were on the host whenua as the host hapu’: doc c28, p.3. Colenso wrote that Te Kēmara rose and began speaking ‘suddenly’. Buick described Te Kēmara as in fact interrupting Busby, but this was probably an over-interpretation of Colenso’s remark: Colenso, The Authentic and Genuine History, p.17; Buick, The Treaty of Waitangi, p.126.
111. Document A1, p. 283
112. Colenso, The Authentic and Genuine History, p.17
113. Ibid, p.18
114. Others have noted this contradiction; see, for example, Rogers, Te Wiremu, p.165 n.10; doc A22, p.39.
115. Salmond speculated that the addition might have come from Busby, but this seems unlikely given both Robertson’s account (see below) and the way Colenso carefully noted Busby’s comments in his published account: doc A22, p.39.
116. ‘Proclamation’, Sydney Herald, 21 February 1840, p.2
117. Colenso himself felt rather virtuous in this regard, writing to the CMS secretary on 13 February that he was ‘thankful . . . to the Lord (though I sometimes feel my poverty) that he has kept me from becoming possessed of land’: doc A22, p.56.
118. Colenso, The Authentic and Genuine History, pp.18–19
119. Document A22, p.40; doc A1, p.286; doc A18, p.198
120. Document A18, p.199
121. Ibid
122. Low, ‘Pomplallier and the Treaty’, p.192
123. Orange, The Treaty of Waitangi, p.47
125. Parkinson identified him as John Johnson, who was later the first proprietor of the Duke of Marlborough Hotel: Parkinson, ‘Preserved in the Archives of the Colony’, p.54 n.13.
126. Colenso, The Authentic and Genuine History, pp.19–20. This was a key example of what Judith Ward described as Colenso’s much more favourable treatment of Williams in his published history. Salmond called it ‘a politic footnote’: Ward, ‘Fact or Fiction?’, pp. 75, 109; doc A22, p.42.
128. Document A1, p. 289
130. Document A22, p.43
132. Ibid, p.22; see also doc A1, p.289; doc A22, pp.43–44
133. We note that Orange refers to Wai as ‘Whai’: see Orange, The Treaty of Waitangi, pp.48–49. It is possible that Colenso and others dropped the ‘h’ in his name, as they generally did with Māori words that we today would spell ‘wh’. But we did not receive any confirmation of this from the claimants, and we therefore retain the usual spelling of Wai’s name.
135. Ibid, p.23; see also doc A1, p.291; doc A22, p.45
137. Ibid, pp.24–25
139. Document A1, pp.289–290. Phillipson speculated that the unnamed rangatirā was Kāwiti, but may have been unaware of Bright’s account of Tārehā’s speech.
140. ‘Proclamation’, the Sydney Herald, 21 February 1840, p.2
141. Colenso, The Authentic and Genuine History, p.25
142. Colenso referred to Heke as ‘Hoani Heke’, as did Salmond in her evidence to us. But we use ‘Hōne’ since it was clearly the preference of the claimants. His hapū affiliation is also often given as Te Matarahurahu.
144. Document A1, p.293
145. See Owens, The Mediator, p.171
146. Buick, The Treaty of Waitangi, p.140
147. Document A1, pp.293–294; doc A22, p.49; Owens, The Mediator, p.46; Buick, The Treaty of Waitangi, p.140; Orange, The Treaty of Waitangi, pp.174, 182 (concerning Baker’s 1865 attempt to compile the list of signatories). Taylor had not been in New Zealand long at this point, and his understanding of Māori would have had definite limitations. We note that Judith Ward (‘Fact or Fiction?’, pp.54–55, 61) placed considerable emphasis on William Baker’s recollections and concluded that ‘the evidence suggests that Nene arrived at Waitangi during the course of Heke’s speech and was concerned that Hobson was being insulted. A war of words appears to have ensued between the two and Nene’s address has been credited with turning the tide in Hobson’s favour. It seems unlikely that such a heated debate would have ensued if Heke had spoken in support of Hobson’s proposal as outlined by William Colenso. This suggests that Colenso’s record of Heke’s speech may not be reliable.’
149. Colenso, The Authentic and Genuine History, pp.26–27. Salmond noted that the reference to ‘Ngāpuhi’ was to Ngāi Tawake, Ngāti Rēhia, Ngāti Kawa, and Ngāti Hine, and that the northern alliance was referred to as ‘Ngāpuhi’ at this time: doc A22, p.51. We note, however, that Ngāti Hine were in fact of the southern alliance (see section 3.5.2).
150. Document A22, p.51; doc A1, p.294
151. Mathew, who left out much of the detail of the day’s proceedings, did not mention Heke’s speech. Nor did Hobson.
152. Felton, The Founding of New Zealand, pp.37–38
154. Document A1, p.296
155. Salmond noted the unusual speaking order at Waitangi, where Rewa and Moka spoke before their tuakana Wharerahi and Hakiro spoke before his father. As the most senior of the manuhiri at Waitangi, however, it was appropriate for Nene’s tuakana Patuone to speak last: doc A22, pp.46, 52.
156. Colenso, The Authentic and Genuine History, p.27
157. He referred to Patuone as speaking at length and re-establishing the balance at the hui, which may well be a more accurate description of Nene. That he may have got such a detail wrong is perhaps supported by the fact that he made other mistakes. For instance, he wrote that, before Rewa even spoke, a ‘chief from the Williams party was prompted to follow this very independent chief [Te Kēmara] … to combat the tasteless words that had just been heard’. There is no suggestion in any other account of such a speech: Low, ‘Pompallier and the Treaty’, pp 191–192.

158. Low, ‘Pompallier and the Treaty’, p 192

159. Colenso, The Authentic and Genuine History, pp 27–28. The text in square brackets was Colenso’s addition.

160. Colenso presented this information as a footnote from Busby.

161. As Hobson wrote in his 5 February 1840 dispatch to Gipps, a rangatira ‘reproached a noisy fellow named Kitigi [Kaiteke], of the adverse party, with having spoken rudely to me. Kitigi, stung by the remark, sprang forward and shook me violently by the hand, and I received the salute apparently with equal ardour’: Hobson to Gipps, 5 February 1840, BPP, 1841, vol 17 (311), p 8 (IUP, vol 3, p 130); see also Buick, The Treaty of Waitangi, p 146.


163. This was according to Mathew’s timekeeping, although we have already noted (as per Colenso’s account) that Hobson and Nias took their seats on the platform at noon.

164. Buick, The Treaty of Waitangi, p 147; doc A22, p 53; doc A1, p 297

165. Colenso, The Authentic and Genuine History, pp 28–29. For some reason Peter Wells, Colenso’s recent biographer, named this man as Te Kēmara: Wells, The Hungry Heart, p 77. Judith Ward noted that Colenso did not mention this exchange in his 1840 manuscript and concluded that this emendation ‘may have been intended to suggest that Hobson’s untimely death in September 1842 was a consequence of irregularities associated with the signing of the Treaty at Waitangi’: Ward, ‘Fact or Fiction?’, p 107.

166. Colenso, The Authentic and Genuine History, p 29; doc A1, pp 252, 297. Lavaud wrote that the treaty remained unsigned on 5 February and that there were ‘woollen blankets, clothing, tools, tobacco and food awaiting signatories at the exit’: see Low, ‘Pompallier and the Treaty’, p 192. Ward noted that the distribution of tobacco was also mentioned by Charles Wilkes and Ensign Best. Wilkes made no mention of any squabble, but Best noted some lingering unhappiness about the uneven nature of the distribution on the part of Kawiti: see Ward, ‘Fact or Fiction?’, pp 85–86.

167. In the course of her research, Merata Kawharu was told by one informant that Te Tou Rangatira in fact acquired its name through this debate (doc A20, p 102): ‘The particular venue was adjacent to the Te Tii Marae that became known as Te Nohonga o Nga tou o Nga Rangatira, meaning the place at which the ancestors sat and pondered. The name also suggests that the chiefs understood the significance of the treaty and it was something that required careful and thoughtful deliberation.’

168. Orange, The Treaty of Waitangi, p 51

169. Document A18, p 204

170. Buick, The Treaty of Waitangi, p 149


172. Low, ‘Pompallier and the Treaty’, p 190

173. Ibid, p 191

174. Ibid, p 192

175. Colenso, The Authentic and Genuine History, p 34

176. Low, ‘Pompallier and the Treaty’, pp 190–193. Evidently, Pompallier’s memory of events, as filtered through Lavaud, was somewhat askew. Lavaud did not name Te Kēmara but was referring to the first chief to speak. The first to speak in favour of Hobson was Tamati Pukututu, who followed Moka. Note that Low described Pompallier’s 14 May letter as ‘not completely decipherable’: Low, ‘Pompallier and the Treaty’, p 191.

177. Orange, The Treaty of Waitangi, p 58

178. We note that both Robertson and Mathew, by contrast, considered that the attendance on 6 February was larger than on 5 February, with Mathew writing that ‘there could not have been fewer than five hundred natives present – most of them Chiefs’: Mathew, The Founding of New Zealand, p 40; ‘New Zealand’, Sydney Herald, 21 February 1840, p 2; see also Ward, ‘Fact or Fiction?’, p 85.

179. Colenso, The Authentic and Genuine History, p 30

180. Erima Henare asserted that he actually came in his pyjamas: see chapter 9.

181. Document A18, p 205; Colenso, The Authentic and Genuine History, pp 30–31; Buick, The Treaty of Waitangi, p 150; doc A22, p 55. Despite Colenso’s account that the boat from the Herald came ashore around midday, Hobson himself wrote that he was informed as early as 10 am that the chiefs were ready to sign. Williams, too, wrote that ‘business was resumed about eleven o’clock’.


184. Judith Ward noted that none of the other accounts of this aspect of proceedings on 6 February mention Colenso’s specific role: Ward, ‘Fact or Fiction?’, p 93.

185. Colenso, The Authentic and Genuine History, pp 31–32; Carleton, Life of Henry Williams, vol 2, doc A1, pp 298–299; Orange, The Treaty of Waitangi, pp 53, 58; doc A22, p 55; Buick, The Treaty of Waitangi, pp 152–154. Orange wrote that Pompallier’s ‘early departure from the Waitangi meeting of 6 February, before any chiefs had signed the treaty, was probably sufficient to suggest the Bishop’s public dissociation from the business in hand’. Parkinson also suggested that Pompallier probably left at this point because of an anxiety ‘not to become a British tool in a political fait accompli, stage-managed by his sectarian rivals and compromising his allegiance as a Frenchman’. In similar fashion, said Parkinson, the American naval officer from Wilkes’ expedition ‘deliberately absented himself during the speeches
on the previous day, so as not to be seen to be involving America in a diplomatic controversy. Clendon, as United States Consul, clearly had no such qualms: Orange, *The Treaty of Waitangi*, p 58; Parkinson, ‘Preserved in the Archives of the Colony’, p 56.

186. In his notes taken at the time, Colenso ascribed an abbreviated version of these comments to Taylor: see doc A22, p 56; Ward, 'Fact or Fiction?', p 96. We can presume that Busby may have advised Colenso that it was he and not Taylor who had made this remark.


188. Document A18, p 208. In addition to Mathew, Loveridge also noted that Pomppallier failed to mention the incident, although we note that, according to Colenso, Pompallier had by this time left the meeting.


190. Orange noted that the Waitangi sheet 'is the most confusing of all', as it contains the names of 200 northern and Auckland chiefs but with some uncertainties about who signed when and where. She thought that the number of signatories at Waitangi on 6 February might have been 43, 45, or 52 (Orange, *The Treaty of Waitangi*, p 259). Hobson himself thought there had been 46 signatories at Waitangi on the day, and Colenso thought 45. Among other historians, Buick thought 43 and Loveridge suggested 45 or 46. One example of the confusion surrounds Moka. As the Ministry of Culture and Heritage has come to recognise, Moka's name (in the form 'Te tohu o Moka') is written on the sheet 'but no signature or mark appears alongside it. Moka, therefore, may not have signed the Treaty, possibly because of concerns over its impact, which he is known to have voiced on 5 February'. See 'Waitangi Treaty copy', http://www.nzhistory.net.nz/media/interactive/treaty-of-waitangi-copy, last modified 2 February 2011 and Brent Kerehona's biography of Moka at http://www.nzhistory.net.nz/people/moka-te-kainga-mataa, last modified 31 January 2014. We note, however, that counsel for Patukeha accepted that Moka signed, albeit without noting the existence of any debate on the subject: see submission 3.3.14, p 4.

191. Document A37, p 453


194. Orange, *The Treaty of Waitangi*, p 68


196. Document A17, p 143; Colenso, *The Authentic and Genuine History*, pp 34–35; doc A22, p 57; Orange, *The Treaty of Waitangi*, p 55. Orange wrote that the blankets distributed at Waitangi were 'not good quality' (p 88).

197. The apparent signatures by Hakiro and Mene on behalf, respectively, of Titore (who was deceased) and Tārea (their father who so opposed the treaty) were disputed by Ngāti Rēhia claimants. Another slightly irregular aspect of the signatures, which was not raised by the claimants, is that the form of the marks or tohu for the same signatories on he Whakaputanga and te Tiriti was often quite different. For example, the 1840 tohu of Rewa and Patuone are dissimilar to their 1835 marks. In other cases, certain rangatira appear to have developed a more personalised 'signature' by 1840. For instance, Pōmare signed he Whakaputanga with a horizontal line crossed by five shorter vertical lines, but on te Tiriti drew what looks like a fish hook. Likewise, Kawiti appears to have signed he Whakaputanga with two crosses but drew his moko on te Tiriti. We do not take this matter any further, however, as we heard no evidence about it. Moreover, we doubt that the differences that we have discerned are anything other than what one might expect from a largely non-literate group of chiefs finding new ways of affixing their assent to written documents.


200. Hobson to Bunbury, 25 April 1840, BPP, 1841, vol 17 (311), p 17 (IUP, vol 3, p 139)

201. Claudia Orange, in *The Treaty of Waitangi*, p 61, and *An Illustrated History of the Treaty of Waitangi* (Wellington: Bridget Williams Books, 2004), pp 289–290, states that six had signed, but Buick (*The Treaty of Waitangi*, p 166) states it had been seven. It is difficult to tell exactly from the facsimile of the Waitangi sheet, but on balance Orange appears to be correct. However, she also incorrectly recorded eight signatures at Waimate at one point (Orange, 1987, p 62). Orange and Buick also disagree about the number of occasions te Tiriti was signed at Waimate. Buick (*The Treaty of Waitangi*, p 166) wrote that 'The principal meeting at Waimate seems to have been held on the 15th, when Mr Taylor secured thirty signatures, including some of the Hokiangi insurgents.' But Orange wrote in 1987 that the gathering on 10 February 'appears to have been the only treaty signing at Waimate.' She added in 2004 (p 285) that at Waimate 'there was probably only one signing and not two as sometimes thought'.


208. Salmond assumed that Shortland ‘probably jotted [the notes] down at the time from Rev. Hobbs’s running translation’: doc A22, p 59.
209. Orange, The Treaty of Waitangi, p 275 n 8
211. Document A22, p 61
212. Ross, ‘Makoare Taonui’, p 348 (for the possibility that he worked his passage on the Governor Macquarie); and Buick, The Treaty of Waitangi, p 170 and Owens, The Mediator, p 49 (for Taonui’s request for a written copy of the speech and Hobson’s reply). Salmond thought that Taonui might have taken the name Makoare after meeting Macquarie on his visit to Sydney in 1830: doc A22, p 61. However, Macquarie’s period as Governor had been from 1810 to 1821, and he had died in 1824. It was in fact Korokoro who had taken Macquarie’s name during his governorship: see John Liddiard Nicholas, Narrative of a Voyage to New Zealand, Performed in the Years 1814 and 1815 in Company with the Rev Samuel Marsden, 2 vols (Auckland: Wilson and Horton, 1971), vol 1, p 50. It is possible that Taonui inherited the name from Korokoro, who died in 1823, for he may not have worked his passage on the Governor Macquarie – he seems in fact to have been on board the Sir George Murray when it was seized in Sydney in November 1830: Orange, The Treaty of Waitangi, p 19. See also section 3.9.3.
213. Document A22, p 61
214. ‘Maunga Taniwa’ is Maungataniwha, the name of the range (and a specific peak) between Mangamuka and Kaitaia.
215. Document A22, p 62
216. Ibid
218. Document A22, pp 64–65
219. Nicholson, White Chief, p 87
220. In David Colquhoun, ‘The Early Life and Times of Frederick Edward Maning’ (MA thesis, University of Auckland, 1984), fol 109, Colquhoun noted that ‘The publication of Hobson’s comments in the blue books, which reached New Zealand in early 1842, meant that Maning’s humiliation received a prominence that must have been a continuing embarrassment to him.’ But we are unaware of Maning ever explicitly referring to having felt humiliated.
222. Frederick Edward Maning, Old New Zealand and other writings, ed Alex Calder (London: Leicester University Press, 2001), pp 20–23
223. Document D1, p 35; doc A19(a), p 66. Ward explained that he had read Maning’s 1860s correspondence when researching his doctoral thesis and that the letters revealed Maning to be ‘an extremely waspish character who ran a constant stream of invective against Maori, whom he then regarded as grasping, dishonest and lazy’ Ward continued: ‘I am very critical of the excessive use of the term “racist” in recent decades but Maning’s language in his surviving letters goes a long way towards qualifying him for that description’: doc A19(a), p 67.
224. Document D1, p 37; doc A19(a), p 67; doc A22, p 59
225. Document A22, p 65
226. Owens, The Mediator, p 49
227. Document A22, p 66
228. The same applies to the Waitangi hui, where we have no idea how Williams translated Hobson’s statement to the chiefs that ‘You have sold them [Europeans] lands’, or how Tārehā expressed in Māori ‘the lands of our fathers alienated’.
229. Document A22, p 67
230. Ibid
231. See Waitangi Tribunal, Muriwhenua Land Report (Wellington: GP Publications, 1997), pp 98–105. The Tribunal (pp 93, 98) thought the other person Papahia was referring to was CMS surgeon Dr Samuel Ford, who had himself secured 20,000 acres on trust near Mangonui at the end of 1839.
234. Ibid, p 68. Hobson wrote to Gipps (ibid): ‘Another person, altogether of a lower description [than Maning], known under the name of “Jacky Marmon,” who is married to a native woman, and has resided in this country since 1809, is also an agent of the bishop. He assumes the native character in its worst form – is a cannibal – and has been conspicuous in the native wars and outrages for years past. Against such people I shall have to contend in every quarter.’
235. Orange, The Treaty of Waitangi, pp 64–65
Maning’s satirical account suggested that the stampede to sign arose from an impatience ‘to see what the Governor was going to give us’. Maning said those of lower rank trying to sign were ‘slaves’ hoping to convince Hobson they were chiefs and receive payment: Maning, Old New Zealand and other writings, p 22.

237. Buick, *The Treaty of Waitangi*, pp 175–176; Orange, *The Treaty of Waitangi*, p 65; Owens, *The Mediator*, p 51; Taylor to Jowett, 20 October 1840, MS papers 0254–01, ATL, Wellington. Owens contrasted Hobson’s mood with those of Mathew and Taylor, who found (in Mathew’s words) the sight of ‘a parcel of beastly savages – not fewer than three thousand men, women and children devouring pig and potatoes is not very interesting’. Taylor wrote: ‘The feast was any thing but an agreeable sight the greediness and filthy manners of the savage only excited disgust and the ungracious way they received their presents finding fault with every thing made us retire [return?] from their company with disappointment.’

238. The two rangatira who refused to sign would appear to be Hauraki (Maning’s brother-in-law) and Wharepapa: Nicholson, *White Chief*, p 87.


240. Document A22, p 71. This is from Taylor’s journal, not his account of the speeches forwarded to the CMS.

241. Document A22, p 71


243. Nicholson may well have drawn on David Colquhoun, who concluded in his masters thesis on Maning that the letter was from Kaitoke and penned by Maning: Colquhoun, ‘Pakeha Maori’, fol 106.

244. Maning, *Old New Zealand and other writings*, p 23

245. Document A22, p 71

246. Document A18, p 213


248. Ibid, p 83

249. Ibid, pp 67–70; Orange, *An Illustrated History of the Treaty*, pp 37, 39; doc A18, p 213


252. Document A18, pp 218–219

253. Ibid, p 236

254. Orange notes that, at this time, Hobson had in his possession the original Waitangi sheet (signed elsewhere in the north) and the signed English-language copy which had been returned by Maunsell, who had obtained signatures at Manukau and Waikato Heads: Orange, *Treaty of Waitangi*, p 85

255. Ibid; Orange, *An Illustrated History of the Treaty*, p 39


260. ‘Interview of New Zealand chiefs with the Governor’, *The Colonist*, 1 February 1840; p 2

261. Both Sweetman (*The Unsigned New Zealand Treaty*, p 61) and Binney (*‘Tuki’s Universe’, in *Tasman Relations: New Zealand and Australia*, 1788–1888*, ed Keith Sinclair (Auckland: Auckland University Press, 1987), p 29) thought the date of this engagement was 14 February, but Loveridge (Wai 45 doc 12, p 67 n 101) assumed it was 12 February on the basis that the treaty was drafted in anticipation of being signed two days later, on the 14th.


264. Binney, ‘Tuki’s Universe’, p 30; Sweetman, *The Unsigned New Zealand Treaty*, p 64. Gipps had inserted into the treaty an undertaking by the chiefs to ratify the agreement in the presence of both their tribes and Hobson back in New Zealand.


266. Ibid, pp 64–65

267. Parkinson believed it was a deliberate strategy on Hobson’s part to keep Pakeha settlers ignorant of their future legal position while Hobson gained himself a ‘diplomatic foothold’: Parkinson, ‘Preserved in the Archives of the Colony’, p 54.

268. Parkinson, ‘Preserved in the Archives of the Colony’, pp 59–60


270. Document A22, p 11 n 25

271. The authorship of this version is unclear. Samuel Martin wrote that Hobson spent ‘some days with the missionaries concocting the Treaty of Waitangi, of which I send you the Governor’s official translation and the literal one’: Martin, *New Zealand in a Series of Letters* (London: Simmonds and Ward, 1845), p 97.


273. ‘Treaty of Waitangi’, *Evening Star*, 10 July 1875, p 5 (the *Evening Star* later became the *Auckland Star*). Amongst other publications, this
article was reproduced in full the following year in the Māori-language newspaper Te Wananga: see Te Wananga: He Panuitanga tena kia Kite Koutou, 22 January 1876, pp 38–39


See James Rutherford, Selected Documents Relative to the Development of Responsible Government in New Zealand 1839–1868. Prepared for the Use of History Honours Students in the University of New Zealand, 2 vols (Auckland: Auckland University College, 1949), vol 1, doc 5. The synopsis of this collection carries Rutherford’s typed name and the date August 1953, but the select bibliography is signed by him and dated February 1949. The literal back-translation states in parentheses ‘Translated by JR’. In the 1972 collection of essays published by Victoria University entitled The Treaty of Waitangi: Its Origins and Significance (see endnote 39 above), Rutherford’s translation is set out alongside the English text at the start of the volume. It is noted as being derived from Selected Documents, and dated as 1949. Rachael Bell, in her 2009 New Zealand Journal of History article on Ruth Ross, noted Ross’s privately expressed concern that Rutherford’s translation, which had been ‘created to the best of her knowledge by “looking up nouns and verbs in a dictionary”’, had come to dominate, and mislead, academic interpretations of the Treaty. Bell did not refer here to the Selected Documents but to Rutherford’s two published essays, ‘Hone Heke’s Rebellion, 1844–1846’ and ‘The Treaty of Waitangi and the Acquisition of British Sovereignty in New Zealand, 1840’, neither of which includes the full back-translation. We can assume that this is what Ross meant, however: see Rachael Bell, “Texts and Translations”: Ruth Ross and the ‘Treaty of Waitangi’, pp 43–44, 57 n 35.

Kawharu made both a literal translation and a ‘reconstruction of the literal translation’, which is the one in question here.

Document A16, pp 229–233; Parkinson, ‘Preserved in the Archives of the Colony’, pp 100–101; doc A24, pp 19–28. In ‘Preserved in the Archives of the Colony’ at page 69, Parkinson explained that ‘My own “version” of what the Treaty was supposed to say, in English as a back-translation, is given as document 16 in the Appendix. I have aimed at establishing what it was likely to have meant to those observing Pākehā who lacked vested interests – if such persons existed. The phraseology is drawn from the expressions used by witnesses and contemporary commentators.’ We note that Parkinson is not a linguist and was ‘synthesising’ rather than translating. As we note also in chapter 8, his is the only back-translated version other than Busby’s that used the word ‘exclusive’ in connection with the Crown’s right of pre-emption.
CHAPTER 8

PAST PERSPECTIVES ON TE TIRITI AND THE TREATY

8.1 INTRODUCTION
There have always been different perspectives about what was agreed at Waitangi in February 1840. From almost the moment of te Tiriti’s signing, the event, too, has been retold differently by Māori and Pākehā – at first by those who witnessed it and soon enough by countless others. In 1846, the former Governor, Robert FitzRoy, noted the markedly varying ways in which the treaty had been interpreted:

Some persons still affect to deride it; some say it was a deception; and some would unhesitatingly set it aside; while others esteem it highly as a well considered and judicious work, of the utmost importance to both the coloured and the white man in New Zealand. That the natives did not view all its provisions in exactly the same light as our authorities is undoubted . . .

The Māori perspective – to the extent that we can speak in such general terms – has laid heavy emphasis on the Māori text and stressed the retention of rangatiratanga. At times, Māori protest at perceived injustices has appeared to accept that there was a full cession of sovereignty, but we suspect this will often have stemmed from the power imbalances of the day and the need for Māori to appeal to the Crown for redress. In fact, a general denial that the Crown gained sovereignty or supreme authority on the basis of the treaty appears to have characterised a number of Māori perspectives during the nineteenth century, especially when Māori retained substantive control, and over the past three or more decades, during which Māori protest over the denial of rights guaranteed by the treaty has become more assertive.

For their part, Pākehā and the Crown have until relatively recently generally seen the treaty in terms of the English text alone – as a cession of supreme authority in article 1, the guarantee of Māori rights to their property in article 2, and as a statement of some kind of ‘equality’ in article 3 (expressed by some as a requirement for Māori conformity to Pākehā norms). It must be considered, too, that the Crown gave little attention to the treaty for long periods – exemplified by the treaty sheets themselves being kept in such miserable storage facilities for several decades in the late nineteenth and early twentieth centuries. For all that, the very fact of the treaty has often been regarded by Pākehā commentators (at least until recently) as a particularly enlightened and well-meaning act on the part of the British Crown – one from which Māori have benefited, and one which sets New Zealand apart from other settler colonies, particularly those in Australia.
Since the greater Māori assertiveness about treaty rights from the early 1970s, and particularly after the passing of legislation in 1975 to establish this Tribunal, the extent of writing about the treaty in New Zealand has grown exponentially. Dr (later Professor) James Belich observed in 1996 that so many historians had written about the events at Waitangi that ‘it has become a central tableau in the collective memory, like Christ’s Nativity or the landing of the Pilgrim Fathers’. In this chapter, we first outline the main developments in the recent scholarship about the treaty, and then consider the key court and Tribunal statements about it. It is relevant for us to concentrate on this most recent period of thinking and writing about the treaty, as the greater distance from the events of 1840 has allowed for a more rounded assessment of them and the motivations of the participants, based on more careful attention to the full range of evidence. It also provides essential context for the evidence and submissions put forward at our own inquiry, which we go on to discuss in the next chapter. Some of it has also been influential on the conclusions we reach in this report.

8.2 Scholarship about the Treaty

Reflecting on the greater engagement of historians with the treaty, in 1989 Dr John Owens concluded that there were essentially ‘only two significant phases’ in the scholarship: ‘before about 1970 and after’. As he put it:

There are of course differences of opinion over aspects and different writers have different emphases. One can occasionally group writers together into a kind of school of thought. But the basic fact is that before the 1970s our histories were written by Pakeha for Pakeha, after the 1970s there was a Māori presence in historical writing. It tells us something of the history of our race relations that the same kind of interpretation, the same terminology, appears in the 19th century and carries through to the 1960s.

This is not to say, of course, that pre-1970s historians were incapable of considering the Māori perspective. In 1947, Professor James Rutherford, for example, wrote that the British understanding that, through article 1, Māori would become subject to the authority of the Governor was not conveyed by those explaining the treaty; that the ‘restraints and restrictions and responsibilities’ of being British citizens received no emphasis alongside the ‘rights and privileges’ mentioned in article 3; and that kāwanatanga would have seemed a weak authority to the chiefs, especially compared to rangatiratanga, which would have left them thinking they retained ‘all their power authority and “mana” as rangatira over their own people’.

Rutherford’s insights, however, were atypical. The general pre-1970s consensus that Owens referred to was essentially founded on the work of William Pember Reeves, who wrote in 1898 that the chiefs ‘were fully aware that under it [the treaty] the supreme authority passed to the Queen’, and T Lindsay Buick, who claimed in 1914 that:

The natives . . . understood clearly enough that for the advantages they hoped to reap from the treaty they were yielding much of their existing power to the Pakeha Governor, and whether it was much or little they were the more willing to surrender it because they realised that the advent of the European had so altered their social conditions that rule by the old method was no longer possible.

The sovereignty was the shadow, and the land was the substance; and since the shadow was already passing from them by force of circumstances over which they were powerless to exercise control, they consented to its surrender with all the less regret. . . . The Treaty of Waitangi therefore became what it professed to be, a yielding of the supreme political power in the country to the British Crown, and when the last signature had been put to it, Britain’s right to colonise and govern in New Zealand was incontestable before all the world.

The Māori refusal to continue quietly to accept this one-sided interpretation helped force changes in the scholarship, as did the international trend towards decolonisation. But so, too, did one particular article in the New Zealand Journal of History in 1972, by Ruth Ross. This article, entitled ‘Te Tiriti o Waitangi: Texts and Translations’, stands as probably the single most important interpretive
Detail of the Waitangi sheet of te Tiriti as it appeared before conservation. Inadequate storage after 1877 resulted in water and rodent damage.
advance on the subject in modern times. Ross argued that, far from the solemn and far-reaching blueprint for the nation's development it was often portrayed to have been, the treaty transaction was characterised by confusion and undue haste. She made the important observation that sovereignty was translated by Henry Williams in a different way from his translation of 'all sovereign power and authority' in the declaration only a few years previously. She concluded that the Māori text was the true treaty and that what mattered was how it had been understood here, not what the Colonial Office had made of the English text(s) in London. Her rigorous empirical examination of the original documents exposed the unquestioning acceptance of myths about the treaty by an earlier generation of scholars. And she left her contemporaries with the uncomfortable realisation that a reliance on what was said in the English text alone was no longer intellectually honest.

As well as her influence on a range of other scholars in the decades to come, Ross's article had perhaps an even more important impact. It was a catalyst for the inclusion of the Māori text in the schedule to the Treaty of Waitangi.
Past Perspectives on the Tiriti and the Treaty Act 1975, as well as the authority given to the Tribunal in section 5(2) of the Act to ‘determine the meaning and effect of the Treaty as embodied in the 2 texts and to decide issues raised by the differences between them’. Indeed, the third Labour Government’s Caucus Committee on Māori Affairs referred to Ross’s article in its reports of 1973 and 1974 on implementing the Labour Party’s manifesto promise to legally recognise ‘the principles set out in the Treaty of Waitangi’. These reports were considered by Cabinet and were the basis for its decision to introduce the Bill that became the 1975 Act. Dr (later Professor) Michael Belgrave thought that, aside from influencing other scholars and members of Parliament, Ross also ‘provided the historical ammunition’ for the new generation of Māori Tiriti activists.

An historian who was particularly influenced by Ruth Ross is Dame Claudia Orange, who once described Ross as having ‘handed the baton over to me’. Orange’s book, The Treaty of Waitangi, was first published in 1987 and has now sold over 40,000 copies – a rare achievement for a work of New Zealand history. With a gentler tone than Ross’s challenging work, Orange articulated many of the
same messages as her mentor, although she stressed less the confusion that surrounded the treaty than the ‘spirit’ that underlay it. Her text has become the essential reference point for most historical works about the treaty since. Indeed, nearly three decades after its publication, *The Treaty of Waitangi* retains its reputation as the authoritative work on the subject. Writing in 1989, Owens thought it came ‘near to the ideal’ in the way it was

concerned with what actually happened in 1840, concerned with the continuing dialogue, concerned to balance Māori with Pakeha. Not many who have written about the Treaty have achieved this balance.\(^{12}\)

The same year, Professor Keith Sorrenson remarked that Orange had ‘done more than any other historian to recover that submerged Māori history of the Treaty which has hitherto existed largely in oral tradition’.\(^{13}\)

Several voices have, however, pushed back against the new orthodoxy of an underlying treaty ‘spirit’ or relationship described by Orange and applied, to a very large extent, by this Tribunal. Perhaps the best-known criticism of this approach came from Professor William H Oliver in 2001, in his essay entitled ‘The Future Behind Us: The Waitangi Tribunal’s Retrospective Utopia’.\(^{14}\) Scholars such as Oliver have criticised the Tribunal, as well as other historians, for the application of contemporary or ‘presentist’ concerns to the analysis of distant events.\(^{15}\) Professor Andrew Sharp and Dr (later Professor) Paul McHugh summarised this argument as follows: ‘The more powerfully the passion to change or preserve the world informs particular histories, the more they bear testimony to their authors’ present concerns.’\(^{16}\) Notable examples of ‘anti-presentism’ applied to the signing of te Tiriti include a brief contextual section in Professor Alan Ward’s 1999 book *An Unsettled History: Treaty Claims in New Zealand Today*; Lyndsay Head’s chapter ‘The Pursuit of Modernity in Māori Society’ published in the same 2001 volume as Oliver’s critique; and Belgrave’s 2005 book *Historical Frictions: Māori Claims and Reinvented Histories*.\(^{17}\) These scholars have not so much returned to the arguments in vogue before the Māori text was considered, but rather employed the Māori text in their argument for sovereignty having been ceded.

In sum, therefore, the scholarship about the meaning and effect of the treaty shifted markedly from the early 1970s, when historians took more account of the fact that the treaty existed in two languages and was made by peoples with entirely different cultural assumptions. Ross led this major shift, and Orange’s book – which carried on much of the same reasoning – has now been the leading reference text on the treaty for almost 30 years. More recently, however, several scholars have objected to what they see as the application of contemporary judgements to nineteenth-century actions. Historians have continued to differ more specifically over the wording of the treaty texts and the nature of the oral debate at the various treaty signings. We set out an overview of this scholarship below, dividing the coverage into the written texts and the oral debate (as we did in narrating the events themselves in chapter 7) and the treaty’s meaning and effect. We exclude reference to any past works by members of this Tribunal.

### 8.2.1 The wording of the treaty’s texts

#### (1) The English text

There has been some disagreement among historians as to the exact authorship of the English text (see section 7.4). Ross, for example, dismissed Busby’s claims to have been the principal author of the text as ‘a considerable exaggeration’, and Dr Donald Loveridge in 2006 called them ‘more or less a complete fabrication’.\(^{18}\) Orange, on the other hand, thought his claim ‘not altogether an exaggeration.’\(^{19}\)

Regardless of who is correct, it is clear that the Treaty’s language fell into a standard imperial pattern. McHugh noted that Britain entered more than 100 treaties or similar agreements with African peoples between 1788 and 1845, another 40 with Middle Eastern polities, and over two dozen with Malaysian rulers over roughly the same period.\(^{20}\) Tom Bennion likewise traversed British treaty-making in the Pacific in the nineteenth century following the apparently oral cession of sovereignty by the Hawaiian monarch to the British Crown in 1794. He also noted that some of the more direct precedents for the language used in the English text of the Waitangi treaty came from...
West Africa,21 a point picked up by law professor and later Justice Sir Kenneth Keith of the New Zealand Supreme Court and International Court of Justice, as well as by Sorrenson.22

These treaties included the Sherbro agreement of 1825, which used near identical phrases to those in the Waitangi text. Another African treaty in 1840, with King Combo of the Gambia, also bore a close resemblance. As noted in section 7.4, Sorrenson perceived

what one might call a treaty language that was in fairly widespread use, ready to be applied wherever a crisis on one of the frontiers of empire needed to be resolved by the last resort of a treaty of cession.23

Like the similar African treaties, the English text of the Waitangi treaty provided for a complete cession of sovereignty to the Crown, in exchange for various guarantees and protections, but did not provide for any ongoing authority for the indigenous people.

With specific respect to pre-emption, Ross was adamant that the English text misrepresented British intentions. Hobson’s instructions had been to induce the chiefs to agree that ‘henceforward no lands shall be ceded, either gratuitously or otherwise, except to the Crown of Great Britain’. Instead, the chiefs were asked to cede ‘the exclusive right of pre-emption’. Ross contrasted this wording of article 2 with that of Gipps’s abortive treaty with South Island rangatira who were visiting Sydney (see section 7.11), which was much more specific about an exclusive right of purchase (which the chiefs rejected).24 Writing in 1979, Tony Simpson followed Ross’s lead.25 Two decades later, Belgrave gave particular attention to the application of pre-emption in the 1840s but did not discuss the appropriateness of the term itself, noting merely that

Historians have had only a weak understanding of the legal role of pre-emption in the Treaty, regarding it as a policy of convenience, understood by Māori as no more than a right of first refusal.26

Legal scholars have given close attention to the technical meaning of pre-emption. In 1991, McHugh noted the concern expressed by Ross and others that ‘the Crown’s representatives deliberately misused a word normally defined by lawyers as a “right of first refusal” to mean an exclusive right’. McHugh agreed there was evidence that the ordinary meaning may well have been the way the term was understood by the Māori signatories. But he was satisfied that, used in ‘the context of Crown relations with aboriginal societies’, there was ample precedent to show the term meant the exclusive right of purchase that Hobson intended.27 More recently, Dr Mark Hickford has noted that such use of ‘pre-emption’ had been employed previously only in United States judgments, and that it is likely that Hobson had been influenced to use it by Governor Gipps, who was familiar with the American cases.28

It is obvious that, if Hobson used an appropriate word, it would nevertheless have been incumbent upon him to explain its meaning properly to those entrusted in turn to explain his treaty for him. Of course, this raises the question as to why Gipps did not use pre-emption himself in his own attempted treaty. Dr (later Professor Dame) Judith Binney, like Ross, regarded Gipps’s less ambiguous wording as one factor in the refusal of the Sydney-based rangatira to sign.29

(2) The translation of article 1
In contrast to the detail of the English text, historians have had much more to say about Henry Williams’s translation of it into Māori. Belich described it as having ‘a closer relationship with reality’ than the English text.30 But a number of scholars have queried why Williams could not have used ‘mana’ or another term to convey the idea of sovereignty. In 1972, Ross was perhaps the first historian to stress that ‘mana’ had been used to translate the notion of sovereignty in he Whakaputanga in 1835. As she put it,

when this same sovereign power and authority was to be ceded to the Queen by, among others, the very chiefs who had supposedly declared themselves possessed of it in 1835, only te kawanatanga katoa of their lands was specified.31

Clearly influenced by Ross, whom he cited, Ward wrote
in *A Show of Justice* (published shortly after) that using ‘the term “mana” . . . would have given the chiefs a clearer indication of what they were ceding.’ 32 Dr Peter Adams wrote in 1977 that this clarity was ‘no doubt’ why mana was not used. 33

In 1979, Simpson referred to the ‘puzzle’ of why Williams used kāwanatanga ‘instead of the much simpler and more basic concept of mana’. 34 In 1985, Professor Donald McKenzie wrote that,

> By choosing not to use either *mana* or *rangatiratanga* to indicate what the Maori would exchange for ‘all the Rights and Privileges of British subjects’, Williams muted the sense, plain in English, of the treaty as a document of political appropriation. 35

In 2002, Dr (later Professor) Paul Moon wrote that ‘[t]he more appropriate word to use would have been “mana”’. 36 And, in his 2003 doctoral thesis, Manuka Henare referred to *mana* having been ‘used in the declaration of independence but mysteriously not in the Māori text of Te Tiriti o Waitangi’. 37

Other historians, however, have argued that using ‘mana’ would have been quite incorrect. Orange, for example, thought that mana would not have worked, since ‘rangatiratanga and kawanatanga each had its own mana’. 38 Binney, writing in 1989, added:

> It would have been utterly inconceivable – insane – to have asked the chiefs to sign away their mana, spiritual or political (mana wairua, mana tangata) – or their mana indissolubly associated with the land itself (mana whenua). It would have been a most inappropriate phrase, either alone or more properly defined. 39

Lawyer Moana Jackson has regularly expressed the same view and, in doing so, has equated sovereignty with mana. As he put it in 1992:

> It was . . . impossible for any iwi to give away its sovereignty to another. The sovereign mana or rangatiratanga of an iwi was handed down from the ancestors to be nurtured by the living for the generations yet to be. It could not be granted to the descendants of a different ancestor, nor subordinated to the will of another. 40

Ward later switched his emphasis from the position that he adopted in his early writings. In a 1988 article, he wrote that it was ‘sometimes alleged nowadays that the Maori people were deliberately deceived at the signing of the Treaty’ by Henry Williams and the other missionaries, in that ‘the Maori version of the Treaty should have used the word “mana” to indicate what the Maori people were signing away’. Ward did ‘not think any of this is true’. In his view, the missionaries were ‘genuine, not deceitful’ men who felt that the treaty would protect Māori control over their land. 41

Head added weight to this position in 2001, rejecting what she described as ‘an implausible conspiracy to deceive’ and noting that no speaker at Waitangi ‘phrased his fears as “loss of mana”’ (although we might ask how she could know, as we have only partial records in English of what was said). Head argued that ‘mana’ was the wrong authority for a local kāwana:

> For Williams, the localisation of authority separated the effective and dignified functions of government; the one was present in New Zealand, the . . . other retreated to England – to the person, and mana, of the Queen. In this situation, neither mana nor kingitanga were plausible choices for a sovereign authority that Williams wished to convey to Maori as local, delegated power to govern. 42

Belgrave also argued that the notion of Williams acting deceitfully was ‘not consistent with his character’. Rather, he thought that ‘mana’ and ‘kingitanga’ were appropriate words for a Māori declaration of their own authority, but not for ‘translating a sovereignty that was transferable’. ‘Kingitanga’, too, might not have been right for a Queen. 43

The weight of opinion suggests, therefore, that ‘mana’ would not have been viable – either because it was the correct word for what the British sought, and Māori would not have signed up to this; or because it was the incorrect word. What, then, of Williams’s actual choice,
kāwanatanga? Belgrave thought it quite appropriate, because the rangatira referred time and again to the prospect of having a kāwana. As he put it:

Maori repeatedly debated whether they wanted a governor and, if they did, what powers the governor would have and what the consequences would be. These were down-to-earth, realistic discussions, the kind of discussions that Henry Williams would have considered a practical debate about sovereignty.\(^44\)

Head also thought kāwanatanga apt, reasoning that Māori would have understood it in terms of the Kāwana who

they saw in the flesh at Waitangi: a man of higher status than the existing role model, the self-styled kaiwhakarite (functional) James Busby, but lower than the Queen.\(^45\)

Binney regarded kāwanatanga as a ‘careful’ and ‘deliberately pragmatic’ choice, because it was

the name for known individuals, known Governors, who had exercised power in New South Wales for half a century. . . . It was a term for a position of authority, associated with the idea of rule by mediation and by force.\(^46\)

Ward argued that kāwanatanga was coined 'to describe a concept new to New Zealand – that of national, central power', which Māori had not been able to exercise through the Confederation.\(^47\)

Orange, however, thought that the selection of kāwanatanga was ‘not such a happy one’. As she put it:

The concept of sovereignty is sophisticated, involving the right to exercise a jurisdiction at international level as well as within national boundaries. The single word ‘kāwanatanga’ covered significant differences of meaning, and was not likely to convey to Maori a precise definition of sovereignty.\(^48\)

Similarly, linguist Professor Bruce Biggs argued that Williams must have ‘assumed, unconsciously or otherwise, that as the English word “government” implied “sovereignty” its Māorified equivalent would do the same’. However,

as there had never been any supra-tribal authority in New Zealand, there is no way that any Māori, who had not at least visited Australia or England, could have understood much of what Williams meant.\(^49\)

Owens also considered it ‘doubtful’ whether sovereignty and kāwanatanga were ‘understood in the same sense’.\(^50\) While he presumably meant by this that each side understood article 1 differently, we might add that the rangatira were essentially monolingual and were in no position to make any comparison between the two texts.

(3) The translation of article 2
There is more agreement among historians about the accuracy of Williams's translation of article 2. Ross noted that rangatiratanga had been used in the Bible to mean ‘kingdom’, and that Hobson had, soon after the treaty signing, referred to ‘te rangatiratanga o te Kuini’ – that is, ‘the Queen’s sovereignty’. ‘Was it any wonder’, Ross wrote, ‘that the New Zealanders at first supposed the Queen had guaranteed them something more than possession of their own lands?’\(^51\) Orange also thought the use of ‘te tino rangatiratanga’ would have created confusion,

for Maori understood the word to mean far more than ‘possession’, as in the English text. In fact, it was a better approximation to sovereignty than kawanatanga.\(^52\)

Indeed, it was the translation of article 2 in particular that has convinced some historians that Williams was simply making the text more agreeable to the rangatira.

Belich, for example, thought it likely that the use of ‘rangatiratanga’ was ‘a deliberate or semi-deliberate act of deceit’ by Williams and his son Edward to encourage the rangatira to sign, since they believed ‘that the treaty was now the only way that the Maori could be saved from physical or spiritual extinction at the hands of the agents of vice’.\(^53\) More generally, Owens suggested that:
In comparing the English with the Maori text it becomes apparent that Henry Williams was not simply trying to translate, but rather to re-write the Treaty into a form that would be acceptable to the Maoris.\textsuperscript{54}

Sorrenson likewise considered that ‘Williams did not do a straight translation of the English text, but creatively reworked it into a Maori version that he believed Maori chiefs would accept’.\textsuperscript{55} Perhaps Williams’s strongest critic in this regard is Moon, who (with Dr Sabine Fenton) referred to Williams’s ‘mistranslation’, his ‘strategic omissions’, and his careful ‘mutating’ of the Māori text ‘to make it palatable to the Maori chiefs’.\textsuperscript{56}

Orange, too, was open to the possibility that Williams ‘chose an obscure and ambiguous wording in order to secure Maori agreement’, but she also considered that he might have been purposefully ‘reinforcing the authority of the chiefs by building into the treaty a right to exercise some control’. Regardless, she thought it was clear ‘that the treaty text, in using kawanatanga and rangatiratanga, did not spell out the implications of British annexation’.\textsuperscript{57}

There have, however, been voices raised in support of the accuracy of Williams’s translation. Head, for example, argued that rangatiratanga was a coined word that did not have the meaning of political power given to it by many modern commentators. She wrote that ‘the Maori language of the Treaty is now routinely referenced to a world in which it did not exist’. As she put it:

\begin{quote}
It strains belief that, having transferred sovereignty to the Crown in the first article, Williams would posit a principle of omni-applicable Maori authority in the second, yet recent analysis is dependent on this being the case. The British did, of course, care about securing the colony’s land base. This is logically why confirmation of tino rangatiratanga is paired with advice on how to go about selling the land. The logic, and the crudeness of the pairing, point to tino rangatiratanga’s referring not to culture in the sense of Maoriness itself, but specifically to land and resource ownership.\textsuperscript{58}
\end{quote}

In other words, in Head’s eyes, rangatiratanga largely equated to the guarantee of possession in the English text.

Belgrave also wrote in favour of Williams’s fidelity to the English text in using ‘rangatiratanga’. In one sense, he agreed that Williams was attempting to win the chiefs over. As he conceded, ‘There is no doubt that both Williams and Busby believed that the treaty needed to provide strong guarantees of Maori rights if Maori were to agree to a British governor.’ But he had no doubts about Williams’s honesty, nor about the practicality of his translation. As he argued,

\begin{quote}
Williams clearly believed that he had provided a proper translation, and had no sense that he had radically transformed the text. While Williams’s translation of Busby’s legalistic English draft was certainly free, it recognised the kinds of principles and practicalities that, as a straightforward and down-to-earth artisan, he considered important in defending a tribal theocracy.\textsuperscript{59}
\end{quote}

For Belgrave, Williams’s protection of rangatiratanga was simply an acknowledgement of the realities of Māori society in 1840 and ‘doing nothing other than the obvious’. In an echo of Head, he added that it is ‘to modern ears’ that ‘rangatiratanga’ conveys ‘a strong sense of a retained and exclusive sovereignty for rangatira’.\textsuperscript{60}

In his 1999 book, Ward also denied that there was any deception or sloppiness about the translation. Rather, he thought that

\begin{quote}
the officials and their missionary advisers seem to have made considerable efforts to incorporate their understanding of Maori society and its values into the basic terms of the agreement, in both the English and Maori texts
\end{quote}

Ward to some extent foreshadowed Head’s argument that the land guarantee was crucial in gaining Māori agreement. As he put it, with land ‘all was possible; without it, everything else was theoretical. Land was what made chieftainship – and much else besides – concrete’.\textsuperscript{61}

As for Williams’s translation of article 2’s pre-emption text, Orange observed that he ‘did not stress the absolute and exclusive right granted to the Crown’.\textsuperscript{62} McKenzie reflected that the English pre-emption text has
been taken to bestow legality on the actions of successive Governments, while the Maori version seems morally to justify the deep sense of grievance still widely suffered over Maori land issues.

Belgrave did not engage specifically with the accuracy of Williams's translation, merely noting that “Williams's use of “te tino rangatiratanga” was not a statement of absolute sovereignty because the term was qualified by the principle of Crown pre-emption.” It is not clear whether Belgrave was referring here to Hobson's definition of pre-emption or to the meaning which Williams's Māori text was more likely to convey. Indeed, there is no record of Hobson explaining his definition of the pre-emption text to Williams, and the word ‘exclusive’ is absent from every back-translation we have seen, except those of Busby and Dr Phil Parkinson.

(4) Was Williams deceitful or at least a poor linguist?

Let us look further at the suggestion that Williams acted deceitfully. What grounds are there for this accusation? Moon and Fenton argued that the Church's instruction to him to do all in his power to induce the chiefs to cede sovereignty (see chapter 7) created a clear conflict of interest. They also suggested that his significant land holdings motivated him to serve the Crown well, in anticipation of favourable treatment when his own purchases were investigated. Moreover, they argued that he held an essentially dismissive attitude towards Māori and their culture:

Williams's general attitude toward Māori was governed by the extent to which they conformed to his construction of Christianity. He showed no wish to integrate into Māori society, and such involvement in interaction he did have with Māori consistently appeared to be based on his overriding urge to find converts.

As we have seen, historians like Ward and Belgrave have defended Williams's honesty. Moreover, some notable critics of Williams's translation have hesitated to describe him as dishonest and have acknowledged the inherent difficulties that he faced. McKenzie, for example, said he did not impute to Williams any will to deceive the Maori by his choice of terms, although 'Williams certainly shows himself, at that critical time, to have been less sensitive than Colenso to Maori modes of understanding'. Orange also accepted that Williams may have ‘decided to recast the English draft, as translators often do’, and she noted that he had a general tendency to simplify the text. Biggs concluded that Williams used an inappropriate word for at least one crucially important word in Te Tiriti and that Te Tiriti was not ‘in any reasonable sense equivalent to the Treaty’. But he concluded that Williams's translation could only have been well done if definitions of the Māori terms chosen to translate such concepts as sovereignty, rights and powers, pre-emption, etc, had been included, as is done, for example with our statutes. Only then would the meanings chosen by the British Humpty-Dumpty have been made even reasonably clear to the Māori Alice.

What, though, of Williams's skills as a linguist? Historians have been divided on this matter too. Again, it was Ross who began the critique. Williams, she said, was an inexperienced translator, and those with experience – William Williams, Robert Maunsell, and William Puckey of the Anglicans, and the Wesleyan John Hobbs – were unavailable at the time. Williams's son Edward, she added, was certainly fluent in the local dialect but was a 'green' young man of 21, and neither father nor son knew much of constitutional law. Te Tiriti, she said somewhat dismissively, was 'not indigenous Maori; it is missionary Maori, specifically Protestant missionary Maori.' Orange largely concurred with Ross’s analysis, noting also the failure to make any use of the young mission printer William Colenso.

Moon and Fenton took the contrary view, albeit not in Williams's defence. In seeking to demonstrate his deceitfulness, they argued that his ‘mistranslations’ were no mere accident. Williams had an ‘intimate knowledge of what might be termed “constitutional Maori”’, for example, through his translation of the Declaration of Independence. Moon and Fenton thought that Williams's stated need to ‘avoid all expressions of the English’ for
which ‘there was no expressive term in Maori’ was not the result of ignorance, but rather a means of avoiding direct translation of key words like sovereignty (that is, by using mana). Moon and Fenton also cited Williams’s singular dedication, from the time he arrived in New Zealand in 1823, to acquiring a mastery of te reo Māori in order to evangelise. Head similarly dismissed Williams’s ‘linguistic incompetence’ as an implausible and ‘loosely speculative’ theory.

The question of Williams’s honesty is relevant not only to his written translation but also to his verbal explanations to the chiefs at Waitangi on 5 February. We return to this in section 8.2.2(2). We note here, however, the cautionary note sounded by Owens. In his biography of Richard Taylor, Owens argued that those who have advanced the ‘conspiracy theory’ – that Williams and his son sought to ‘hoodwink’ Māori in order to secure British annexation and an increase in value of his land purchases – ‘have made no attempt to prove that this would be consistent with what is known of Williams’ character’. This, wrote Owens, was all the more notable given that a ‘case can be made’ that Williams even tried to ‘preserve and enhance chiefly power’. In an earlier piece of work, Owens similarly concluded that ‘The blunders of Hobson and his band of do-it-yourself diplomats can more properly be attributed to haste and inexperience than to deliberate deception.’

8.2.2 The oral debate

(1) The oral nature of Māori society

Given what she regarded as the deficiencies in Williams’s translation, Orange felt that ‘explanation of the articles would be crucial.’ What, then, have historians and other scholars argued about the discussions at Waitangi and Mangungu and their importance relative to the written words of the treaty texts themselves? As we mentioned in chapter 5, McKenzie noted the Māori embrace of letter writing, which miraculously allowed the writer ‘to be in two places at once, his body in one, his thoughts in another’. But he rejected the ‘absurd . . . European myth’ that, in the quarter-century since Marsden’s first written land transaction at Rangihoua in 1814, Māori had accepted a signature as a sign of full comprehension and legal commitment, to surrender the relatvities of time, place and person in an oral culture to the presumed fixities of the written or printed word.

As he put it with respect to the hui at Waitangi on 5 February 1840:

For the Māori present, the very form of public discourse and decision-making was oral and confirmed in the consensus not in the document. It is inconceivable that Williams’s explanations to them in Maori were wholly one way, that there was no response and no demand for reverse mediation. In signing the treaty, many chiefs would have made complementary oral conditions which were more important than (and certainly in their own way modified) the words on the page.

Orange also argued that

The oral nature of the Waitangi deliberations was thus of paramount importance, particularly in a Māori tradition in which relationships were customarily sustained and modified through lengthy discussion.

Belich put the point even more strongly. He went so far as to call the oral transactions, rather than the written texts, ‘the historical treaty’. He described them as

a series of oral agreements among chiefs, as well as between them and those speaking for the Governor, which must have varied from treaty meeting to treaty meeting. [Emphasis in original.]

Nonetheless, we should not forget that some rānanga were acutely conscious of the importance of the written word. As we have seen, Mākoare Taonui began at Mangungu by asking for Hobson’s speech to be written down. Hobson’s reply that te Tiriti was written down and copies would be made available was not an answer to Mākoare’s specific request, because, as we know, the Tiriti text and the oral statements were two different matters.
Past Perspectives on the Tiriti and the Treaty

We should remember Mohi Tāwhai’s comment too, also at Mangungu, that ‘Our sayings will sink to the bottom like a stone, but your sayings will float light, like the wood of the w[ha]u tree and always remain to be seen.’ McKenzie interpreted this as an acknowledgement of the differences between the written and spoken word; as he put it, ‘Manuscript and print, the tools of the Pakeha, persist, but words which are spoken fade as they fall.’

(2) The Crown’s assurances

What has been contended about the tenor of the assurances made by the Crown’s agents to the rangatira? In 1973, Ward, following Ross, was highly critical of the Crown’s communication at Waitangi about what changes the treaty would bring. He argued that:

- the chiefs ‘had little understanding of the legal concept of national sovereignty as understood by the officials’;
- ‘[t]he gulf between Maori and British purposes in 1840 was very great’; and
- Hobson disregarded Māori objections and reservations and regarded signature-gathering as more of ‘an exercise in public relations’ than a ‘weighty mission’.

Ward concluded:

Bent on their mission, Hobson and his staff were basically careless of the opinions of the people they had come to save, and cared little that the exercise of their power, unless accompanied by ample measures to engage and compensate the Maori, would appear oppressive and evoke resistance.

As we have seen, Ward has altered his position over time, coming to regard Hobson and the missionaries as having had much more honourable intentions. But, writing in 1999, he was prepared to accept that, even if the rangatira knew the Crown would exercise authority, the Crown’s communication had been less than frank:

It can be argued that British officials should have explained much more clearly just how the Crown’s sovereignty (kawanatanga) would impinge upon Maori rangatiratanga. The reason they did not do so, and instead put the most positive and encouraging construction on the Treaty, is that securing the authority necessary to control the land trade was extremely urgent.

It is often argued that the interpretation invited by Hobson’s and the missionaries’ messages was that kawanatanga was sought mostly to control ‘lawless’ Europeans, and the Queen’s sovereignty would henceforth apply only to Pākehā. Ward concluded as much in A Show of Justice, writing, ‘In general the chiefs considered that the authority of the Governor was to apply to matters involving Pakeha, not internal Maori disputes.’ Belich suspected...
that the chiefs may have looked forward to help from the Governor in controlling Europeans, a task which was becoming burdensome, and he allowed for the possibility that

the concept of partial sovereignty, over Europeans only, was mentioned in the treaty debates. Right up to January 1840, partial sovereignty over European existing settlements was the option most discussed by the British, and this might have percolated through to New Zealand.85

Moon was emphatic that Hobson’s expressed intent was protective and benign. As he wrote in 2002,

Hobson explicitly and unambiguously presented the Treaty to Maori as an instrument of protection – a means of allowing the Crown to rule over the settler population in order to regulate European behaviour. He was certainly never open about this rule enveloping Maori as well.86

An important contribution to the scholarship has come from scholars who have translated into English the first-hand comments of contemporary French observers. They include Philip Turner’s thesis of 1986 and published work by Dr Peter Low.87 Both, for example, translated a notable observation of Bishop Pompallier’s assistant, Father Louis-Catherin Servant. Turner’s version was as follows:

The governor proposes to the tribal chiefs that they recognise his authority: he gives them to understand that this authority is to maintain good order, and protect their respective interests; that all the chiefs will preserve their powers and their possessions. A great number of the latter speak, and display in turn all their Maori eloquence. Most of the orators do not want the governor to extend his authority over the natives, but only over the Europeans.88

Belich described Hobson’s agents as quite capable of ‘shifting’ the emphasis in their explanations to obtain Māori consent. To make this point, he quoted Turner’s translation of Servant.89 Orange, who also used Turner,90 gave this summation of the discussions at Waitangi:

Couched in terms designed to convince chiefs to sign, explanations skirted the problem of sovereignty cognisable at international law and presented an ideal picture of the workings of sovereignty within New Zealand. Maori authority might have to be shared, but Hobson would merely be more effective than Busby, and British jurisdiction would apply mainly to controlling troublesome Pakeha; Maori authority might even be enhanced.95

In his 2003 Penguin History of New Zealand, which did not dwell on the disputed events at Waitangi, Dr Michael King observed that

missionary explanations of the terms and concepts, particularly those given by Henry Williams, fudged precise meanings and potential contradictions and emphasised instead the protective and benevolent intentions of the document as it would affect Maori.92

Owens, who as we have seen rejected the notion of deceit behind the text of te Tiriti, wrote in 2004 that Hobson laid emphasis on the need for sovereignty to restrain British subjects and avoided mentioning that, ‘if sovereignty was ceded, Maori would also be restrained’.93 Orange noted that Hobson’s emphasis at Mangungu was similar: there he made ‘repeated assurances’, according to Hobbs, that

the Queen did not want the land, but merely the sovereignty, [so] that . . . her officers . . . might be able more effectually to govern her subjects . . . and punish those of them who might be guilty of crime.94

Ward took a different view in his 1999 book, notwithstanding his remark about the failure to explain the workings of sovereignty in detail. His overall conclusion about the way the Crown’s message was conveyed was that

Records of Treaty discussions between officials and chiefs . . . show the Crown’s determination to prohibit warfare and other violent practices within Maori society. The chiefs would have been remarkably obtuse if they had not recognised that
the Queen's authority was to extend over them in some way. Indeed, some declined to sign the Treaty for precisely that reason.\textsuperscript{95}

In perhaps a similar manner to Belgraves reference to 'modern ears' (see section 8.2.1(3)), Ward accused some commentators on this matter of presentism. As he put it:

Many of the modern attempts to attribute more precise meanings to those discussions – either enlarging the meaning of rangatiratanga and reducing that of kawanatanga, or vice versa – are largely a projection onto the past of present-day goals or intentions.\textsuperscript{96}

Despite differences over the intentions held by Hobson and his missionary agents, there is general agreement that they put a positive gloss on the meaning and effect of the treaty to encourage the rangatira to sign. Did this amount to deceit? We have seen that missionary influence was crucial in obtaining the chiefs’ consent at both Waitangi and Mangungu and that Colenso made his famous intervention on the morning of 6 February partly out of concern that the chiefs would blame the missionaries if they later felt cheated. Moon and Fenton, for their part, argued that Williams

seems to have complemented his mistranslation of the text with a more elaborate but equally effective litany of verbal misrepresentations – carefully bypassing, at all stages, any suggestion that in signing the Treaty Maori would be surrendering their sovereignty.\textsuperscript{97}

Historians who have defended Williams’s honesty appear to have focused on his actual translation of the text rather than his verbal explanations at Waitangi. In Ward’s case, however, we have his recent views on Williams’s spoken communications with the rangatira, as presented to our inquiry (see section 9.3.3(1)).

There has been relative unity among historians about the failure to explain the pre-emption clause properly, although views have differed as to whether this was Williams’s fault. Ross noted that, immediately after the Waitangi hui, Colenso wrote to the CMS that he ‘did not “for a moment” suppose that the chiefs were “aware that by signing the Treaty they had restrained themselves from selling their land to whomsoever they will”’. The chief Hara, for example, responded when told he could not sell his land privately, ‘What! Do you think I won’t do what I like with my own?’ The clamours of protest from Māori and settlers alike led to Governor FitzRoy’s pre-emption waiver in 1844, and the matter festered on for years. Ross related how, in 1858, Busby entered the fray and maintained that the right of the Crown alone to purchase Māori land was put very clearly to the chiefs.\textsuperscript{98} But Williams eventually made a statement, which was reported by the press in 1861 and which Ross also quoted. This rather exploded any notion that the pre-emption clause had indeed been explained to mean what Normanby’s instructions intended:

when it touched upon the land, the pre-emption clause had to be explained to them over and over again, and the following is the explanation that was given: The Queen is to have the first offer of the land you may wish to sell, and in the event of its being refused by the Crown, the land is yours to sell it to whom you please. This explanation, I most conscientiously assert was given to them, and thus they understood it; and, . . . had any other explanation been given to them, the treaty never would have been signed by a chief in the Bay of Islands. I am bound, in honor, to make this statement, however at variance it may be with that made by the editor of the Aucklander [Busby].

I should have considered the whole body of missionaries guilty of trickery – if not treachery – to the New Zealanders, had they not fully and clearly explained to the natives the meaning of the pre-emption clause. [Emphasis in original.]\textsuperscript{99}

Ross thought that Williams’s recollection of having explained the clause ‘over and over again’ was possibly ‘the exaggeration of hindsight, because it hardly squared with comments made by Colenso at the time that the chiefs thought that there was no restraint on them ‘selling their land to whomsoever they will’.\textsuperscript{100} Indeed, Orange concluded that, far from the clear (and contradictory) statements that Busby and Williams claimed in hindsight, the
'explanation' of pre-emption is likely to have been rather muddled:

The treaty negotiations suggest . . . that the exclusive nature of pre-emption was not always clearly understood. Nor did Maori grasp the financial constraints that pre-emption might bring; it was presented, it seems, either as a benefit to be gained or as a minor concession in return for the guarantee of complete Maori ownership.

Ross also argued that the guarantee of the rights and privileges of British subjects was fundamentally contradicted – indeed nullified – by pre-emption, either as the right of first refusal or the sole right of purchase. In 1981, Owens added that article 3 ‘ignored the fact that British subjects were not normally subject to a pre-emption clause.’

So was Williams deliberately misleading on this specific matter? McKenzie implied as much. He suggested that, while ‘neither Hobson nor Williams could have communicated the full import of “pre-emption” to those who were asked to assent to the treaty’, Williams’s simplification of the issue in his translation showed less readiness than did Colenso to penetrate ‘the Native mind’ and ‘explain the thing in all its bearings . . . so that it should be their very own act and deed: One might be accused of arguing from hindsight were it not for Colenso’s contemporary insight.

Orange, however, thought Williams could be excused. While she granted that he would have probably been aware of Hobson’s desire for an exclusive right of purchase, given the latter’s 30 January proclamation, she accepted that Williams and the other treaty negotiators – who were mainly missionaries – would not have been able to explain pre-emption properly, and would naturally have emphasised its protective functions:

It is quite likely that [the] negotiators did not realise the full significance of pre-emption; Hobson may not have widely publicised the financial provisions for the colony and the part that pre-emption would play [in funding the colony].

Ross noted in this regard that Hobson’s instructions were confidential.

(3) Oratory
One noted aspect of the oral transaction is the way that rangatira who were dramatically opposed in their speeches of 5 February turned around the next day (at Waitangi) or later the same day (at Mangungu) and signed the document. Colenso described the ‘excited manner’ of Te Kēmara’s two speeches at Waitangi, but footnoted a comment that the first was ‘all mere show – not really intended.’ Before his emissaries ‘hawked’ copies of the treaty around the country (as Ward put it in A Show of Justice), Hobson warned them somewhat cynically of what they would face at hui:

The Koraroes (Korero – debates) as they are called will be a great tax on your patience, for probably everyone present will address you in a long speech full of angry opposition, but very little to the purpose; but to secure a favourable termination to the debate you have only to obtain the friendship of one or two of the most influential chiefs, who will probably give a favourable turn to the meeting, and all present will very soon yield to your proposal.

In 1914, Buick agreed with Colenso that Te Kēmara’s speech was merely ‘theatrical display’ and an exercise in ‘Maori vanity.’ A similar understanding of the nature of the speeches persists. Parkinson, for instance, wrote several years ago that the debate at Waitangi ‘was really not much of a debate – more a series of harangues, delivered in a rather theatrical tradition.’

Others have stressed the practice of Māori oratory. Dr (later Professor Dame) Anne Salmond, for example, described the nature of whaikōrero in her 1975 book Hui, noting that hui attendees ‘best appreciate a speech full of drama and fire – an impassioned denouncement, a series of sly digs or an inspired piece of clowning.’ We can see
that those elements were present in some of the speeches at Waitangi on 5 February 1840. Oral debate was also the occasion to test propositions and theories. As King explained, with respect to Waitangi, 'it was a convention of whaikorero (Maori discussion) that all arguments, positive and negative, should be put.' Binney concluded that the speech-makers at Waitangi and Mangungu used the discourse to 'emphatically [open] up' the 'essential issue' of the chiefs' and the Governor's respective authority. As she put it:

On the three occasions for which we have some record of the speeches made, at Waitangi, Kaitaia, and Te Horeke, this pattern of hostility, suspicion, questioning of the translations, discourse, and final acceptance occurred.

A Ngāpuhi perspective was provided by Sir James Henare in his affidavit on the treaty to the Court of Appeal in the Lands case in 1987 (see section 8.3.2) and was quoted by Dr (later Professor) Jane Kelsey in her 1990 book A Question of Honour. Sir James wrote as the last surviving member of Te Rūnanga o Te Tiriti o Waitangi, a committee of descendants of Ngāpuhi treaty signatories first established in the 1880s. The tradition he recounted was that, after Hobson presented the treaty on 5 February, the rangatira retired to Te Tii, where they resolved among themselves at long last to sign it. But they decided that they would nonetheless 'offer token opposition to the Treaty' the next day, and they arrived at Waitangi saying that they would not sign. Kelsey noted that '[t]his resistance had been referred to in almost all records and histories related to the signing,' but she implied that it had been misunderstood by Pākehā commentators. She quoted Sir James as follows:

The historians say that all the Chiefs violently opposed the signing of the Treaty of Waitangi. But this was only token opposition. A token because it should have been obvious to all the historians and lawyers and everyone else who had been dealing with the Treaty . . . Why did they get up and oppose the signing of the Treaty and then immediately get up and sign it and append their moko? And then shook the Governor by the hand and Captain Hobson said 'He iwi kotahi tatou.'

Elements of the chronology here differ from the narrative that we have set out in chapter 7, reflecting the way that oral tradition can shift details of events over time. However, the essence of the tradition – the offering of token resistance, the importance of the discussions among the rangatira on the evening of 5 February, and the final decision to sign Te Tiriti – fits with the written history. The central point, however, as Sir James relayed it, was that the rangatira ‘never believed and never intended’ to give away their sovereignty and mana.

(4) The evening of 5 February
The possibility remains that a key reason why chiefs so avowedly opposed to the treaty on 5 February willingly signed it on the 6th is that they were talked into it that evening by Williams and his colleagues. While we do not know exactly how matters were explained, we know, at least, that Heke said on 5 February, ‘The Native mind could not comprehend these things: they must trust to the advice of their missionaries.’ Orange considered that in the evening Williams had kept up his persuasive line of argument adopted during that day’s meeting, emphasising the beneficial aspects of the treaty and distracting Maori attention from matters to which they might take exception.

Orange concluded, therefore, that the decision to sign Te Tiriti involved ‘a remarkable degree of trust’ on the part of the chiefs: ‘They were encouraged by the advice of the English missionaries that Maori interests would be best served by agreeing to the treaty.’ This was the case not only at Waitangi but also at Mangungu, where Hobbs thought missionary intervention had been vital to securing the chiefs’ signatures.

Little coverage about what the missionaries may have said on the evening of 5 February exists in the modern scholarship. Indeed, these discussions have been seldom
mentioned beyond snippets – such as Owens noting that Richard Taylor was probably not present – or have done little more than repeat Williams’s own assertion that the treaty was explained ‘clause by clause’ to the rangatira, as was maintained by the Reverend Lawrence Rogers in his 1973 biography of Williams.

(5) The signing

The signing of te Tiriti itself on 6 February contained one more or less final oral assurance in the form of Hobson’s statement to each signing rangatira: ‘He iwi tahi tatou’. The meaning and significance of these words have been subjects of debate in their own right.

What might be called the traditional view is that Hobson confirmed thereby that Māori and Pākehā were now equal members of the state, with the same rights and obligations. This interpretation has lately been favoured by those who object to alleged Māori advocacy of ‘special rights’ under the treaty, or ‘separatism’. McHugh remarked in this regard in 1991 that

Many white New Zealanders have a knee-jerk reaction against special laws favouring the Māori population. Some recall Captain Hobson’s words at Waitangi after the chiefs had signed the Treaty: ‘Now we are one people.’

In 1998, Sorrenson suggested that Hobson’s words had served the agenda of assimilating Māori but that such a use was no longer tenable. As he put it:

That injunction has been uttered many times since and by successive governors at Waitangi anniversary ceremonies who could still get away with it in the middle years of this century. But not any more.

National Party leader Dr Don Brash invoked Hobson’s words in his 2004 Ōrewa speech, attacking what he saw as ‘two sets of laws, and two standards of citizenship’. He argued that the Treaty of Waitangi ‘should not be used as the basis for giving greater civil, political or democratic rights to any particular ethnic group’ and that ‘we must build a modern, prosperous, democratic nation based on one rule for all’. A few days later, the Governor-General, Dame Silvia Cartwright, took the step of signalling that Hobson’s message would not have been understood that way by the chiefs:

Just a few days ago, I listened to the second Rua Rau Tau lecture given by Dame Joan Metge. As others have done before her, she likened the relationship among all the people who make up modern New Zealand to a rope – many strands which when woven or working together create a strong nation. She recalled the words of Lieutenant Governor Hobson at Waitangi on 6 February 1840 to each rangatira who signed the Treaty that day: ‘He iwi tahi tatou’ which Governor Hobson, incorrectly it seems, understood to mean: ‘We are now one people’. Dame Joan, a distinguished scholar and member of the Waitangi National Trust Board that administers the land on which the first signatures were put to the Treaty, views the phrase as having two possible meanings: In 1840 correctly translated it would have meant: ‘We two peoples together make a nation.

This implicit endorsement of Metge’s position by one of Hobson’s successors has not quelled the debate.

Some popular misconceptions about Hobson’s words include the notion that they formed part of the treaty itself – a rather selective Pākehā emphasis on the oral nature of the transaction, perhaps. A variation on this idea is that Hobson ‘proclaim[ed]’ the words – in both languages – and that therefore they had the same effect as the written terms. Another view is that Hobson’s statement was ‘probably more important than the document itself’, and that it was uttered by Governor Grey. Others have even claimed, rather fancifully, that the words were spoken by each chief as they signed.

Some noted historians have not delved into the symbolism of Hobson’s statement: Belich in Making Peoples and even Moon in his biography of Hobson made no mention of it. Ross, however, thought that ‘If Waitangi in 1840 held any real promise for the future, it was perhaps to be found...
in ‘He iwi tahi tatou’ (which she, like Colenso, translated as ‘We are now one people’). By this, she may have meant what Ward suggested in 1999: that Hobson was referring to ‘two races embarking on the common enterprise of nation-building’ – a somewhat similar position to that of Metge. In this, these scholars all had something in common with Justice Casey in the 1987 Lands case. He thought Hobson was referring to the partnership between Māori and Pākehā, ‘rather than to the notion that with a stroke of the pen both races had become assimilated’.

Orange, for her part, thought Hobson was appealing to rangatira who had embraced Christianity by emphasising the link between Māori and British ‘as one people with the same law, spiritual and temporal’.

In 2010, six years after giving her lecture that the Governor-General quoted, Metge published an amended version. As one of the more comprehensive assessments of Hobson’s sentence, we set out Metge’s consideration of it in full:

At Waitangi on 6 February 1840, William Colenso tells us, Lieutenant-Governor Hobson said to each rangatira who signed the Treaty: ‘He iwi tahi tātou’. Presumably he was coached by somebody, probably Henry Williams. Colenso translated this into English as ‘We are now one people’. In doing so, he missed three subtle points. First, the word iwi means nation as well as people. Secondly, if Hobson meant one (unified) people he should have said ‘he iwi kotahi’; tahi without the prefix ko means together. Thirdly, the last word, tātou, certainly means the first person plural we/us, but it is a special form, one without an equivalent in English. Use of tātou signals the fact that the we in question comprises two or more groups, which are and remain distinct within the unity.

This succinct Māori sentence is incredibly difficult to translate into English in a way that does it justice. The problem is that for many years Colenso’s translation has been used to emphasise the idea that ‘we are all New Zealanders’, a model I have rejected as unduly reductionist. Some years ago I suggested the translation ‘We many peoples together make a nation’ but that was too easily interpreted as advocacy of multiculturalism, a model that also has flaws. Perhaps it would be good strategy to leave the saying in Māori, untranslated, while all of us – old New Zealanders, young New Zealanders and new New Zealanders – continue to debate and work out how to relate to each other, with the Treaty as our guide.

In 1985, McKenzie rejected the fact that some rangatira had signed their names as indicating their full understanding of and assent to the written terms of the treaty. He concluded that, of the more than 500 signatures to Te Tiriti,

the highest possible number of personal signatures, as distinct from crosses, moko-patterns or apparently quite meaningless marks, is seventy-two. In almost every case the signatures are so painfully and crudely written as to show clearly that they have not been penned by signatories practised in writing and therefore fluent in the art. We are forced to conclude . . .

differently, that [the typical signatory at Waitangi] . . . is unlikely to have been able to read what he was signing in even the most literal way. Even if he could do that, the odds are loaded against his knowing how to write his own name. Even if he could do that, the evidence suggests that he wrote painfully and with only the most elementary competence. The presumed wide-spread, high-level literacy of the Maori in the 1830s is a chimera, a fantasy creation of the European mind. Even at Waitangi the settlement was premised on the assumption that it was, for the Maori, an oral-aural occasion.

Drawing on McKenzie, Belich likewise stressed that very few signatories were able to read what they signed. He doubted the signatures and marks were evidence of rangatira abandoning their ‘traditional practice of making solemn and binding verbal agreements on the basis of formal discussion at major meetings called for the purpose’. Rather, they were ‘concessions to Pakeha ritual, snapshots of the great event’.

Head, however, was critical of what she called McKenzie’s depiction of the signatures as ‘mere squiggles on the paper – a squiggle of signature length maybe, but only a simulacrum of the real thing, because the chiefs could not write’. In Head’s view, McKenzie’s analysis made
the marks ‘look sad and duped’. This was the ‘wrong frame’, she suggested. Instead, and in contrast to Belich, she argued that the fact that the rangatira had signed their names or marks symbolised their ‘step into the future’. As she put it,

By being expressed in the foreign medium of writing, the signatures were an acknowledgement of modes of power in the new world. The chiefs offered the British the power of their names, which was the effective form of their authority. [Emphasis in original.]

8.2.3 The meaning and effect of the treaty

What, then, have historians concluded about the treaty’s overall meaning and effect? Was sovereignty ceded, on the basis of the full and informed consent Hobson was expected to obtain in his instructions from Normanby? We begin with Ross, whose memorable conclusion was that, far from being a ‘sacred compact’ (as described by Lord Bledisloe, the Governor-General who bequeathed the treaty grounds to the nation), ‘the Treaty of Waitangi was hastily and inexpertly drawn up, ambiguous and contradictory in content, chaotic in its execution.’ Who could say what the intentions behind the treaty were, she asked, when even the signatories were so ‘uncertain and divided in their understanding’ of the meaning of te Tiriti? Other 1970s historians followed Ross in rejecting the longstanding view of the treaty as a willing cession by Māori to the Crown in exchange for protection. As Ward put it in 1973:

The chiefs’ signing was taken by the British as a meaningful recognition of the supremacy of the Queen and her agent the Governor. In fact it had almost none of that quality. The Māori leaders had little understanding of the legal concept of national sovereignty as understood by the officials. They had instead a very lively conception of the mana of the land and the mana of the people embodied in the senior-ranking chiefs of the various lineages. This they had no intention whatever of surrendering; rather they wished to take steps to preserve it. Nene’s purpose was essentially to secure the aid of a useful ally to keep in check the settlers and the French.

Writing in 1977, Adams thought that ‘some’ rangatira had agreed to ‘some’ elements of Crown control, but that it is likely none understood the full implications of what the British had in mind:

The political realities of an anarchic frontier situation were no doubt sufficiently apparent for some of the leading chiefs to realize that the cession meant the acceptance of some degree of control and authority over Maori–pakeha relations and over Maori activities which affected them; this some of them welcomed. Yet it is unlikely that the chiefs understood either the extent of the control and authority envisaged by the new British administration, or the long-term implications of the transfer of sovereignty; nor, of course, were any real attempts made to explain them. Without that understanding the signing of the Treaty of Waitangi was an act of trust.

Adams’s implication was that it was a trust that would be betrayed.

Writing in 1979, Simpson took a different tack, still rejecting the notion of a sacred compact but suggesting that at least some rangatira signed as a means of self-preservation. In his view, the speeches of the rangatira showed that many ‘saw their own authority declining under the force of Christianity and European technology’. Hobson was thus ‘a prop to their authority’, and the rangatira ‘saw the Treaty as an opportunity to reintroduce stability in a world changing to their disadvantage’. Thus, while Hobson would have regarded the treaty as a ‘charade’ imposed on him by the Colonial Office, and the Colonial Office would have seen it as ‘a sop to the powerful Church Missionary Society’, the rangatira were gulled into acceptance of British rule by the act of signing it. This is not to say that some were not aware of what was going on. By and large, those who were did not sign, or signed because they saw little alternative. It is important to note only that in these proceedings there is no sign of the vaunted covenant between Māori and pakeha.

Into the 1980s, Orange concluded that, from the oral debate, ‘Māori might well have assumed . . . that their
sovereign rights were actually being confirmed in return for a limited concession of power in kawanatanga.' As she put it:

When Hobson reported these proceedings to the Colonial Office, he asserted that efforts had been made to explain to the chiefs ‘in the fullest manner’ the effect that might result from the treaty. It is difficult to see how he could honestly claim this. As presented, the treaty seemed to be confirming the chiefs’ authority and directing its efforts mainly at Pakeha, aiming specifically at better control of British subjects. Such control might be to the advantage of the Maori people, even though it would mean accepting an increased British authority and sharing the ruling power of the land. Apart from this, however, other predictable changes that would affect Maori life do not appear to have been touched on. Most importantly, there is an absence of any explanation that Maori agreement to kawanatanga (‘sovereignty’ in the English text) would mean British annexation, a substantial transfer of power that would bring international recognition of New Zealand as a British colony. On the contrary, from the emphasis on protection, Maori might have expected that they were being offered an arrangement akin to a protectorate.

In other words, according to Orange, the Māori text failed to convey the meaning of the English text, and Hobson’s agents – be they Busby or the missionaries – failed to ‘clarify the difference’; the treaty was presented ‘in a most benevolent light’; and the evident Māori concern that they would lose their mana or authority was assuaged by the guarantee of rangatiratanga. ‘It looked’, Orange concluded, ‘as if the treaty was asking little of them but offering much.’ But the chiefs still had to place ‘a remarkable degree of trust’ in their advisers. Ultimately, ‘Maori expectations of benefits from the agreement must in the end have outweighed fears, enabling reluctant chiefs to put aside reservations.’

Another important 1980s contributor to debate about the treaty’s meaning was Binney, who touched on it to a greater or lesser extent in several essays. Taken as a whole, she described the treaty thus: for the rangatira, it ‘seemed to offer what they had asked for: a British protectorate, which preserved their chieftainship; while they ceded governorship of the land to the Queen. ‘In accepting the authority of the chiefs’, Binney argued, ‘the treaty had, in Māori understanding, acknowledged a dual sovereignty.’ Notwithstanding this dual authority, Binney thought the retention of rangatiratanga would have convinced the chiefs that ‘they were retaining the substance of power’. This was because ‘those who had been to Poihakena [Port Jackson, Sydney] had seen mostly the benevolent face of “Kawanatanga”, governorship.’

For Binney, the oral debate was where ‘the Maori understanding is revealed.’ She had no doubt that Hobson’s representatives at the treaty meetings ‘soft-pedalled the full implications of the transfer of sovereignty. They played up the role of the Crown as a protector, and the equal rights that were to be given to Māori.’ Some rangatira were hesitant, but the kind of assurances of chiefly independence and the Governor’s control of the settlers recorded by Servant eventually ‘overcame Maori hostility.’ The effect of the treaty was that ‘rangatiratanga (chieftainship) coexisted with kawanatanga (governorship)’, albeit with the former being ‘for a while, the greater practical authority.’

Binney invites us to consider the transaction at face value, in terms of the way the Māori signatories saw it. Kāwanatanga was the right word for what Māori were prepared to convey. The deal was struck through the exchanges at the hui, not through the mere affixing of signatures to parchment. This suggestion of an agreement having indeed been forged at Waitangi, but just not one intended by the British, is similar to the view of Ross and Low. Ross noted James Edward Fitzgerald’s remarks in the House in 1865 that

Governor Hobson might have wished the Maoris to sign one thing, and they might have signed something totally different. Were they bound by what they signed or what Captain Hobson meant them to sign?

Ross turned this on its head and asked, ‘Was the Crown bound by what Hobson signed, or by what he assumed its meaning to be?’ Likewise, Low took Pompallier’s
observation in a letter of 14 May 1840 that ‘few understood well what they did in signing. They were won over by presents and by their ignorance’, and similarly turned it upside down. He suggested that the Māori understanding of the treaty as what he saw as an equal authority was at least as valid as the European understanding of the treaty as a cession of full sovereignty:

Perhaps, after all, chief Patuone’s gesture with his two index fingers was not altogether wrong. Could it have shown a quite tenable interpretation of the word kawanatanga as denoting some kind of protectorate system (such as later occurred in Tonga, where full rangatiratanga is retained to this day)? And could we therefore say that the text of the Treaty does not truly mean what the British intended it to mean? If so, then perhaps Bishop Pompallier’s letter to his superiors should have said: ‘Captain Hobson failed to understand well what he did in signing.’

Belich initially entered the fray in his 1986 book, *The New Zealand Wars*. He argued that while the British thought they were to acquire ‘full and real sovereignty’, Māori may have understood the Crown’s sovereignty as nominal only – like that of ‘a monarch who “reigns but does not govern”’. He noted Māori resentment of ‘British interference in local matters, except where they themselves invited it for a particular purpose.’ In 1990, however, Belich had clearly been influenced by Binney’s 1989 reference (quoted above) to the chiefs’ familiarity with New South Wales kāwana as authoritative figures willing to intervene through the use of force. He wondered if his earlier view – that Māori ‘would have seen kawanatanga as no more than “a loose and vague suzerainty”’ – remained correct. As he put it, ‘Positing a Maori understanding of kawana as a mere figurehead no longer seems tenable.’ This no doubt led him in *Making Peoples* in 1996 to conclude that familiarity with the Australian governors meant that Northland Māori probably ‘realised that signing the treaty implied agreement to a big increase in settlement and in the power of the British state in New Zealand’, and that only some of the rangatira would have regarded Busby as a precedent for the kāwana.

But neither Binney nor Belich appeared to mean by this that the rangatira accepted that the increase in British power would affect the operation of rangatiratanga or their substantive sovereignty. Binney’s suggestion that the rangatira believed they were retaining ‘the substance of power’ was made in 1987. We do not believe she had changed her mind in her later treatment of the subject in 1989. Rather, she wrote then that Hobson and the missionaries had convinced the rangatira ‘of the need for an intervening authority to protect Maori interests, and to mediate between them and the traders and settlers.’ In other words, Māori understood that the Governor’s interventions would essentially control Pākehā or help resolve Māori–Pākehā disputes, and not undermine their own authority. It is a moot point whether she might have considered this role impinged on rangatiratanga or helped enforce it, but we suspect she meant the latter. In any case, Binney’s view appears to have been that Māori welcomed an intervening authority because that very kind of authority was needed to control settler behaviour. Belich too had the impression in 1996 ‘that Maori saw the new governor’s authority as substantial and significant, but restricted to Pakeha.’ Indeed, he thought (as noted above) that the rangatira may well have felt that a governor would ‘free [them] from the burden of ruling the large new Pakeha communities, and assist them in policing the Pakeha–Maori interface’ (emphasis added).

Other writers have rejected the notion of Māori agreeing, through te Tiriti, to the Crown holding a higher authority, although again there are differences of opinion about whether Māori were to be partly subject to the kāwana’s authority. In 1991, Tribunal chairperson Chief Judge Edward Durie wrote that

From the Maori text, . . . read in light of the culture and people’s subsequent conduct, it is doubtful whether Maori saw themselves as ceding sovereignty, or understood what that culture-laden concept meant. It seems more likely that Maori saw themselves as entering into an alliance with the Queen in which the Queen would govern for the maintenance of peace and the control of unruly settlers, while Maori would continue, as before, to govern themselves.
It is not entirely clear whether Durie believed the Queen's role in maintaining the peace included stopping intertribal fighting, for example. In 1998 Sorrenson was more dismissive of the Crown's authority, contrasting the chiefs' retention of their rangatiratanga with ‘whatever vague powers they might have conceded to the kawana or governor’. In 2002, Moon rejected out of hand the idea that the rangatira ceded sovereignty, arguing that ‘tino rangatiratanga necessarily took precedence over any attempt by an outside body at governing tribes’. He concluded that Hobson was seen as weak and ineffectual, and that ‘For many chiefs . . . the issue of governance, in whatever manifestation, was palatable only when it applied to Europeans’. Such was the failure to give any impression to the contrary, he wrote, that ‘any serious historian would shudder at claims that the Maori knew exactly that they were ceding the right to govern the country, in perpetuity, to the Crown.’

In 2003, Manuka Henare described the Māori understanding of the treaty as a 'protectorate relationship in which Britain was to continue its assistance in Māori nation building'. The Queen was offering help in Māori establishing a 'civil society', with 'laws that would govern the behaviour amongst Māori, and between Māori and Pākehā. In return for this help, ‘Māori would allow British people to live here in peace.' In Henare's view, the rangatira regarded Hobson as a 'hired hand' who would help sail the ship, rather than as the ship's owner.

What, though, of what we might call the neo-traditionalists who have maintained that Māori agreed to cede full and ultimate control to the Crown? Ward, in 1999, laid some emphasis on the Māori text of the treaty for this position. Its preamble made it clear the Crown’s kāwanatanga applied to all people and territory, he said. As we have noted, he also claimed that some chiefs refused to sign because they did not want that authority over them. Ultimately, Ward concluded, the argument made by those such as Tāmati Waka Nene that the clock could not be turned back carried the day:

There was clearly a widespread appreciation that the problems of modernity required more concerted government than was possible at tribal level, and that the Crown should be at the head of it. To that extent, the chiefs and the officials shared a common purpose.

Ward acknowledged that the urgency to bring the land trade under control left it unclear how rangatiratanga and kāwanatanga would relate to each other in practice. But he added that many British officials would have regarded the entire matter as rather academic, because they saw Māori decline as inevitable.

Head, in 2001, thought that much of the scholarship about the treaty was based on the notion that Māori had been ‘duped’. This, she argued, overlooked Māori agency. In her view, the rangatira were not innocent and ‘enclosed in traditional thinking’, but rather were very interested in pursuing ‘westernisation’. She identified the principal cause of this as musket warfare, which she described as having created massive social disruption and strife. The rangatira thus sought ‘a value system that would delegitimise inter-group fighting – one that would create the conditions for the development of a civil society which repressed warfare’. They made a rational choice, she argued, to adopt the means by which ‘the foreigners ordered their world’. In this regard, Head saw a link between conversion and the treaty: ‘Christianity offered a model of governance where peace was protected by law, and where revenge was the responsibility of the state.’ The northern chiefs’ support for the treaty was thus ‘a response to lived change’. For Head:

Signatures to the Treaty . . . expressed an impulse for an integrated world. Most of all, it was a vote for the new. Modernity was the critical idea in the Treaty as far as Maori were concerned.

Belgrave, in 2005, also depicted the impact of settlement and the attraction of modernity as the reasons rangatira signed te Tiriti:

Rather than being dominant and able to reject the European world, those Maori communities who already depended on trade with outsiders were little able to turn back the imperial clock. The signing of the treaty was not a single event, but the
culmination of a process of debate that had taken place over a number of years, made almost inevitable by the land rush that accompanied the prospect of a British takeover. Only isolated and powerful tribes were able to stand aside.\footnote{165}

He thought the idea of being part of, or allied with, the British Empire was another incentive for the rangatira to sign, as were the rights that flowed from British subjecthood, such as \textit{habeas corpus} and equality before the law. He added that tribes also assented to the treaty as a form of protection from each other. While Belgrave accepted that the treaty was a 'seizure of power', he concluded nonetheless that 'it was not done without a degree of consent'.\footnote{166}

We conclude this summary by mentioning the accounts of three prominent legal experts. We begin with McHugh, who in 1989 invoked the Victorian jurist A V Dicey’s distinction between 'legal sovereignty' (the right to govern and make laws) and 'political sovereignty' (effectively, the will of the people). McHugh argued that the latter legitimated the exercise of the former. He suggested that Māori had ceded their legal sovereignty to the Crown through the treaty, but had retained their political sovereignty, or their rangatiratanga, and thus exercised a check on the Crown's authority. His account of the treaty's significance, according to English law, was in these terms:

\begin{quote}
\textit{it is clear that the Crown's government over the Māori tribes originates from their formal consent in the Treaty of Waitangi. This consent was considered a legal prerequisite to the Crown's erection of an imperium (government) over the Tribes. The association of sovereign authority with the consent of the governed is but a particular and local example of a principle of British constitutional theory dating at least from the beginning of the seventeenth century.}\footnote{167}
\end{quote}

In this work, McHugh did not examine the quality of that consent. However, he expanded on such matters in his 1991 book, \textit{The Māori Magna Carta}. In particular, he questioned whether the rangatira who signed te Tiriti intended to cede their legal sovereignty. Commenting that it 'would be foolish to expect there to have been an exact meeting of minds' between the parties in 1840, he noted that 'the indications' from careful historical and anthropological reviews were that the rangatira believed they were retaining their own authority over their people according to their customary law. Despite this, McHugh argued, the Crown's acquisition of sovereignty was legal according to English law because the Crown had complied with the rules developed during its earlier imperial activities, namely, that it could establish a government over an organised society only with prior consent.\footnote{168} His summary description of the treaty's effect accepted that the Crown was given power over intertribal affairs as well as over the settlers:

\begin{quote}
The Treaty of Waitangi . . . created a dynamic, ongoing relationship between the Crown and tribe. The chiefs entered into a 'partnership' with the Crown, giving the latter overriding power on intertribal matters and recognizing its authority over the settler population.\footnote{169}
\end{quote}

In 1999, Professor Jock Brookfield pointed to some agreement by Māori scholars, such as Professor (later Sir) Hugh Kawharu in 1984, that kāwanatanga applied to aspects of Māori life, such as the right to make war. He asked whether and how, in light of that, kāwanatanga could be a merely subordinate and delegated power. He noted, on the other hand, that Moana Jackson and others had argued that it was not possible for a chief to relinquish part of his mana, and that te Tiriti itself guaranteed 'tino' (unqualified) rangatiratanga. All things considered, he thought it possible that some signatories did have the 'revolutionary intention' of transferring some part of their mana to the Crown, notwithstanding Jackson’s view that this would have been invalid, and that other chiefs did not have that intention. He ventured that the differences in viewpoint of the Māori scholars he named may in fact mirror the differing expectations of the various chiefs. It is surely likely that, for whatever reason, they did not all understand the effect of the Treaty in the same way or intend the same thing.\footnote{170}

However, Brookfield doubted that any rangatira could
‘have intended to cede to the Crown the full power which it claimed and ultimately enforced throughout the coun-
try’ – a power which, he noted, had ‘been exercised over the Treaty itself’. As he put it:

If it is difficult to reconcile the first two articles of the Treaty with each other, it is far more difficult – indeed impos-
sible – to reconcile with those two articles what the Crown in fact did. To the extent that the power asserted and seized by the Crown exceeded what was ceded, the seizure was a revolu-
tionary act in relation to the customary legal systems of the hapū of the signatory chiefs.¹⁷¹

The third legal perspective we note here is that of Dr Matthew Palmer, who examined what may have been agreed in February 1840 in his 2008 book The Treaty of Waitangi in New Zealand’s Law and Constitution. Like Brookfield, Palmer noted the likely divergence of opinion among treaty signatories:

Each Māori hapū, led by their rangatira, would have made judgements about whether to agree to the Treaty based on a combination of factors. These would have varied depending on the geographic circumstances of the hapū, the nature and extent of their experience of Europeans, and their strategic position in relation to other hapū.¹⁷²

Bearing this in mind, and noting the absence of an authoritative hapū-by-hapū analysis of these influences, Palmer set out the considerations that he believed would have led a ‘realist rangatira’ to sign te Tiriti at the time:

If some relationship was to be entered with a foreign power, Britain was the obvious choice – both because of its global and local power and because of its history of interactions in New Zealand. The British might be able to do some good in controlling their own people in relation to criminal behaviour and dubious land deals and may help to facilitate trade. Also, the terms of Article 11 of the Treaty proposed explicitly to preserve, if not strengthen, a rangatira’s authority to lead his hapū. Most rangatira probably did not have the same understand-
ing of the land pre-emption provision in Article 11 as the

British did. Nor do I think it likely that many, if any, rangatira would have shared the British conception of sovereignty in Article I. The proposed relationship with a more powerful ally would have resonated with the customary dynamics of shifting alliances with larger aggregations of hapū. Queen Victoria was a reassuringly distant sort of ariki to have to deal with in this regard. The missionaries seemed generally benign and sometimes useful and they thought it was a good idea. The British clearly put some value on signing the Treaty, given the ceremony at Waitangi and the Hokianga Harbour. Importantly, you would not want to let the neighbouring hapū get any more leverage over the use of British warships than you had. And, for some who anticipated that the British might not honour all its terms in future, it would be better to have the British themselves signed up to some sort of statement of commitment to your interests.¹⁷³

Palmer then set out several statements from 1840s New Zealand to support his interpretation, and went on to quote from a series of modern scholars to show the degree of ‘common ground’ about the meaning and effect of the treaty from the British and Māori perspectives in 1840. Palmer concluded that it was clear that

the Crown and Māori were choosing to establish a formal relationship with the other that related to the exercise of power in New Zealand – particularly that Britain was taking on responsibilities in relation to foreign relations and British subjects.

However, ‘there was no common understanding of the extent to which the British power to govern, and the con-
tinued authority of rangatira, were to interact’.¹⁷⁴

In a more strictly legal interpretation of the position at international law, Palmer also concluded that,

On the basis of the English text, Britain likely considered that the Treaty enabled and legitimised, at international law, the British assertion of sovereignty in New Zealand. On the basis of the Māori text, those rangatira who signed the Treaty may reasonably have considered that while it allowed Britain to regulate the behaviour of Pākehā and deal with
foreign powers, the Treaty provided assurance of the continued authority of rangatira in leading their hapū independently of British decision-making. . . . On the basis of what we know today, an interpretation of the Treaty of Waitangi that accorded to most rangatira an intention to cede sovereignty is, in my opinion, untenable. The implication of this view is that the Treaty is not a treaty of cession, as assumed by international lawyers such as Crawford and Brownlie who focus on the question of capacity rather than the terms of the Treaty. Rather, it may have been more analogous to a ‘treaty of protection’.

We return to international law when setting out the submissions of claimant and Crown counsel in chapter 9.

8.2.4 What if the rangatira had not signed?
A final matter to note is the issue of what might have happened if the rangatira had refused to sign the Treaty. Ward, who considered the matter in 1999, very much doubted that Hobson would have been deterred. He observed that Colonial Office officials had debated whether obtaining a cession of sovereignty from Māori was even necessary, given the amount of land that Māori had already ‘sold’, but had concluded it would be better to pursue a cession by treaty. Moreover, Ward noted that Hobson had been granted authority to proclaim sovereignty over the South Island by right of discovery, and provision had been made for any territory annexed in New Zealand to form part of New South Wales. As he put it:

The British had thus taken for themselves the necessary authority to annex New Zealand, according to European law. It is almost certain they would have carried through their intention, even if the chiefs had not signed the Treaty at Waitangi. In fact Hobson did so in respect of the South Island, on 21 May 1840, before more than a few of the South Island chiefs had signed the Treaty.

Ward added that, with Gipps’s 14 January proclamations, ‘the British were acting as if they had governmental authority in New Zealand before the Treaty was even drafted.’ Similarly, Moon wrote in 2002 that Hobson’s 30 January 1840 proclamations ‘referred, significantly, to the existing and prospective settlement of British subjects in New Zealand, as though to provide some constitutional safety-net should the plans for the Treaty not eventuate.’

Other historians have no doubt but that the British were there to stay, come what may – Ian Wards, for example, who in 1968 stressed the British readiness to use military force if necessary.

Legal scholars, however, have expressed considerable doubt that the Crown would have asserted sovereignty over New Zealand, or parts of it, without signatures on the treaty. As McHugh put it in his 1991 book, The Māori Magna Carta,

There is overwhelming evidence of the Crown’s belief that it was legally restrained from exercising any constituent power in New Zealand without Māori consent. The formal Institutions and Commission to Hobson as well as supplementary documentation of 1839 bear this out.

Palmer added in 2008 that

I believe it is clear that in 1840 British government practice, British government interpretation of international law and other sources of international law were all consistent with the stated British recognition of sovereignty residing with Māori rangatira on behalf of their hapū. This recognition of New Zealand sovereignty was a reason, in terms of government policy, and international law at the time, for Britain to treat with Māori for cession of sovereignty.

We return to the work of historians and other scholars when we set out how those who appeared at our inquiry advanced or disputed these recent interpretations. We turn now to another set of perspectives on the treaty: those of the courts and previous Tribunal panels.

8.3 Previous Tribunal and Court Statements
8.3.1 Waitangi Tribunal reports
Any consideration of what previous Tribunals have said about the relationship entered into under the treaty at
Past Perspectives on the Treaty

Waitangi in 1840 must first take into account the nature and extent of the Waitangi Tribunal’s jurisdiction. First, the Treaty of Waitangi Act 1975 is premised on there being one treaty, embodied in two texts. Section 5 provides that the Tribunal:

shall have regard to the 2 texts of the Treaty set out in the First Schedule to this Act and, for the purposes of this Act, shall have exclusive jurisdiction to determine the meaning and effect of the Treaty as embodied in the 2 texts and to decide issues raised by the differences between them.

Secondly, as is stated in the preamble to the 1975 Act, the Tribunal’s task is

to make recommendations on claims relating to the practical application of the Treaty and to determine whether certain matters are inconsistent with the principles of the Treaty.

The ‘certain matters’ that can be examined by the Tribunal for their consistency with treaty principles are set out in section 6 of the Act. It provides that any Māori or group of Māori can claim to have suffered prejudice as a result of: any legislation passed in New Zealand on or after 6 February 1840; any delegated legislation made under the authority of such legislation; any policy or practice adopted by, or proposed to be adopted by, or on behalf of the Crown; and any act done or omitted on or after 6 February 1840 or proposed to be done or omitted, by or on behalf of the Crown.

Together, sections 5 and 6 of the Waitangi Tribunal’s constituent Act set certain boundaries to our jurisdiction which, inevitably, are reflected in previous Tribunals’ approaches to and statements about the matters that have been before them. First, the Tribunal has no authority to contradict the Act’s premise that there is one treaty with two texts, and earlier Tribunals have had no cause to question that premise. Rather, both texts have been considered during the nearly 40 years in which the Tribunal has been articulating and applying treaty principles.

Secondly, the fact that the Tribunal’s jurisdiction is over claims about matters ‘on or after 6 February 1840’ has meant that previous Tribunals have largely confined their inquiries to events after that date. Certainly, no earlier Tribunal has received the in-depth evidence and argument that this Tribunal received about the broader historical context for, and the significant events, including the Whakaputanga, leading up to 6 February 1840. Thus, the information upon which earlier Tribunals have based their views about pre-treaty matters, and about the influence of those matters on the meaning and effect of the treaty, has been far more limited than the information produced and tested in this inquiry.

Thirdly, most other Tribunals have considered other parts of the country, where the circumstances were very different.

That said, we think that it is appropriate to take careful note of what prior Tribunals have said about the making of the treaty, where they have in fact considered the same kinds of evidence as we have. Tribunals inquiring into claims in the northern part of New Zealand have tended to fall into this category because of the unique importance of te Tiriti to claimants there. The first substantive Tribunal inquiries of the early-to-mid-1980s also made a point of examining what was promised and agreed at Waitangi in February 1840. We accordingly restrict our discussion of past Tribunal statements to these kinds of inquiries.

In sum, the Tribunal reports we consider have reached different views about the agreement at Waitangi. Some have implied that Māori in 1840 did not cede to the Crown what the English text describes as ‘all the rights and powers of Sovereignty’, while others have regarded a cession of sovereignty as being very clear to both parties. To illustrate the contrast, the Motunui–Waitara Tribunal wrote in 1983 that ‘te tino rangatiratanga’, the retention of which was guaranteed to Māori, ‘could be taken to mean “the highest chieftainship” or indeed, “the sovereignty of their lands”’.

Consistent with that view, the Manukau Tribunal wrote in 1985 that the kāwanatanga ceded to the Crown was a lesser authority than sovereignty, whereas rangatiratanga was ‘not conditioned’, and ‘tino rangatiratanga’ meant ‘full authority status and prestige with regard to their possessions and interests’. In June 1988, however, the Muriwhenua Fishing Tribunal wrote that...
the supremacy of the Queen’s authority was clear, because the Crown was to have an overriding control; the chiefs’ speeches at Waitangi demonstrated that they understood this; and ‘tino rangatiratanga’ equated more to ‘tribal self-management’.\textsuperscript{184} Shortly after, in August 1988, the Mangonui Sewerage Tribunal also referred to the ‘rights of tribal self-management that flow from the Treaty’. It stressed, as the Court of Appeal had done in the \textit{Lands}\textsuperscript{185} case the previous year (see below), that the Crown’s role was, as Tāmati Waka Nene had put it at Waitangi: ‘father, judge and peacemaker’.\textsuperscript{186}

In 1989, legal scholar Ani Mikaere considered that Tribunal reports could essentially be put into pre- and post-\textit{Lands} case categories. She pointed out that the Orakei Tribunal, in its report of November 1987, had noted that it would be guided by the Court of Appeal judgments in the \textit{Lands} case, and she detected a shift in Tribunal reports at this time towards a greater emphasis on the English text and the Crown’s acquisition of sovereignty. She noted that Justice Somers had held that the Tribunal would henceforth be bound by the Court of Appeal’s interpretation of treaty principles. Altogether, Mikaere thought, this represented ‘a significant shift on the vital question whether the Treaty constituted a treaty of cession’ on the Tribunal’s part.\textsuperscript{187}

We have no doubt that the Court of Appeal’s findings have been an important influence on the Tribunal. But we also consider that the Tribunal has made some significant observations since the \textit{Lands} case that do not merely repeat the Court of Appeal’s reasoning.

For us, two Tribunal reports stand out for their consideration of the circumstances surrounding the signing of \textit{He Whakaputanga me te Tiriti} and their influence on our understanding of the treaty’s meaning and effect. The first of these is indeed the \textit{Report on the Orakei Claim} of 1987, which is regarded as a landmark Tribunal report on treaty interpretation, setting the tone for many subsequent reports.\textsuperscript{188} On a key issue for this inquiry, it commented as follows:

\begin{quote}
The Maori text . . . conveyed an intention that the Maori would retain full authority over their lands, homes and things important to them, or in a phrase, that they would retain their mana Maori. That of course is wider than the English text which guaranteed ‘the full, exclusive and undisturbed possession of lands, estates, forests, fisheries and other properties’ so long as the Maori wished to retain them. The Maori text gave that and more.

To the Crown was given ‘Kawanatanga’ in the Maori text, not ‘mana’[,] for . . . the missionaries knew well enough no Maori would cede that. ‘Kawanatanga’ was another missionary coined word and . . . likely meant[,] to the Maori, the right to make laws for peace and good order and to protect the mana Maori. That, on its face, is less than the supreme sovereignty of the English text and does not carry the English cultural assumptions that go with it, the unfettered authority of Parliament or the principles of common law administered by the Queen’s Judges in the Queen’s name. But nor does the Maori text invalidate the proclamation of sovereignty that followed the Treaty. Contemporary statements show well enough Maori accepted the Crown’s higher authority and saw themselves as subjects[,] be it with the substantial rights reserved to them under the Treaty.\textsuperscript{189}
\end{quote}

In other words, the Orakei Tribunal seems to have thought that a cession of sovereignty is by no means apparent in the words of the Māori text, which almost all chiefs signed. However, it did think such a cession was confirmed by Māori statements made during the oral transaction, such as the concern expressed by various rangatira that the Governor would have a higher status. As its conclusion states, ‘The cession of sovereignty . . . is implicit from surrounding circumstances.’ Nonetheless, as we have noted, the Tribunal still considered that the chiefs retained their ‘full authority’ or mana over their lands and ‘things prized’.\textsuperscript{190} It did not grapple with the apparent contradiction between ‘full authority’ for Māori and sovereignty for the Crown.

The Orakei Tribunal also discussed the pre-emption clause of the treaty at some length. It concluded that, had the Crown’s plans to fund ongoing colonisation through the cheap purchase of Māori land been communicated to the chiefs,
the likelihood of the chiefs agreeing to such a proposal would have been remote. Given the constant reiteration by Captain Hobson and his agents of the Crown’s commitment to the protection of their lands and their rights the chiefs understandably failed to appreciate the risk they ran in agreeing to this provision.\textsuperscript{191}

However, that Tribunal would not agree with Adams that profitable resale of Māori land ‘was precisely the reason for pre-emption’. Instead, it considered that the protective concerns in Normanby’s instructions – that Māori would not sell more land than they could afford to for their comfort and support, and that their remaining land would increase in value as the settler population grew – were equally important.\textsuperscript{192}

The Orakei Tribunal also found that, in the case of any ambiguity between the English and Māori versions, ‘considerable weight’ had to be placed on the Māori text of the treaty. As it explained:

Few, if any, of the Maori signatories could read English nor could all of them read Maori. But the Maori version was for them the only relevant text. It seems clear that it was written and subsequently explained by Williams in terms that were most likely to be acceptable to the Maori chiefs.\textsuperscript{193}

The second report we refer to is the \textit{Muriwhenua Land Report} of 1997. It is fair to say that, prior to our own inquiry, no other Tribunal report has engaged as thoroughly with the kōrero and promises at Waitangi and elsewhere in the north as did Muriwhenua Land. While that Tribunal’s investigation of these matters was not as extensive as our own, it nevertheless made use of secondary texts such as Orange’s 1987 book (which was not available to the Orakei Tribunal), primary works such as Colenso’s published 1890 account, and a research report on the three main northern Tiriti signings (at Waitangi, Mangungu, and Kaitaia) by Salmond, which at our request was presented by Salmond in very similar form at our own inquiry.\textsuperscript{194} For these reasons, the Muriwhenua Land Tribunal’s findings are worth noting.

That Tribunal’s focus was on pre-1865 (including pre-treaty) land transactions. It therefore made conclusions on the maintenance of Māori customary practices. For example, it noted that Hobson promised to preserve Māori custom in the ‘fourth article’:

From the Treaty guarantee of rangatiratanga (or traditional authority), from oral undertakings to respect the custom and the law, and from the guarantee that Maori could keep their land, Maori had cause to believe that the Europeans already in possession of land held it only on customary terms. The Treaty debate could not have disabused them of the customary notion but, rather, could only have reinforced it.\textsuperscript{195}

On the broader issue of whether Māori willingly ceded their sovereignty, the Muriwhenua Land Tribunal made several significant points, including the fact that critical aspects of British sovereignty were simply not discussed:

When considering the Treaty of Waitangi and British expectations, the Treaty debate is more significant for what was not said than for what was. It was not said, for example, that, for the British, sovereignty meant that the Queen’s authority was absolute. Nor was it said that with sovereignty came British law, with hardly any modification, or that Maori law and authority would prevail only until they could be replaced. Similarly, while Maori assumed that they had kept the underlying right to the land on which Pakeha were living, in accordance with ancestral norms, the British assumed, but did not say, that the underlying (or radical) title would be held by the Crown, in accordance with English beliefs. Although no deception was intended, the assumption was none the less that, in brief, the British would rule on all matters, and the fair share for Maori would be what the British deemed appropriate.\textsuperscript{196}

As can be seen, the Tribunal was quick to stress that the Queen’s representatives were not acting deceptively. In fact, it emphasised what it believed were the Crown’s benevolent intentions. But, while the Tribunal perceived goodwill, it ultimately saw little mutuality, and implicit in
this was, we think, the conclusion that Māori did not cede sovereignty as understood by the British:

We imply no subterfuge in describing the enormous gap between what was said and agreed and what was left unspoken. Like Māori, the British were locked into their own worldview and spoke of things which carried a raft of implications that they could take for granted and yet only they could know. Matters had to be put simply, and British constitutional norms were as incomprehensible to Māori as Māori societal norms were a mystery to the British. What needs to be stressed, therefore, is that each side approached the Treaty with genuine good feelings for the other – Māori seeking advantages from Pakeha trade and residence, the British expecting benefits from this expansion of their empire. They also proposed protection for the indigenous people. As a wealth of historical material reveals, there was in England at this time a strong evangelical and humanitarian tradition consistent with this objective. As Māori knew, the terms were not as important as the hearts of those making them.

The result, however, is that, despite the goodwill, the parties were talking past each other. Māori expected the relationship
to be defined by their rules. It was natural to think so and, far from disabusing them of that view, the Treaty and the debate reinforced it. By the same token, the British, true to what was natural to them, assumed that sovereignty had been obtained by the Treaty and therefore matters would be determined by British legal precepts. It is thus important to see the Treaty not in terms of its specific details but for what it mainly was: a statement of good intent and of basic and necessary principles.\textsuperscript{197}

In essence, therefore, the Muriwhenua Land Tribunal excused the lack of mutual understanding by viewing the treaty as born of honourable intentions which gave it its underlying meaning:

Whatever the mismatches of Maori and Pakeha aspirations, none gainsay the Treaty's honest intention that Maori and Pakeha relationships would be based on mutual respect and the protection of each other. For Maori, these principles were essential to any alliance. For the British, they were part of the art of statesmanship and of humanitarian objectives.\textsuperscript{198}

We note finally that the Muriwhenua Land Tribunal also considered the art of Māori oratory, as practised at Waitangi and elsewhere. It noted the European stereotype of ‘violent argument quieted through the timely appearance of a principal rangatira’, but thought that matters were not usually so finely balanced. A lively debate, from a Māori perspective, ‘does justice to the cause, sharpens the issues, augments the occasion, and leaves stories to memorialise the event’. While the common view was that Hobson had been ‘harangued with allegations’, the Tribunal pointed out that ‘impassioned declamation is also a standard oratorical tool’. Thus, the chiefs repeated the claims from ‘mischievous’ Pākehā that they would be enslaved or lose all their land in order to ‘clear the air’ and ‘compel a forthright denial’.\textsuperscript{199}

\textbf{8.3.2 Court rulings}

New Zealand's courts have a different status from the Waitangi Tribunal, for what a court says about treaty principles (in a case in which the principles are material) becomes part of New Zealand’s law. Judicial statements about the nature of the treaty relationship are therefore important, especially if made by the judges of our Court of Appeal or Supreme Court. We note, as we have of earlier Waitangi Tribunal inquiries, that the courts’ conclusions about the understandings of the treaty parties in February 1840 are not based on extensive evidence of historical events. The reason, however, stems from the courts’ inability to challenge the fundamental legal rule that sovereignty lawfully declared cannot be lawfully questioned.

Under New Zealand law, the treaty cannot be the basis of litigation in the courts unless it has been given effect by statute. Before the 1980s, there were only isolated statutory references to the treaty. One example was section 8 of the Fish Protection Act 1877, which provided that nothing in the Act was to affect any of the provisions of the treaty or to take away or limit any Māori rights secured by the treaty to any fishery.\textsuperscript{200} The Tribunal in the Report on the Muriwhenua Fishing Claim commented on that provision:

It recognized the Treaty of Waitangi but the manner in which it did so illustrates a recurring theme, apparent also in Maori land laws (the Native Land Act 1862 for example) that Maori concerns for the recognition of Treaty interests could be met by mentioning the Treaty in the Act, in a general way, and although nearly everything else in the Act might be contrary to Treaty principles.\textsuperscript{201}

The general absence of statutory recognition of the treaty until relatively recently explains the paucity of litigation about its meaning. (The Tribunal in its 1983 Report on the Motunui–Waitara Claim, listed 14 court cases between 1847 and 1977 in which the treaty had been pleaded, all without success.\textsuperscript{202}) It also explains why treaty-based objections by Māori to particular New Zealand laws have most often been expressed in petitions to Parliament or, since 1975, in claims to this Tribunal.

A significant change was heralded with the election of the fourth Labour Government in 1984 and its enactment of several statutes that required the Crown, variously, to act consistently with, give effect to, take into account, or have regard to the principles of the treaty. Thus, as Palmer
has argued, the ‘first serious interpretation of the meaning of the Treaty of Waitangi by New Zealand appellate judges’ was in the so-called Lands case of June 1987. This resulted from the New Zealand Māori Council’s challenge, under section 9 of the State-Owned Enterprises Act 1986, to the Government’s transfer of assets to State-owned enterprises. The Lands case necessarily focused on the principles arising from the treaty (as section 9 required), and the judges did not traverse the 1840 proceedings at Waitangi in any particular detail. As President of the Court Cooke put it:

The differences between the texts and the shades of meaning do not matter for the purposes of this case. What matters is the spirit. . . . In brief the basic terms of the bargain were that the Queen was to govern and the Maoris were to be her subjects; in return their chieftainships and possessions were to be protected, but sales of land to the Crown could be negotiated.

Justice Somers also felt it unnecessary
to discuss the differences between the two texts and the possible different understandings of the Crown and the Maori in 1840 as to the meaning of the Treaty. They are issues best determined by the Waitangi Tribunal to whom they have been committed by Parliament.

However, as Mikaere noted, Justice Somers also stated that a finding of the court would

of course be binding and to the extent that it is material in any case should be followed by the Waitangi Tribunal as a declaration of the highest judicial tribunal in New Zealand.

The Lands case judges were unanimous in concluding that the Crown had acquired sovereignty in 1840. Justice Somers explained it this way:

We were referred to a number of valuable commentaries on this part of the Treaty and to the several determinations of the Waitangi Tribunal. They provide grounds for thinking that there were important differences between the understanding of the signatories as to true intent and meaning of article I of the Treaty. But notwithstanding that feature I am of opinion that the question of sovereignty in New Zealand is not in doubt. On 21 May 1840 Captain Hobson proclaimed the ‘full sovereignty of the Queen over the whole of the North Island’ by virtue of the rights and powers ceded to the Crown by the Treaty of Waitangi, and over the South Island and Stewart Island on the grounds of discovery. These proclamations were approved in London and published in the London Gazette of 2 October 1840. The sovereignty of the Crown was then
beyond dispute and the subsequent legislative history of New Zealand clearly evidences that. Sovereignty in New Zealand resides in Parliament.²⁰⁷

This was, we suspect, both an acknowledgement that the situation at Waitangi on 6 February 1840 was far from clear cut and a reminder that our law will not countenance any criticism of sovereignty that has been proclaimed in accordance with law.

There were other reminders that it was the subsequent assertion of sovereignty by Britain that mattered legally, rather than whether Māori intended to cede it in te Tiriti. For example, Justice Richardson observed that:

> It now seems widely accepted as a matter of colonial law and international law that those [May] proclamations [by Hobson] approved by the Crown and the gazetting of the acquisition of New Zealand by the Crown in the London Gazette on 2 October 1840 authoritatively established Crown sovereignty over New Zealand.

The matter is much more complex than that bare narrative indicates. Scholars differ both as to the precise legal basis...
for British sovereignty and as to the legal status of the Treaty under New Zealand law.\textsuperscript{208}

Of the five Court of Appeal judges, Justice Bisson considered the exchanges at Waitangi in the most (although still partial) detail. He concluded that ‘there would have been a problem in the Maori Chiefs who signed the Treaty being able to have a full understanding of what was meant in the English version.’ He thought the Māori viewpoint was perhaps best encapsulated in the words of Tāmati Waka Nene on 5 February. He quoted here from Colenso’s account, with its request for Hobson to be ‘a father, a judge, a peace-maker’,\textsuperscript{209} rather than from Hobson’s own account, with Nere’s demand being ‘You must be our father! You must not allow us to become slaves! You must preserve our customs, and never permit our lands to be wrested from us!’\textsuperscript{210} Justice Bisson also quoted Colenso’s account of Patuone’s speech and reached this conclusion about the agreement entered into:

\begin{quote}
Just as Captain Hobson assured the Chiefs that they might rely implicitly on the good faith of Her Majesty’s Government the Chiefs entered into the Treaty, ‘in the full spirit and meaning thereof’.

The passages I have quoted from the speeches of two Maori Chiefs and from the letter of Governor Hobson enable the principles of the Treaty to be distilled from an analysis of the text of the Treaty. The Maori Chiefs looked to the Crown for protection from other foreign powers, for peace and for law and order. They reposed their trust for these things in the Crown believing that they retained their own rangatiratanga and taonga. The Crown assured them of the utmost good faith in the manner in which their existing rights would be guaranteed and in particular guaranteed down to each individual Maori the full exclusive and undisturbed possession of their lands which is the basic and most important principle of the Treaty in the context of the case before this Court.\textsuperscript{211}
\end{quote}

In 1989, the Tainui Māori Trust Board sought to protect tribal interests in confiscated Waikato land and the coal resources under that land in the face of the Crown’s plans to sell its State-owned enterprise Coalcorp. Again, the case was resolved in the Court of Appeal, and again the judges did not analyse the events at Waitangi on 5 and 6 February 1840. President Cooke stated that non-Māori had to accept the need for reparation for past and continuing breaches of the treaty. On the other hand, he said, Māori had to understand that

\begin{quote}
the Treaty gave the Queen government, Kawanatanga, and foresaw continuing immigration. The development of New Zealand as a nation has been largely due to that immigration.
\end{quote}

No other discussion on the arrangement was entered into: the word ‘sovereignty’, for example, was not mentioned in any of the judgments.\textsuperscript{212}

That same year, in the Fisheries case the Court of Appeal considered the fishing rights of the five iwi of Muriwhenua under section 88(2) of the Fisheries Act 1983.\textsuperscript{213} And, in 1992, the challenge by various iwi to the 1992 fisheries
settlement between Māori representatives and the Crown was heard again by the Court of Appeal in the Sealord case.\footnote{Palmer regarded these two cases – along with Lands and Broadcasting Assets (see below) – as four cases which ‘turn out to be particularly important in making general statements about the meaning of the Treaty.’} Yet, in neither Fisheries nor Sealord did the judges discuss the exchange of sovereignty or kāwanatanga for the guarantee of tino rangatiratanga. Again, it seems, the courts preferred to leave such analysis to the Tribunal.

In 1991, the New Zealand Māori Council challenged the Crown over its transfer of the former assets of the New Zealand Broadcasting Corporation to Radio New Zealand and Television New Zealand. This long-running litigation, known as the Broadcasting Assets case, came before the Court of Appeal later in 1991 and the Privy Council in 1993. Again, the judges did not consider the original treaty discussions. For our purposes, the only matters of note are that Justice McKay, who delivered the majority judgment of the Court of Appeal, deferred to President Cooke and Justice Richardson in the Lands case on the nature of the treaty relationship; and, in the Privy Council, the law lords stated that the Crown had duties of protecting Māori property ‘in return for being recognised as the legitimate government of the whole nation by Maori.’\footnote{We mention one final Court of Appeal decision. In the Whales case of 1995, in which the Ngāi Tahu Māori Trust Board challenged the Director-General of Conservation over the allocation of an additional whale-watching licence at Kaikoura (section 4 of the Conservation Act 1987 requiring the Crown to ‘give effect’ to the principles of the treaty) – and in which the court found that Ngāi Tahu were entitled to a ‘reasonable degree of preference’ over other permit applicants – President Cooke summed up the Crown’s authority under the treaty as follows:}

Again, there was no discussion of the February 1840 foundation for the Crown’s ‘overriding authority’ in article 1.

8.4 Conclusion

Prior to the 1970s, discussion of the treaty was a standard feature of writing about New Zealand history. Generally absent from this, however, was the degree of scrutiny of the treaty’s meaning that characterises more recent scholarship. The treaty was simply there, in the background, as the nation’s founding document, and most Pākehā believed that the agreement made was accurately reflected in the English text.

Then, from the 1970s, partly prompted by Māori assertiveness over their rights and the global trend towards decolonisation, historians acknowledged that the rangatira signed and understood the Māori text of the treaty, and not the English one. This consciousness radically shifted the scholarship. Māori perspectives on the treaty’s meaning – based on the Māori text and particularly the concept of tino rangatiratanga – could no longer be overlooked. The result has been an ongoing national debate about the nature of the agreement concluded at Waitangi, and particularly the extent to which Māori treaty rights continue to oblige and constrain the Crown.

A number of years after this new phase of interpretation began to develop, the Waitangi Tribunal started to consider the treaty’s meaning and effect. In due course, so also did the courts, after references to treaty principles were inserted into statutes in the 1980s. As we can see, however, no previous Tribunal or judicial inquiry has considered
the nature of the agreement between the Queen's representatives and Ngāpuhi chiefs at Waitangi (and, for that matter, at Mangungu) in February 1840 to anything near the extent of this inquiry. Inevitably, those earlier inquiries have tended to generalise and begin from the starting point of certain assumptions. That is not a criticism of those judges or panels, for the very nature of their respective jurisdictions has fashioned the evidence and submissions before them and, inevitably, has been reflected in their decisions.

Regardless of these limitations, the focus on the treaty in history-writing and litigation over the previous four decades created an impressive back-drop to the commencement of our own inquiry in 2010. Yet, our inquiry promised only to sharpen this focus. In the next chapter we set out the range of evidence and submissions presented to us over our five weeks of hearings in 2010 and 2011. These both echoed the previous discourse and took the treaty debate in new directions, as we shall see.

Notes

2. James Belich, Making Peoples: A History of the New Zealanders – from Polynesian Settlement to the end of the Nineteenth Century (Auckland: Allen Lane, 1996), p 193. Belich was referring to historians writing throughout New Zealand’s past, rather than only since the 1970s. In a similar vein, Tony Simpson wrote in 1979 (Te Riri Pakeha: The White Man’s Anger (Waiau: Alister Taylor, 1979), p 31) that: ‘There can be few people who have grown up in this country who do not have in their mind’s eye the official vision of the Treaty of Waitangi. It is a scene that leaps from a hundred school projects, and which is evoked at interminable length in official speeches on innumerable occasions. It has even – the ultimate respectability – appeared on a postage stamp.’
15. Another example of this is Dr (later Professor) Giselle Byrnes’ book The Waitangi Tribunal and New Zealand History (Melbourne: Oxford University Press, 2004).
18. Ross, ‘Te Tiriti o Waitangi’, p 135; Donald Loveridge, ‘The “Littlewood Treaty”: An Appraisal of Texts and Interpretations’ (commissioned research report, Wellington: Treaty of Waitangi Research Unit, 2006), p 14 n 58. Tony Simpson followed Ross and wrote that Busby’s claims to having drafted the treaty were ‘almost certainly a falsification, for the Treaty seems, from surviving drafts, to be the joint work of Hobson and his secretary, Freeman, with Busby’s contribution limited to changing a few words here and there’: Simpson, Te Riri Pakeha, p 50.
24. Ross, 'Te Tiriti o Waitangi', pp 143–145
25. Simpson, Te Riri Pakeha, p 51
28. Hickford explained that 'Gipps was an extensive collector of tomes concerning European histories and ius gentium, and he deployed these sources in defending the entitlement of imperial administrations to manage anglophone settlers and territories in alien locations. Hickford wrote of a 'northern American literary cargo of pre-emption'. Hickford also suggested that the inclusion of 'pre-emption' arose from lessons learned from the problematic beginnings of European settlement in the Port Phillip District of New South Wales in 1835, where John Batman and others claimed to have signed treaties with local Aboriginals, separate from the British Crown: Mark Hickford, Lords of the Land: Indigenous Property Rights and the Jurisprudence of Empire (Oxford: Oxford University Press, 2011), pp 101–102, 108, 119.
30. Belich, Making Peoples, p 194
31. Ross, 'Te Tiriti o Waitangi', p 141
34. Simpson, Te Riri Pakeha, p 50
37. Document A16, p 20
38. Orange, The Treaty of Waitangi, p 42
43. Belgrave, Historical Frictions, p 59
44. Ibid, p 60
45. Head, 'The Pursuit of Modernity', p 106
47. Ward, Unsettled History, p 15
48. Orange, The Treaty of Waitangi, p 40
51. Ross, 'Te Tiriti o Waitangi', p 143
52. Orange, The Treaty of Waitangi, p 41
53. Belich, Making Peoples, p 194
54. Owens, 'New Zealand before Annexation', p 52
56. Moon and Fenton, 'Bound to a Fateful Union', pp 57–59
57. Orange, The Treaty of Waitangi, pp 41–42
59. Belgrave, Historical Frictions, p 61
60. Ibid, pp 60–61
61. Ward, An Unsettled History, pp 13-14, 17
62. Orange, The Treaty of Waitangi, p 42
63. McKenzie, Oral Culture, p 43
64. Belgrave, Historical Frictions, p 60
65. Simpson (Te Riri Pakeha, p 51) also cited Williams's land holdings as a factor motivating him about the treaty: 'The sooner English law was established, the sooner he would be assured of possessing his land.'
66. Moon and Fenton, 'Bound to a Fateful Union', pp 52–54
67. McKenzie, Oral Culture, pp 41–42 n 81
68. Orange, The Treaty of Waitangi, pp 40–41
70. Ross, 'Te Tiriti o Waitangi', pp 136–138
71. Orange, The Treaty of Waitangi, p 39
72. Moon and Fenton, 'Bound to a Fateful Union', pp 54–57
73. Head, 'The Pursuit of Modernity', p 105
75. Owens, 'New Zealand before Annexation', p 52
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76. Orange, *The Treaty of Waitangi*, p 43
77. McKenzie, *Oral Culture*, pp 10, 19, 40
78. Orange, *The Treaty of Waitangi*, p 56
80. Richard Taylor to William Jowett, 20 October 1840, MS papers 0254–01 (or MS 197, reel 1), ATL, Wellington
82. Ward, *A Show of Justice*, pp 42–43, 45
83. Ward, *An Unsettled History*, p 17
84. Ward, *A Show of Justice*, p 43
86. Moon, *Te Ara ki te Tiriti*, p 131
88. Louis Catherin Servant as translated by Turner, 'The Politics of Neutrality', p 88
90. Turner's 1986 thesis was included in Orange's bibliography.
95. Ward, *An Unsettled History*, p 14
96. Ibid, p 17
97. Moon and Fenton, *Bound to a Fateful Union*, p 60
98. Ross, 'Te Tiriti o Waitangi', pp 145, 150
99. Ibid, pp 151–152
100. Ibid, pp 145, 152
102. Ross, 'Te Tiriti o Waitangi', p 152
103. Owens, 'New Zealand before Annexation', p 52
104. McKenzie, *Oral Culture*, p 44 n 84
106. Ross, 'Te Tiriti o Waitangi', p 144
110. Phil Parkinson, 'Preserved in the Archives of the Colony': *The English Drafts of the Treaty of Waitangi* (Wellington: New Zealand Association for Comparative Law, 2004), p 53
115. Ibid, p 11
118. Ibid, p 58
121. McHugh, *The Māori Magna Carta*, p 224
122. Sorrenson, 'Waitangi: Ka Whawhai Tonu Matou', p 178
125. See, for example, 'Constitutional Reform', *New Zealand Listener*, vol 236, no 3786 (1 December 2012), p 6, where a correspondent to the *Listener* wrote in late 2012 that, 'When considering the role of the Treaty of Waitangi in any proposal for a constitution, there is only one clause that needs to be taken forward. It's the one that sums up the purpose and essence of the Treaty: "We are now one people."'. In 'Apartheid Risk', *Taranaki Daily News*, 30 January 2002, p 8, a letter writer to the New Plymouth newspaper wrote in 2002 that 'The treaty says: He iwi tahi tatou – We are now one people.'
126. See, for example, 'New Zealanders', *Christchurch Press*, 18 February 1998, p 43
127. See, for example, 'Bad Move', *Dominion*, 23 April 2002, p 6
128. See, for example, 'Maori Seats', *Hawke's Bay Today*, 19 March 2014, p 13

We note that this version of events dates back some decades. In 1932, the *Auckland Star* claimed that “‘He iwi tahi tatou’ . . . said each tattooed chief as he signed.’ The same article also stated that the treaty was signed on 5 February: ‘Craddle of History’, *Auckland Star*, 11 May 1932, p.10.


133. It is likely that this is a reference to Metge’s Rua Rautau lecture (audio available at http://www.radionz.co.nz/national/programmes/waitangiraurataulectures/audio/2508843/2004-dr-dame-joan-metge), which Dame Silvia Cartwright correctly quoted.


139. Ward, *A Show of Justice*, p.42

140. Adams, *Fatal Necessity*, p.164

141. Simpson, *Te Riri Pakeha*, p.50

142. Ibid, p.52

143. Orange, *The Treaty of Waitangi*, p.41

144. Ibid, p.46

145. Ibid, pp.1, 4, 58


156. Binney, ‘The Maori and the Signing’, p.28


159. Sorrenson, ‘Waitangi: Ka Whawhai Tonu Matou’, p.179

160. Moon, *Te Ara ki te Tiriti*, pp.153, 155, 159


162. Ward, *An Unsettled History*, p.16

163. Ibid, pp.14, 16, 17


165. Belgrave, *Historical Frictions*, p.62

166. Ibid, pp.62, 65


169. Ibid, p.6


171. Ibid, pp.104–105


173. Ibid, pp.68–69

174. Ibid, p.73

175. Ibid, pp.163–164


177. Moon, *Te Ara ki te Tiriti*, p.117

178. Ian Wards, in his first chapter, made this point to counter what he called ‘the myth of moral suasion’ in New Zealand historiography. Wards, *The Shadow of the Land*, pp.2–37

179. McHugh, *The Māori Magna Carta*, p.30


181. Section 6(1)(c) does not expressly state that a Crown policy or practice that is claimed to have caused prejudice must date from 6 February 1840. We note that, unlike the other matters dealt with by section 6 (written laws, acts, and omissions), a policy or practice cannot always be dated precisely. Since the Treaty of Waitangi is dated 6 February 1840, a claim that a Crown policy or practice is inconsistent with Treaty principles could not be based on a policy or practice that entirely predated the Treaty.


185. We note that, in 2012, in *New Zealand Maori Council v Attorney-General* [2013] NZSC 6, the Supreme Court said, at [15] n.25, ‘This case is frequently called the Lands case; we shall refer to it in this judgment as the soe case, because, as we shall explain, what was in issue in that case was not only land but also water.’ We do not take from this that the Supreme Court believes that all references to the Lands case should be so amended.

189. Waitangi Tribunal, Report on the Orakei Claim, pp 188–189
190. Ibid, p 208
191. Ibid, p 201
192. Ibid, pp 201, 203
193. Ibid, p 181
194. See doc A22, p 1
196. Ibid, p 115
197. Ibid, p 116
198. Ibid, p 117
199. Ibid, p 111
200. This provision, so far as it related to sea fisheries, was repealed by the Sea-fisheries Act 1894 but the Fisheries Acts of 1908 and 1983 protected ‘Maori fishing rights’, providing the basis for the litigation that successfully challenged the Crown’s quota management regime and led to the 1992 Sealord Deed of Settlement.
201. Waitangi Tribunal, Report on the Muriwhenua Fishing Claim, p 85
203. Palmer, The Treaty of Waitangi, p 123
204. New Zealand Maori Council v Attorney General [1987] 1 NZLR 641 at 663
205. Ibid, at 691
208. Ibid, at 671
209. Ibid, at 714
210. Hobson to Gipps, 5 February 1840, BPP, 1840, vol 33 [560], p 10 (IUP, vol 3, p 46)
212. Tainui Maori Trust Board v Attorney-General [1989] 2 NZLR 513 at 530
213. Te Runanga o Muriwhenua v Attorney-General [1990] 2 NZLR 641 (CA)
214. Te Runanga o Wharekauri Rekohu Inc v Attorney-General [1993] 2 NZLR 301 (CA)
CHAPTER 9

CLAIMANT AND CROWN EVIDENCE AND SUBMISSIONS

9.1 Introduction
At our first hearing, Erima Henare issued us with the following challenge:

This is . . . a very important occasion for all of New Zealand. The truth has never been told or acknowledged so there is still much misunderstanding and much apprehension about the place of Te Tiriti in New Zealand's Constitution.

In carrying out your task, we ask that the Tribunal be absolutely clear on the issues that lay before it to consider in the early hearing process. The role of the Tribunal is to delve into 'our' understandings of Te Tiriti and He Whakaputanga and the reasons for which they were signed. Importantly we seek to have the untruths that exist within the myths that are perpetuated about us thrown off. In this light we ask you to listen to us, to question us, and to actively seek our understanding of what our tupuna tried to achieve.¹

Central to the claimants’ call for a fresh approach to the subject matter was the presentation of what they described as an untold story of their own traditions about and understanding of the treaty. It is to this body of evidence that we now turn. Some of the claimant traditions were specific to certain hapū or whare wānanga, while other evidence stemmed from claimants’ professional expertise as linguists or other scholars. While we relate this evidence within the same basic framework that we apply in other parts of the report – that is, in terms of the treaty’s words, the oral debate, and the treaty’s overall meaning and effect – we nonetheless acknowledge the uniqueness of the claimants’ kōrero.

We also summarise what the commissioned witnesses who appeared before us argued about the treaty. Historians, legal scholars and other experts were commissioned by both the claimants and the Crown, as well as by the Tribunal. Finally, we set out the claimant and Crown closing submissions, which drew on the evidence of these witnesses. Claimant counsel, of course, also relied on the evidence of the claimants who appeared before us, evidence which drew on the kōrero tuku iho of their tupuna.

9.2 Claimant Accounts of the Signing of te Tiriti

Haere mai e Te Tiriti O Waitangi
Welcome Te Tiriti O Waitangi

Haere mai ki tenei Ao
Welcome to this world

Haere mai me nga hua kei roto ia koe
Welcome with the fruits you have in you
This karakia, given by the rangatira Ngamanu (Rewa) after he had signed te Tiriti at Waitangi on 6 February 1840, was set out by Rima Edwards at the start of his written evidence to us on behalf of Ngāpuhi Nui Tonu. He also set out the words of the waiata composed by Aperahama Taonui about the tapu of te Tiriti that was used in prayers by Te Ngakahi o Ngāpuhi, the sect founded by the prophet Papahurihia (whom we introduced in chapter 5):

Ko nga kupu o tenei waiata pao e whai ake nei:
KAIHAUTU: Tenei te ata te takiri nei e
TEKATOA: Kia whakatapua Te Tiriti O Waitangi

The words of the song are:
LEADER: The morning dawn rises
CONGREGATION: The Te Tiriti O Waitangi is made sacred

Edwards began his evidence in this way in order to demonstrate the sacredness of te Tiriti to Ngāpuhi. He described it as a ‘kawenata tapu’, or sacred covenant, bearing the tohu tapu (sacred marks) of the claimants’ tupuna. Edwards learnt his kōrero about te Tiriti in Te Whare Wānanga o te Ngākahi o Ngāpuhi, a school of learning established to preserve and pass on tribal knowledge and traditions. Since 1982, he had been a teacher within this whare wānanga, a role he had inherited from his father. Like Edwards’s evidence, much of the claimant testimony was sourced from oral history, handed down within families over generations or taught in traditional wānanga, and has never been recorded in history books. As Edwards explained:

I haere mai matou ki te korero kia koutou no te mea e hia-hia ana matou kia marama katoa nga korero waengangui I a tatou. I haere mai matou ki te whakapuaki i o matou nei mohioranga kia koutou. He maha hoki o enei korero horekau ana kia rangona e te iwi whanui. Ko ta matou hia-hia kia kaua he mea e waihona ki waho kia mohio tuturu ai koutou. Kia kaua ano hoki koutou e mea a muri ake nei horekau koutou i mohio. I haere mai matou ki konei ki te tuku aroha atu kia koutou i enei taonga maturanga a matou e pa ana ki nga ra o mua me te tuku atu kia koutou o matou whatumanawa o matou tumanako mo nga ra katoa kei mua ia tatou katoa. E hia-hia ana matou kia mohio tuturu koutou kia matou, me te whakatutuki a kikokiko i te katoa a o matou take me te tapiri atu ki te wairua pai.

We have come here to pass on our knowledge to you, much of which has never been shared in a public situation before, because we want you to be completely informed. We want you never again be able to say that you did not know. We have come here to entrust you with the taonga of our learning, and our past, and our feelings and our hopes and desires for the future because we want you to understand us and to be able to address our issues comprehensively, meaningfully and effectively.

Titewhai Harawira put it like this, also at the start of our hearings:

Today is a very important day in the history of Aotearoa. For the first time, in the history of Aotearoa, we will be hearing the Ngāpuhi story, the Ngāpuhi story as told by the tohunga of Ngāpuhi.

Before we relate the claimants’ kōrero, we pause to reflect on the nature and significance of oral traditions. Their importance will often lie in the fundamental message they are conveying, which has been regarded as significant enough to have been handed down across generations. Details may change in the course of the retelling, but what Dr (later Professor Dame) Judith Binney called a ‘central mythic cell’ will usually remain intact. In the case
of the Ngāpuhi understanding of the signing of te Tiriti, this might be, for example, that sovereignty or mana was never ceded, or that Captain William Hobson or Henry Williams acted inappropriately. The way this is retold may shift, but the core message is usually retained.

The Tribunal has considered oral narratives in numerous inquiries. In its Muriwhenua Land Report of 1997 it gave what we think is a useful summation of the function and meaning of these traditions:

in the past, the written account has been relied on and oral tradition has been distrusted. What may be seen from a European view to be liberties taken in relating details over time are taken to discredit the entire Maori opinion. . . . While the metaphors of oral tradition needed to sustain messages over generations have resulted in powerful accounts, the tradition may remain vitally honest for the inner truths conveyed. In reviewing Muriwhenua history, therefore, our greater concern has been not with the vagaries of oral tradition, but with the power of the written word to entrench error and bias.

In the case of the treaty, it has also been the written Pākehā record that has dominated the majority understanding. Setting out here the claimant kōrero thus adds an essential voice to the discourse.

We acknowledge, of course, that not all claimant
evidence was sourced from oral tradition, and that there are various types of oral tradition. Inevitably, some claimant arguments will have been influenced by modern historical inquiry. But the overall understanding of the claimants – regardless of how the knowledge was derived – is that their tūpuna did not cede their mana in agreeing to te Tiriti in 1840.

9.2.1 Debates before the Waitangi hui
Several claimant witnesses told us of oral traditions referring to discussions about the treaty that took place just before the Waitangi hui or that preceded Hobson’s arrival in New Zealand altogether. Erimana Taniora of Ngāti Uru and Te Whānaupani said that several hui were held at Whangaroa to discuss the implications of the treaty prior to its signing, including one at a place later named Waitangi in remembrance of te Tiriti. Rangatira from Ngāi Tupango, Tahawai, and Ngāti Uru were said to have been at that hui, and Wiremu Hau spoke in favour of te Tiriti. Among other rangatira, the main concern was that land would be lost and needed to be protected. The last of these hui was held on 4 February, before Whangaroa leaders travelled to the Bay of Islands. According to Taniora, they did not attend the 5 to 6 February hui because there was no food, and instead signed te Tiriti at Waimate on 10 February. Taniora said he knew these things through ‘korero that has been told to me by the old people’.

Henare said that, in anticipation of Hobson’s arrival,

I tono ngā Mihinare kia tae mai te iwi ki Waitangi i te kotahi marama i mua ati te ono o Pēpuere. Ka mutu ka timata rātou i te kōrero i te Tiriti ka timata rātou ki te kōrero mō te Kāwana e haere mai ana

the missionaries called the people to Waitangi one month before the 6th of February and the missionaries began talking about Te Tiriti, then they started to speak about the governor who was coming.

However, Henare said, the missionaries did not provide enough food to sustain the visitors, and in time the Hokianga people, for example, drifted home – which is why they signed te Tiriti there. Some stayed on until 6 February. ‘Engari i te wā i hainatia e te Tiriti-o-Waitangi i riro kē ma ngā Mihinare rātou e whakatiki, āe tika tonu he finger food’ (‘By the time of signing of the Treaty the missionaries responsible for feeding them, it was finger food’).

Henare said he had learnt this kōrero in the Ngāti Hine whare wānanga:

Ko ēnei kōrero ka whārikihia mai nei ki mua i a kōoutou, i akongia mai au i te whare wānanga o Ngāti Hine, ko Marino-kato te ingoa. He whare wānanga tēnei i ahu mai i te wā o taku tūpuna, Hine-amaru.

These talks I put before you. It was taught to me from the Ngāti Hine school of learning. Marino Kāto is a house of learning that came from the time of my ancestress, Hineamaru.

Pereme Porter told us that his great-grandmother, Marara Tupi had been at Waitangi in 1840. She had talked of hui taking place for five days before the signing, at which there was ‘a discussion about the allowance of pakeha to be amongst us, in our independent nation’. Kaumātua had also told the historian Dr Merata Kawharu that there had been numerous hui in the lead-up to Waitangi. As she explained:

According to a contemporary kaumatua opinion, the hui at Waitangi on the 5th and 6th of February 1840 was not the only hui of rangatiratanga where ideas about rangatiratanga was discussed. Hui were held throughout Taitokerau, one tradition states there were as many as 60 hui where the type of future with Europeans was discussed. This suggests that Māori were primed to discuss and debate the Treaty with the British. Unlike Pakeha written accounts where the Waitangi hui at the Treaty grounds was the first meeting, according to one tradition Waitangi was the place of the last meeting.

9.2.2 Te tiriti tuatahi
Edwards told of preliminary discussions held with the rangatira about the wording of te Tiriti, which took place
in the midst of the gathering at Waitangi. He told us that James Busby and Williams presented to the chiefs a ‘tiriti tuatahi’, or ‘first treaty’, at Te Tou Rangatira some time prior to 6 February (presumably on the evening of either 4 or 5 February). Edwards explained that this was the kōrero that had been handed down from Heke Pokai, Ngamanu, and Te Hinaki within Te Whare Wānanga o Te Ngakahi o Ngāpuhi. According to this tradition, this tiriti included the following words in article 1: ‘ka tuku kia riro wakangaro rawa atu ki te Kuini o ingarangi ake tonu atu te mana katoa a o ratou wenua.’

Edwards translated this as ‘absolutely give to be lost to the Queen of England forever the Sovereignty of all their lands’. As he put it, te tiriti tuatahi thus conveyed ‘in an unmistakable way that the Rangatira [would] sign away their mana or Sovereignty’ (‘e whakatakoto ana i runga i te whakamarama nui rawa atu e tuku wakangaro atu ana nga Rangatira i to ratou mana’). However, according to Edwards, this was the reason the chiefs rejected it. In fact, he said, they asked that it be buried with Hobson because it was a curse on him:

Ki nga whakaaro o nga Rangatira ko te mauuii me te matenga o Hopihana no te mea horekau, i pono ona whakaaro ara ka takahia e ia te tapu o te kaupapa i uhia ra e nga Rangatira ki runga i nga whakahaereenga. Ka mate te tangata i te takahi tapu. Ko te whakapono a nga Rangatira he makutu tenei i uhia e Hopihana ki runga i a ia ano.

The Ngapuhi Rangatira felt that Hobson’s illness and eventual death were a result of his untrue intentions desecrating the tapu under which the Rangatira endeavoured to conduct the whole process. Desecration of Tapu can lead to death. The Rangatira believed that Captain Hobson had imposed this makutu on himself.17

Edwards said that this tiriti also had a fourth article concerning religions, but was otherwise (with the deletion of the reference to ceding mana, of course) the same as the tiriti signed by the chiefs, which Te Wānanga o Te Ngakahi referred to as ‘Te Tiriti Tuatahi’.

Faced with this rejection, Edwards believed that Williams and Busby would have gone back to Hobson:

E whakapono ana ahau I whakaatu atu a Te Wiremu kia Wiremu Hopihana ara horekau nga Rangatira I whakae ki Te Tiriti Tuatahi no te mea I tika te whakamaori ara e tuku ana ratou I to ratou mana.

I believe that Henry Williams would have consulted with Captain Hobson and advised him that the Rangatira refused to accept the first draft Tiriti because it was a correct translation for the cession of mana.19

We assume from this that Edwards believed that Hobson agreed to the substitution of the word ‘kawanatanga’ for
'mana' in the tiriti put to the chiefs on 6 February, and this led to their acceptance of it.

Henare spoke in support of Edwards's kōrero. Picking up on a question from the Tribunal to Edwards about there having been several drafts of the treaty, he said, 'I te mea tuatahi, kāre ngā rangatira i whakaae ki te kōrero Pākehā mō te Sovereignty, ko te mana, kāre ngā rangatira i whakaae.' (The first one, the rangatira did not agree about sovereignty being referred to as mana. The rangatira would not agree.)

He later reiterated that

i te tuhinga tuatahi o te Tīrīti o Waitangi i uru i roto i te reo Pākehā i uru te kupu mana i te whakamāoritanga e Te Wīremu mō te Sovereignty, kāore ngā tūpuna i whakaae ki tēnā ka tango hia mai e te Wīremu, ka whakaurungia ko te Kāwanatanga.22

We translate this as follows:

In the first written version (draft) of the Treaty of Waitangi in English, the word mana was put in by Williams as the Māori word for sovereignty. The ancestors did not agree with that and so Williams removed it and put in the word kāwanatanga.

With the retention of their mana and their rangatiratanga, however, the chiefs were willing to sign.

9.2.3 The wording of te Tiriti and the Treaty

The claimants’ view is that the signed document itself is best understood as an 'undivided whole', as Dame Joan Metge has put it, rather than analysed phrase by phrase.23 For example, in response to written questions from Crown counsel on specific phrases in the Māori and English texts, Dr Patu Hohepa said:

While I have tried to answer the string of questions posed by the Crown in the way in which they were asked, I think it is important to highlight the concerns I have with the dissecutive way in which they seek to have Te Tiriti interpreted. Essentially these questions have separated out certain strands from the covenant in an effort to place them in conflict with each other. In this way, the exercise of tino rangatiratanga is conceptualised as separate and in opposition to the exercise of kawanatanga. The Crown's search for conflict within the document negates its overall context which was the desire to create a relationship.24

As we noted in chapter 1, the claimants also contended that only the Māori text is of any relevance to this inquiry,
because it is what their tūpuna signed and understood. Henare explained that

From our Maori perspective there is only Te Tiriti o Waitangi. That is what was signed here. It is to that Tiriti that our ancestors, our tūpuna affixed their tohu tapu from the ngū of their noses, making it tapu. The other text, I beg to offer is just the English version. It is not the same as Te Tiriti o Waitangi and has no mana. It is an English language version that meant nothing to our tūpuna, nothing. They signed only what they understood, Te Tiriti i roto i te reo Māori.35

Likewise, Warren Moetara said that Te Wahapū ancestors did not sign the Treaty ‘and therefore it has no significance to us.’26 Moana Jackson, who was commissioned by the claimants as an expert witness, argued that

the issue for the rangatira was not whether they understood sovereignty[,] it was whether they understood mana, and clearly they did, and so in that sense the English text was effectively irrelevant to the discussions that our people had.27

Hohepa went further, arguing that the English version was not only irrelevant but also destructive of the oral undertakings:

Te Tiriti was a treaty between our nation and the nation of Queen Victoria and her successors. The English version is not a translation of Te Tiriti; the English version is irrelevant to our understanding of Te Tiriti. The English version destroys the words and promises of Busby, Hobson, and Henry Williams given at Waitangi and Hokianga.28

Renata Tane added that

The Treaty written in Māori was not a translation of the official version sent to England. Ko tēnei te Tiriti tūturu, te Tiriti Māori[,] (‘This is the real Treaty, the Māori version’).29

Despite these points, we do of course discuss Treaty terms like ‘sovereignty’ – not only because our legislation compels us to consider both texts, but also in order to establish the British intentions behind the treaty. Moreover, the claimants themselves did not ignore the terms of the English text, in part because reference to these terms helped to make their key point about the concept of ‘mana’, as we set out below.

On the basic issue of the quality and sense of Williams’s translation, Hohepa explained that the ‘language idiolect’ (or specific form of language) Williams used was ‘formal Ngāpuhi’. He added that there were ‘no ungrammatical or unacceptable errors’ and the capitalisation was ‘excellent’. While the punctuation was ‘erratic’ and thus a cause of ‘slight problems in translating’, this was not sufficient to ‘cause serious problems in understanding what is meant in Māori’.30 In a 2010 publication submitted in evidence by claimant counsel, Professor Margaret Mutu called Williams’s language ‘stilted and unnatural’, albeit still clear in its meaning.31

On the matter of sovereignty and mana, therefore, Edwards argued that

If Sovereignty in 1840 is the same as it is in 2010, and if it means the Power and Authority to govern a Country and to make laws that affect everything within that Country, then there is only one word in the Ngapuhi language and indeed the Maori language that can convey such a message to the Rangatira of the Hapu. That word is ‘Mana’ and there is no other word in Ngapuhi or Maoridom that can convey such a message.32

Edwards reiterated his belief that the chiefs had already rejected conveying their mana – a term which carried ‘no confusion in Ngapuhi or Maoridom’ (‘Ko te kupu “Mana” horekau ona pohehetanga ki roto o Ngapuhi ara i rota hoki i te Ao Maori katoa’) – in te tiriti tuatahi.33

Hohepa explained mana in this way:

It comes from the Gods, from Ranginui and Papatūānuku, it comes from whakapapa and ancestors whose deeds flow
through the bones of all. It wells upwards or diminishes from one's own activities and the support or withdrawal of others.\textsuperscript{34}

Mutu stressed that tino rangatiratanga and mana signified a much broader authority than what the English understood as 'sovereignty':

Mana as described by my kaumātua can be translated, albeit rather simplistically, as power and authority that is endowed by the gods to human beings to enable them to achieve their potential, indeed to excel, and, where appropriate, to lead. It is high-order leadership, the ability to keep the people together, that is an essential quality in a rangatira. The exercise of such leadership in order to maintain and enhance the mana of the people is rangatiratanga. Tino rangatiratanga is the exercise of paramount and spiritually sanctioned power and authority. It includes aspects of the English notions of ownership, status, influence, dignity, respect and sovereignty, and has strong spiritual connotations.

The English notion of sovereignty does refer to ultimate power and authority, but only that which derives from human sources and manifests itself in man-made rules and laws. It is therefore essentially different and much more restricted in its nature than mana and tino rangatiratanga.\textsuperscript{36}

Henare thought that conveying mana would not just have been unthinkable, but that any request for this would have been met with an uncompromising and even violent response:

Had ceding sovereignty been suggested at that time, that is that the Rangatira gathered at Waitangi should surrender their Mana to the foreigners, 'all hell would have broken loose' and the foreigners would have been ejected or annihilated.\textsuperscript{37}

Jackson argued that 'tino rangatiratanga' was another way of expressing 'mana', especially after 1840.\textsuperscript{38} Mutu translated this as 'the unqualified exercise of their paramount authority'.\textsuperscript{39} Hohepa concurred, translating te tino rangatiratanga as 'absolute sovereignty'. He noted that rangatiratanga was one of several words that had been used in a 'Humpty Dumpty way' by the missionaries to convey ideas of kingdom (in the Bible), trusteeship, chiefly authority, and so on.\textsuperscript{40} He thought that 'kawanatanga' would have been well understood by the chiefs from their experience of the New South Wales governors (with whom they enjoyed a 'warm relationship'), but not from the Bible, as Pontius Pilate had no whakapapa connection to the English and their governors. To that extent, he thought the chiefs would have comprehended kawanatanga as 'governorship'. The idea of 'government', by contrast, he thought would have not been well understood:

While Māori would understand the meaning of kawanatanga as 'governor-ship' as meaning the governor will govern Pakeha people (in the preamble) and any lands obtained by or given to the Queen, the other notion of
kawanatanga – governing through a government – would not
be known or experienced or have a cultural or actual prece-
dent. Government based on sovereignty as in England, or
on republic principles as in USA would not even be in the
radar of those who attended and spoke at the Tiriti signings.
Governorship they also understood as being of a fixed term
from their NSW experiences.\(^41\)

Not only were the governors appointed for fixed terms,
but they also held a subordinate authority. As Henare
explained,

\[\text{the term ‘kawanatanga’ was understood by my tupuna as}
\text{referring to a lesser delegated set of powers such as governors}
\text{over provinces in the biblical texts. My tupuna knew the dif-
\text{ference between ‘He Kingi’ and ‘He Kawana.’}^42\]

Despite his evidence on the retraction of te tiriti tuatahi,
Edwards still apparently felt that Williams was deceptive
in his translation. As he put it:

\[\text{Ko te kaupapa kua oti mai i Ingarangi mai rano ko te tango}
\text{i te whenua me te mana ara ka whakamahia etahi kupu e}
\text{ratou hei huna i enei whakaaro a ratou.}\]

The overall plan from way back in England was always to
take the land and the mana and some words were often used
to [mask] this fact.\(^43\)

Likewise, Henare stated that Williams would have been
well aware of the inconsistencies in the way ‘sovereignty’
was expressed in Māori in He Whakaputanga and te Tiriti.
He argued:

\[\text{Williams’ use of ‘kawanatanga’ to translate sovereignty}
\text{was disingenuous at best. . . . I don’t doubt that Williams}
\text{genuinely believed that it was in the best interests of Māori}
\text{to become British subjects. I believe Williams knew what he}
\text{was doing, and he was essentially acting in a political way}
\text{to try and secure Māori consent. Williams translated He}
\text{Whakaputanga and he signed as a witness, in that document}
\text{all sovereignty and authority is translated as ‘Ko te Kingitanga}
\text{ko te mana.’ We now know that the very object of Te Tiriti}
\text{from the English point of view was to have the chiefs of He}
\text{Whakaminenga relinquish to the Crown that sovereignty}
\text{which the Crown recognised five years before, in 1835. That}
\text{is what Article 1 of the English version says. It is certainly not}
\text{what article one of Te Tiriti says, and Article 1 of the English}
\text{version plainly contradicts Article 2 of Te Tiriti, and Williams,}
\text{as the translator, had to have known about this.}^44\]

Porter was in no doubt. As he understood it, ‘God’s
people, and in particular the missionaries Henry Williams
and others have lied to us and betrayed us.’\(^45\)

\[\text{9.2.4 The oral debate and Māori understandings}\
\text{The written text of te Tiriti is one thing, but for Māori}
\text{the oral debate was at least equally as significant. Hohepa}
\text{stressed the importance to Māori of the spoken word:}
\text{very few chiefs could read and write before 1840 because writ-
\text{ing had only been in existence for less than one generation}
\text{and writing was not yet an essential part of their communica-
\text{tion system} . . . The main tikanga concerning language was}
\text{still built around the proverb, ‘he tao rākau e taea te karo, he}
\text{tao kupu, kāo’ (A wooden spear can be parried, a verbal spear,
\text{never). The culture of Māori was still overwhelmingly oral,
\text{one where the spoken words were valued, thought about, and}
\text{their meanings shared.}^46\]

\[\text{For this reason, he emphasised, what was actually said}
\text{at Waitangi and elsewhere was of great importance:}
\text{Listening to, absorbing, understanding and remembering}
\text{what is spoken in Māori has been a normal every day part}
\text{of Māori life and is the reason for the survival of Māori oral}
\text{history for over a thousand years including the recollection}
\text{of thousands of names genealogically accompanied by screeds}
\text{of historicity concerning the wananga attached to various}
\text{tūpuna. All through spoken Māori. Māori was their world.}
\text{They were Māori; Waitangi, Waimate, Mangungu, Kaitaia,}
\text{were places that were turangawaewae; tikanga drove their}\
\text{[continue on next page]}\]
lives. They would understand what was read out from the written text. The words of the spoken version would soon be in the minds of Māori listeners. The literal and extended and metaphorical meanings of each word in each sentence they would know if it was Māori. Only Kawanatanga extensions would be unknown. From their knowledge bases they discussed the implications of the agreement.47

Hugh Rihari gave his view on the disadvantage Māori faced in dealing with a written agreement:

As was the British tradition, this compact was recorded in writing. With hindsight I think we were vulnerable at this point in the process as this was not our customary way of recording an agreement – and these English words put on the paper, later became a web to trap us.48

Henare attributed the chiefs’ decision to sign in large part to the faith that they placed in the missionaries. As he put it:

Our Tupuna took a calculated risk in signing Te Tiriti o Waitangi. They believed the words that were conveyed to them, and trusted the people that explained its meaning. They believed what they were told and they signed it on the basis of the understanding.49

Edwards said that, according to Hōne Heke and Nga-manu, both Williams and Busby explained to the rangatira at Waitangi that kāwanatanga meant ‘he matua Kawana i runga i te aroha’ (‘a parent Governor on the basis of love’). The same definition was given at Mangungu, according to kōrero handed down by Aperehama Taonui.50 Edwards said that the chiefs thus understood Te Tiriti (tuara) as a mutually beneficial relationship with Queen Victoria in which each would be a ‘tuara’ (which he translated as ‘back support’) for the other:

Horekau nga rangatira Maori i tuku i tetahi mea e mate ai ratou me te iwi. Engari na runga i ta ratou whakatanga ki te Matua Kawana i runga i te aroha hei whakahaha ake i to ratou tu no te mea ka tautoko nga taha erua ia raua ano. Ko te tuara he whakatautoko o tetahi ki tetahi ara ko nga rangatiranga ka tuku ki tenei hononga pera ano te nui to ta te Kuini ka tuku mai ki tenei hononga. Koia tenei ko te whakamaramatanga o tenei kaupapa te Tuara. Ehara i te whakakore i to ratou mana whakahaere ia ratou ano engari ko te manaaki tautoko o tetahi ki tetahi i tenei hononga.

Maori did not consider they were relinquishing anything that would ultimately harm themselves and their people. Rather through accepting the parent governor on the basis of love they were enhancing their position because the two sides would actually be mutually supportive. Back support means that they would support each other and they were willing to give to that relationship as much as the Queen was prepared to give to them. That is what back support means. It does not mean giving up control over their own affairs but rather being mutually supportive of the other member of the partnership.51

The impression the chiefs took of Te Tiriti, according to Jackson, was that it was a Maori reaffirmation of the ideals contained in He Whakaputanga and a tikanga-based expectation that the British Crown would meet its obligations by helping to keep order among Pakeha while acknowledging the kawa and mana of the existing polities.52

In a similar vein, Hohepa gave this overall description of the Māori understanding:

The Māori interpretation of the Māori version is the internationally recognised protocol. Te Tiriti was an agreement with England that we will recognise a Governor who represents the Queen of England, who will control their people, who will honour and guarantee our rangatiratanga or mana motuhake or absolute sovereignty over all our lands, oceans, forests, fisheries and taonga. Any surplus lands we have we will tuku or hoko to the Queen to have for the use of her people, whom she will reign over. Our tikanga, not her ture, or the torah of the missionaries, will prevail over all.53

Rihari likewise said that
The Crown affirmed our rangatiratanga over our people and promised us undisturbed possession of our whenua, kainga and taonga. And we gave the Crown powers of ‘kawanatanga’ to make laws for the manuhiri and manage the problems we were facing due to the ‘riff-raff’ who were coming here.54

9.2.5 The signing

As noted, Henare referred to the tapu nature of the signatures based on the tattooed patterns on the side of the chiefs’ noses. Te Warihi Hetaraka of Ngāti Wai expanded on this method of signing te Tiriti:

It is significant that when signing Te Tiriti the Rangatira used only a small part of their ta moko. When we look at ta moko, we can read the entire universe represented there, but in signing He Whakaputanga and Te Tiriti, the Rangatira only chose to use a small part of their moko which signified a humble acknowledgement that the meaning of their actions in signing, was insignificant to the meaning of the universe that was held and represented in the total ta moko.

Ta moko represents the mana of the bearer and the exercise of that mana is a privilege, the part of the moko chosen by the Rangatira, were those that referred to them as individuals. Different Rangatira took from different parts of their moko, usually the part that described their person or their particular skill. For example an orator would choose a portion of the moko from around the mouth.55

For most claimants there was no question that their tūpuna willingly signed te Tiriti. Moetara told us, for example, that, ‘As descendants of Rangatira, my whanau have always felt a sense of pride at the fact that he was a signatory to Te Tiriti.’ But some claimants disputed the general account of the signing process. Kiharoa Gilbert of Te Waimate Taiāmai, for one, alleged gross irregularities in the signing. He argued that some signatures were forged and that ‘x’ marks on the sheet in fact indicate disagreement rather than consent.56

Other witnesses had more specific concerns about the signatures. Wiremu Heihei of Ngāti Rēhia, for example, was adamant that Hakiro and Mene had not signed:

He whakapae noa tenei no etahi, i haina marika nga tama e rua a Tāreha, i Te Tiriti.

Ko Hākiro i haina mo Titore, engari kua mate ke Titore i te tau 1837. Mo Mene, tirohia tana waitohu me nga tuhituhi kei te taha tonu o tāna waitohu (mo tona matua). Ko te mea tuatahi ka kitea atu, he rereke ana nga tuhituhi kei te taha o tona waitohu.

I patapataingia te tino toa nei e to mâtou tangata, mo ona tirohanga e pā ana ki nga āhuaranga mo te waitohu me nga kōrero i muri mai i te ingoa o te tama a Tāreha ara a Mene. He aha ma te tama, ma Mēne hei haina i te Tiriti, i reira ia kihai i korero, otiia ko te matua a Tāreha i reira, kihai i haina heoi, kōrero marietia e ia te take ōna i kore rawa nei e whakaae? He aha ra tenei tuwhai āhua whakatamariki i te rangatira nui o Ngapuhi, he mamingaminga, he teka.

It is alleged that the two sons of Tāreha, Hakiro and Mene signed Te Tiriti.

With regards to Hakiro he signed on behalf of Titore but in fact, Titore had died in 1837. With regards to Mene, I say look carefully at his signature and the writing beside his signature (for his father). The first thing you will see is that the writing beside his signature is different to his signature yet it is the same as all the other written additions to other rangatira names.

How is anyone expected to believe that Mene signed when he did not speak at the venue and when his father Tāreha was there and gave clear reasons why he would never ever agree to sign Te Tiriti. What nonsense this is which serves to denigrate the prestige of a great chief of Ngapuhi: pure deceit, blatant lies.57

Doubts have been raised by Moka’s descendants about whether he signed te Tiriti, and these doubts have led to an acknowledgement by the Ministry of Culture and Heritage that in fact he may well not have done so (see chapter 7, endnote 189).

Tane suggested that the tūpuna were under the threat of destruction if they did not agree to te Tiriti:

ka mutu kei kōnā ngā waka o ngā pū nunui rawa atu e hakautoko I ā rātou nei mana o te mana o Hobson me ana.
kaimahi o te Karauna. Koinei te HMS active kei reira ō kaipuke nui. Ki aku hakaaro I auā wā mehemea kāore a Hone Heke, a Marupō I haina ka patua tūkinotia te marea I roto Waitangi me ō rātou waka nunui me ngā pū nunui.

all the time they were under the cannons of the sailing ships of England while Hobson and his officials carried out their work. Ships such as the HMS Active. In my opinion, if Hone Heke and Marupo had not signed the people who had gathered at Waitangi would have been obliterated. 58

As we have noted, as each rangatira stepped forward to sign at Waitangi, Hobson said, 'He iwi tahi tatou'. Nuki Aldridge explained how he believed the chiefs would have understood this:

E ai nga korero a nga tupuna matua what it would have meant to the rangatira at the time was that we would be one people under the Maori kaupapa, we would live together under the Maori umbrella. History does not say that, so I pose this question to the NZ Crown and all its institutions: If say, a Maori chief signed a treaty with England and he shook the hand of the Queen of England, and said 'we are now one people' would the Queen then give England away? 59

Aldridge saw Hobson’s words as a turning point and as a portent of assimilation:

‘He iwi kotahi tatou’ – spoken by Hobson at Waitangi in 1840, knowing that it was untrue, that it was not his intention – was racism of the highest order. From that moment, Maori history became secondary to ‘hunga ke’ [foreigners’] thinking. From there, colonial England began the process of ensuring that Maori became an English person or they disappeared completely. 60

According to the claimants, the occasion of the signing of te Tiriti also inspired several prophetic statements by their tūpuna. Edwards told us how, before the signing, Papahurihia said to his close friend Kawiti:

E te ariki e Kawiti hei aha taua tohu ai i Te Tiriti O Waitangi kia noho mai taua ki te pupuri i te arikitanga o to tatou mana motuhake ki tenei to tatou whenua.

Te Ariki E Kawiti, let not you and I sign Te Tiriti O Waitangi, let us stay to hold the Supreme Authority of our lands.

But Kawiti felt that he must sign Te Tiriti to uphold the mana of his son Te Kuhunga, who had already signed. At the same time, said Edwards, Papahurihia made the following prophecy to Kawiti and other rangatira:

Ka whakahurihia e te pakeha tana Tiriti hei pungawerewere hei kai la tatou te iwi Maori. Ka rite tatou ki te papaka o te tatarakihi i ngotea ai ona Toto e te pungawerewere a whakarerea ana ki muri he papaka. Te papaka ko taua ko te Iwi Maori.

The Pakeha will turn his Treaty into a devouring spider that will consume you and me, the Maori people, and we will resemble the carcass of the cicada whose blood has been sucked out by the spider to leave behind a carcass and that carcass shall be you and I the Maori people.

After the signing, Papahurihia added:

Kua mau tatou ki te ripo. Kaati ka taka ki tua o te rua rau tau ka tu mai te pono ki te whakatika i nga mea katoa.

We have been caught in a whirlpool. Alas, it will last for beyond two hundred years when the truth will stand to put everything right. 61

Edwards explained this prophecy as follows:

Ko te tikanga o tenei poropiti e whakaatu ana ki te iwi he wa ka tu kaha tonu tatou, he wa ka riro nga tikanga katoa i te ringa kaha o te pakeha, he wa ano ka tu mai ano tatou i runga i te kaha o to tatou mana tukuhiho to tatou mana motuhake no te mea kotahi ano mana nui atu i te ringa kaha ara ko te pono. E kore rawa e mate.
The meaning of this prophecy is advising the people that there's a time when we will stand strong, a time when everything will be taken by the strong arm of the pakeha and a time when we will stand again on the strength of our sovereignty because there is only one power greater than that of the strong arm and that power is the truth. It never dies.62

Edwards explained that Papahurihia gave Makoare Taonui's son, Aperahama, the prophetic power in Hokianga.63 Wiremu Heihei said, in this regard, 'ko te urunga mai o te punawerewere, i poropitihia ai e Aperahama Taonui, ki te Whare Tapu o Ngapuhi' ('at the time of the signing the spider as prophesied by Aperahama Taonui would enter the sacred house of Ngapuhi').64

Edwards also recorded another prophecy or tohu at Mangungu. Kaitoke saw a dog's head on Hobson's shoulders. He turned to his fellow rangatira and said, 'Kua kite ake nei ahau i te tohu kino me tango ake a tatou tohu' ('I have seen a bad sign; our tohu should be removed'). Edwards explained that

Ko tenei mea te matakite o te kuri he tohu tiaki ki etahi whanau i Hokianga engari mena nga matenga kuri kei runga i te matenga o te tangata he tohu kino.

The vision of a dog is a guardian symbol for some families in Hokianga but when the dog's head is seen on the head of a person then it is a bad omen.65

9.2.6 He Whakaputanga
Several of the claimants stressed that he Whakaputanga was not superseded by te Tiriti but was rather continued in force, with te Tiriti a reaffirmation of the mana declared in 1835. Heihei put it like this:

Kia mātou o Ngāti Rēhia, e hara He W[h]akaputanga i te pepa noa iho nei kia pangā hei kai mo te kiore i roto i nga tutae o te Whare Miere o te Kāwanatanga tahae nei, engari, he mea whakahirahira, he mea tapu rawa atu kia mātou.

Ko He W[h]akaputanga he mea ora i Te Tīi, he mea manawa pā kia Ngāti Rēhia, ahakoa ano nga mahi o te Pākeha ki te whakahuri i nga whakaaro o tenei hapu, ka ū tonu mātou.

For us Ngāti Rēhia, He Whakaputanga is not just a piece of paper to be discarded in the dungeons of parliament building to be eaten by rats, but is alive and real for us.

He Whakaputanga is alive in Te Tīi and a great concern for us as Ngāti Rēhia, in spite of the colonization of the minds of many of our people, we still adhere to it.66

Henare saw continuity between the two documents. As he put it, 'what our people hoped for in He Whakaputanga was that the Māori worldview would remain dominant in this country. Article 2 of Te Tiriti o Waitangi reaffirmed that.'67 Jackson also stated that ‘if mana was not ceded then Te Tiriti was a Maori reaffirmation of the ideals contained in He Whakaputanga.’68 However, Emma Gibbs-Smith thought te Tiriti had also caused a disruption. He Whakaputanga was an assertion of Māori independence and self-determination, but te Tiriti ‘allowed the introduction of a new culture which sought to impose itself without consultation upon Māori under the guise of government’. She appeared to conclude, nevertheless, that at least the mindset behind he Whakaputanga endured:

While the Whakaputanga was overshadowed by the signing of the Treaty, I do believe that Māori had retained principles from the Whakaputanga to ensure the independence of Māori and to ensure Māori self-determination.69

9.2.7 Summary
The claimants had some differing views, as one would expect from representatives of different hapū and tūpuna, but generally held fast to certain key tenets. Foremost among these was that they did not cede mana, as well as the importance of the oral agreements made at Waitangi and elsewhere. The claimants’ evidence ranged from the technical, such as Hohepa’s expert analysis of the grammar of te Tiriti, to traditions handed down on the nature of prophecies and reasons why certain tūpuna had or had
not signed. Edwards’s kōrero about te tiriti tuatahi was perhaps the most striking aspect of the claimant evidence, suggesting that Māori had rebuffed an explicit attempt to have them cede their mana.

We note in conclusion one final matter raised by Edwards. This was the tradition that, immediately after the signing of te Tiriti, the rangatira planned an agenda for a meeting they hoped would take place with Hobson and Queen Victoria one year later, on 6 February 1841. Issues they planned to discuss included trade, the application of English law in cases of murder, the rights of rangatira in land matters, the application of hapū custom law and Biblical law to land transactions, and the limited value the rangatira thought should be placed on money. The rangatira presented this agenda to the missionaries, and entrusted them to convey the message to Hobson and the Queen. Edwards did not say how the missionaries may have responded or if they relayed the information to Hobson, but we interpret this tradition as evidence that, at the time of its signing, the claimants’ tūpuna considered te Tiriti as subject to ongoing discussion and reassessment.

9.3 Historians’ Evidence at our Inquiry

We turn now to consider the evidence put forward by historians at our inquiry. Having set out the pre-existing scholarship in the previous chapter, we will see here how the historian witnesses built on or differed from this. All the historians commissioned by the Crown to give evidence – Professor Alan Ward, Dr Donald Loveridge, and Dr Phil Parkinson, as well as legal historian Professor Paul McHugh – featured to a greater or lesser extent in the previous scholarship. In our inquiry, Loveridge focused on pre-1840 deliberations in the Colonial Office, McHugh on international and constitutional law, Parkinson on early written texts in Māori, and Ward on the general Māori and Crown understandings of the treaty and the declaration. Tribunal commissionees included Professor Dame Anne Salmond, whom we asked to resubmit the 1992 evidence that she presented to the Muriwhenua Land Tribunal on the Waitangi, Mangungu, and Kaitaia Tiriti signings, and Samuel Carpenter, whom we commissioned to write about the attitudes and understandings of Williams and Busby. Histories commissioned by or for the claimants included a report on contact and cultural adaptation in the north from 1769 to 1840 by Dr Vincent O’Malley and John Hutton; an overview by Dr Grant Phillipson of the interaction of Bay of Islands Māori with the Crown from 1793 to 1853; a report by Kawharu on te Tiriti in its northern context; and a report by Ralph Johnson on the Northern War and its underlying causes. Manuka Henare’s doctoral thesis was also submitted in evidence by the claimants, and he presented a brief of evidence that was largely the same as his thesis text.

We follow here the same pattern laid down previously, of setting out what historians in our inquiry contended about the treaty’s written texts, the oral debate, and the treaty’s meaning and effect.

9.3.1 The wording of the Treaty’s texts
(1) The translation of key terms
The historians who appeared before us gave considerable attention to Williams’s translation of the Treaty into Māori. Their principal disagreement, in this regard, was between Salmond, on the one hand, and Carpenter, Ward, and Parkinson, on the other.

Salmond argued that ‘kāwanatanga’ ‘always referred to a subordinated and delegated form of power’. It was used ‘only 74 times in the Paipera Tapu (Bible),’ compared to 310 occurrences for ‘kīngitanga’ and 210 for ‘rangatiratanga’, and from this she concluded that it ‘must have been an unfamiliar term to many of those involved in the Tiriti transactions.’ She thus considered which other terms might have been more appropriate translations of sovereignty. She thought mana ‘the best indigenous equivalent to sovereignty’, as it derived from ancestors and was thus close to the European concept of the ‘divine right of Kings’. She noted its use in He Whakaputanga to translate ‘authority’. She described kīngitanga as ‘the best of the neologisms’, because it referred to sovereign status and power and was used both frequently in the Bible to translate ‘kingdom’ and in He Whakaputanga to translate ‘sovereign power’. She noted also that the use of these two terms for sovereignty together in He Whakaputanga
– ‘ko te kingitanga ko te mana’ for sovereignty – left no room for doubt. She named as other possibilities ‘ariki-tangā, which referred ‘to the highest human authority in Māori polities’, and ‘rangatiratanga’, which was used for ‘kingdom’ in the Bible and the Lord’s Prayer and had been used for ‘independence’ in the Whakaputanga. However, Salmond acknowledged that ‘mana’ would have been a most problematic translation of sovereignty. As she put it,

No-one with any knowledge of Māori life in 1840 . . . would have asked the rangatira to surrender their mana, which came from their ancestors, and was not theirs to cede. Its loss would have meant death and disaster to themselves and their people.72

Salmond commented on the other aspects of te Tiriti’s wording. In article 3, for example, the Queen undertook to protect or ‘tiaki’ the Māori people. For Salmond, this was one of the terms that would have led the chiefs to regard te Tiriti as a kind of lasting personal relationship between them and the Queen, based in tikanga Māori. She argued that te Tiriti included:

- A tuku by the Queen of a chief as a kai-wakarite [mediator, adjudicator, negotiator] to Māori people;
- A tuku by the chiefs of parts of New Zealand to the Queen, now and in the future;
- A tuku by the Queen of kāwanatanga, and the right of hokonga (trading) of land through a kai-hoko (trading agent);
- A tuku by the Queen to Māori people individually of her protection, and tikanga (customary rights) exactly the same as those of her subjects in England.73

Furthermore, the chiefs’ application of their tohu in signing te Tiriti (as set out in the postscript) was a further aspect of the ceremonious language of Māori gift exchange, signifying a commitment by all parties and their descendants to uphold the relationship that had been established; to honour the gifts that had been exchanged; and to continue a pattern of reciprocal generosity at the risk of a fundamental collapse of mana (ancestral power to act) for the defaulting party.74

Salmond also discussed the use of the word ‘ture’ in the preamble, both in the reference to the consequences of Māori and Pākehā living in a ‘lawless state’ (‘e noho ture kore ana’) and as a translation of ‘Articles and Conditions’ (‘enei ture’). She explained that ture was derived from ‘Torah’ and was a missionary-coined word used in Māori translations of the Bible as an equivalent for “law, ordinance, statu[t]e” and the like. Despite Williams’s later statement that he had explained to the rangatira the benefits of
being ‘one people with the English . . . under one sovereign, and one law’, Salmond thought that the way ture was used in the preamble would have suggested to the rangatira that it would primarily apply to the currently unregulated relations between Māori and European individuals, and it seems probable that the rangatira understood the scope of ture in that way.

To this end, Salmond also quoted Father Louis-Catherin Servant’s observation that most speakers wanted the Kāwana to have authority over the Europeans only.75

To demonstrate the inadequacy of translating sovereignty as kāwanatanga, Salmond quoted Sir William Blackstone’s influential 1760s Oxford University Commentaries on the Laws of England. Blackstone, who described the evolution of the British constitution and the relationship between the monarch and Parliament, wrote that sovereignty was ‘a supreme, irresistible, absolute, uncontrolled authority . . . placed in those hands in which goodness, wisdom and power are most likely to be found.’76 In other words, Salmond’s point was that sovereignty was the highest form of power, not a subordinate or delegated one such as kāwanatanga. However, Carpenter contended that the use of kāwanatanga was appropriate, because Blackstone essentially equated sovereign authority with civil government. He paraphrased Blackstone in these terms:

’Sovereignty’, said Blackstone, is equivalent to the legislative power. Legislation, he said, is the essence of government. Hence, if you exercise civil government in a state you will be sovereign. And if you are sovereign you will be the law maker or governor. Williams, perhaps, did not read Blackstone’s Commentaries or [Dr Samuel] Johnson’s Dictionary. Nonetheless, these authorities illustrate the way in which the notions of sovereignty and government were commonly understood. Their authoritative definitions are in accordance with how both Williams and Busby used the terms.78

Ward and Carpenter criticised Salmond for what they saw as her failure to specify that the authority Blackstone referred to was legislative and judicial, not executive.79 Carpenter also argued that Ruth Ross’s reference to the precedent value of the terminology in he Whakaputanga had ‘superficial merit’ only. For him, the different terms used were readily explained by the different contexts of the two documents: in he Whakaputanga the chiefs declared themselves possessed of mana, but this was not something they could then surrender to another rangatira (the Queen). His conclusion was that ‘kāwanatanga should be understood as the most appropriate word to describe the substance of the cession of sovereignty in article one’.80 In this, he followed Dr (later Professor) Michael Belgrave’s line of argument (noted in chapter 8) that mana was not the right term for a transferable sovereignty. Parkinson did as well, suggesting also that kingitanga was an inappropriate authority to be held by a queen.81

Like Carpenter, Ward disagreed with Ross’s assertion that ‘mana’ was the word that would enable the chiefs to grasp the authority they were relinquishing through the cession of sovereignty. He acknowledged that he had taken a lead from Ross in 1973, when his book A Show of Justice was published; now, however, he regarded Williams as having done a praiseworthy job.82

In general, the Crown witnesses also thought that ‘kawanatanga’ conveyed much more clearly than ‘mana’ that the chiefs would retain ownership of land but cede authority. This distinction was described by McHugh in terms of the concepts of imperium (sovereignty) and dominium (property).83 Parkinson put it this way:

I do agree that in the translation of the obscure word ‘sovereignty’ (an alien concept for the chiefs), it was necessary to distinguish the ownership of property (article 2) from political authority (article 1). That was affected by naming the latter as ‘kawanatanga’. [Emphasis in original.]84

Ward argued that the authority implied by ‘rangatiratanga’ essentially related to the ‘customary authority of rangatira among their own people’. Carpenter likewise referred to its application ‘at the level of local hapū and whānau’.85 They thus saw no contradiction between the retention of rangatiratanga and the cession of kāwanatanga, or overarching authority. As Carpenter put it, the
chiefs were granting the Queen an authority they themselves were unable to exercise. He pointed to the preamble’s reference to the chiefs’ agreement to ‘te Kawanatanga o te Kuini’ as showing they were accepting a new authority. As such, he argued, ‘the Treaty did not represent a loss of Maori authority’. Ward agreed with Carpenter that ‘w[h]akaaetia’ (‘agree to’) was thus more appropriate than the English text’s ‘cede’.

As Carpenter explained, the Torah was ‘God’s law, or the Mosaic Law of the Old Testament’. For those chiefs influenced by the missionaries, the apparent connection between civil and divine law or Christian morality through the use of ‘ture’ may have had some influence. Ward also cited Lyndsay Head’s view that ‘the chiefs’ Christian ideals were strong, and . . . they saw the ture as anchored in the divine’. He noted Carpenter’s research showing that, in discussions with Māori in the two years preceding te Tiriti, Williams had ‘linked divine law with moral law and civil law, suggesting that civil magistrates, like missionaries, were God’s servants.’ Ward concluded that

Maori conceptions of the ture as a reflection of the will of God as well as the will of man was indeed probably stronger in the minds of many Maori than it was in the minds of some Crown officials and settlers.

Parkinson also engaged with Salmond’s emphasis on the use of the word ‘tuku’. He agreed with her that there had been an exchange and he considered ‘quite correct’ her interpretation of tuku as being

gift exchange – the Queen giving [rangatiratanga] to Maori in exchange for the British concept of civil government, and Maori giving the Queen sovereignty over them in exchange for a guarantee that their rights and property would remain theirs.

We note the general point, although we also note that Salmond did not suggest the tuku from the rangatira to the Queen was one of sovereignty over them.

Comments on the wording of te Tiriti were also made by Phillipson, who pointed out that Hobson was described as a kaiwhakarite in the preamble to te Tiriti, and the chiefs had for some years had such an official in the person of Busby. Phillipson thus felt that Busby himself was an important model for the chiefs’ understanding of kawanatanga. He also showed that the word ‘taonga’ was used in the 1830s to mean a broad variety of things, both physical and non-physical. Examples he gave included ‘a valued person, a book, a treasured possession, a spiritual object, riches, and “all good things”’. We have shown in chapter 3 how it was also used in Lord Goderich’s letter to the rangatira on behalf of King William IV in 1833 as a translation of ‘all . . . things which you desire’. Phillipson concluded that it was ‘not surprising, therefore, that many claimants have sought to explore the meaning of what these “good things” might be, both then and today’.

As we shall see, Crown counsel sought to circumscribe the meaning of ‘taonga’ in 1840. Such a position was not adopted by any of the Crown witnesses, though Ward did say that ‘o ratou wenua o ratou kainga me o ratou taonga katoa’ was ‘mainly a description of material resources’.

Finally, we note with respect to Williams’s translation that even those who have defended both it and the original in English are willing to concede the shortcomings of the pre-emption text. Carpenter, for example, wrote that ‘The Crown right of pre-emption in the English text was not clearly an exclusive right of purchase in the Māori text.’ Ward also acknowledged that

The evidence is not clear whether Maori would have understood the Crown right of pre-emption as an exclusive right to purchase Maori land or a right of first offer only – probably both views were held.

(2) Was Williams deceptive or a poor linguist?
Salmond concluded that Williams’s choice of words in the Māori text was a deliberate strategy to convince the chiefs to sign. She felt sure that Williams would have known that the best means of conveying sovereignty was to use a combination of ‘kingitanga’ and ‘mana’. However:

In the end, having decided that it would be best for Māori and missionaries alike if the British Crown were to establish
itself in New Zealand, it appears that Henry Williams translated Te Tiriti in terms that he knew would be relatively acceptable to the rangatira, describing a political arrangement very like a protectorate (as requested in He Wakaputanga), with a clear commitment that Queen Victoria would uphold their independent authority or tino rangatiratanga. If Williams had used the terms 'ko te kingitanga ko te mana' (as he did in He Wakapūtanga) to translate 'sovereignty' in Tūre 1 of Te Tiriti, and asked the rangatira to cede these powers to the British Crown, it is almost certain that they would have been angry and affronted, and that the negotiations would have failed. Instead, he couched the cession to Queen Victoria as a tuku or release of 'kāwanatanga'.

Salmond also emphasised Williams’s 10 years’ service from the age of 14 in the Royal Navy, which gave him ‘a strong sense of duty, and loyalty to the Crown’. On Williams’s skills as a linguist, Salmond, like Ross, did not consider him to have been a leading translator. She named his brother William and Maunsell as the principal translators of the Bible, and noted that James Hamlin was another superior translator to Henry.

Ward argued strongly in Williams’s defence. He declared him to be a patently honest man with Maori interests very much at heart before, during and after the Treaty negotiations, [who] did his best to render in te reo Maori the terms being negotiated.

Ward also dismissed Ross’s comments about ‘missionary Māori’ as a ‘false distinction’, as ‘All languages constantly evolve, and they evolve very swiftly when the speakers are exposed to other languages and to new experiences and artefacts. Te reo Māori was no exception.’ Ward acknowledged William Williams’s and Maunsell’s experience as translators, and noted the latter’s ‘particularly outstanding reputation’, but he pointed to the fact that Henry Williams had been in the Bay of Islands 12 years longer than Maunsell, ‘in constant day-to-day discourse with Māori’. Ward argued, moreover, that as a committed evangelist Williams had dedicated his efforts to teaching via the medium of te reo, and translating and printing ‘Māori catechisms, prayers, hymns and biblical extracts’. Ward found the notion of Williams being incompetent in te reo ‘very unconvincing’.

Carpenter, for his part, accepted that Williams may well have deliberately omitted ‘mana’ from his translation, albeit for the sake of accuracy rather than any deceit.

As Phillipson concluded, Williams is ‘alternately praised and blamed’ for the significant differences in meaning between the English and Māori texts. He is variously said to have purposefully misled or done the best he could in the circumstances. Phillipson noted another interpretation: that he ‘put things in the way most calculated to win Māori support, and that everything depended as a result on the oral explanations and contracts entered into at the Waitangi hui’. We certainly agree about the importance of the oral exchanges, and turn shortly to historians’ perspectives on these. Before doing so, we discuss what the historian witnesses made of the claimants’ account of a tūriti tuatahi – one that included a cession of mana – having been put to the rangatira.

9.3.2 Te tūriti tuatahi
In his evidence for the Crown, Parkinson considered it ‘inconceivable’ that Busby and Williams would have presented the chiefs with a tūriti tuatahi on the evening of 4 February (the date that he understood Edwards to have meant). He added that there was also no evidence at all for the existence of such a document, despite the express instruction of Hobson that all genuine documents, including drafts be preserved in the archives of the colony, which indeed they have been.

Instead, Parkinson thought that there is a rather recent oral tradition about such a document, which surfaced in the 1920s and may place reliance in a fictionalised and mischievous tale by [Frederick] Maning about
the possibility of the Treaty being buried with Hobson's body on his death in 1842. There is no historical basis to this tale.  

Ward also considered it 'highly unlikely' that such a hui could have taken place and not been recorded in writing by Williams or Busby.

Both Phillipson and Salmond were invited to comment in writing on Edwards's evidence on this matter. Phillipson thought it had to be taken 'very seriously'. He considered that the absence of any mention of te tiriti tuatahi (other than Maning's story) in the written record was not necessarily telling, given how little Williams and the other missionaries wrote about what exactly was said on the evening of 5 February (the date he understood this draft to have been presented). He agreed that there was nothing in the written record to corroborate Edwards's account, but suggested that there was nothing in particular to contradict it either. He thought that the claimants' idea that a different draft was put to the chiefs on the evening of 5 February was plausible, as the draft Williams prepared was rewritten late that night by Richard Taylor (at which point 'kawanatanga' could have been substituted for 'mana'). He thought that Williams's original draft may have been what the chiefs called 'te tiriti tuatahi', and that the reason this draft has never been found could be explained by the chiefs requesting it from Taylor so it could be buried with Hobson.

Essentially, Phillipson's point was that Ngāpuhi tradition tells of a rejection of the idea of ceding mana and an agreement only to cede kawanatanga, and this is corroborated by the written accounts of Colenso (in his notes of the speeches), Lavaud (as told to him by Pompallier), and Felton Mathew. Phillipson considered that something very significant must have happened on the evening of 5 February, to explain the change of heart on 6 February of so many who had opposed accepting the Governor the day before. They had been very concerned that he would sit high above them and might even presume to put them in irons. Something convinced most of them to withdraw their opposition, although – as I also noted – a minority of leaders remained mistrustful and either refused to sign Te Tiriti, or opposed it again soon after.

Phillipson concluded that,

Given what we know from the documentary evidence, and the oral traditions as presented by Mr Edwards and Mr Henare, I am satisfied that a dialogue must have begun before 4 February, and that – at some point in this dialogue – it was contemplated that a cession of sovereignty might be translated as 'ka tuku kia riro wakangaro rawa atu ki te Kuini o Ingarangi ake tonu atu te mana katoa a o ratou wenua . . . absolutely give to be lost to the Queen of England forever the Sovereignty of all their lands'. Oral tradition thus confirms what historians have long suspected; that Maori would not have agreed to Te Tiriti if it had included a cession of their mana. I also accept that it was possible that this took place on the evening of 5 February, but I also consider it possible (given Erima Henare's account) that it occurred earlier than that, in the discussions leading up to Hobson's arrival and the drafting of (and translation of) his Treaty.

Here, Phillipson may have conflated Erima Henare's discussion of the January 1840 meetings with his reference to Edwards's evidence about te tiriti tuatahi. If a first draft of Te Tiriti was put to the chiefs before 6 February 1840, it seems logical to conclude that this happened either during the afternoon or evening of 4 February (when Williams carried out his translation work) or on the evening of 5 February (when the chiefs were assembled at Te Tou Rangatira and spoke to the missionaries, and Taylor sat up late writing out the Tiriti text that was signed the next day).

Salmond also thought that the lack of any mention by Williams of his meeting with the rangatira on the evening of 4 February (her understanding of the date in question) does not mean that it did not happen, although she agreed Busby 'would almost certainly have mentioned it' if he had been present. However, she thought it not
improbable that Henry Williams would have consulted some rangatira whom he trusted to give him feedback and advice about the wording of the early drafts of Te Tiriti – indeed, this would have been wise.

Salmond rejected Parkinson’s assertion that such a meeting was ‘inconceivable’. ‘I do not know’, she wrote, ‘on what grounds he can make such an unequivocal assertion.’ Salmond thought that Edwards’s account ‘might explain why kāwanatanga was used instead of mana or kingitanga, since this referred to a lesser kind of power.’

As it happened, in week two of our inquiry a number of claimant witnesses referred to written historical sources corroborating their traditional evidence but did not identify them. We commissioned an archival specialist, Dr Jane Mcrae, to identify any such written sources. One issue she looked at was te tiriti tuatahi: we asked her whether there was any surviving evidence of Williams and Busby consulting the chiefs about a first draft of Williams’s translation. Mcrae could find no written record of such a consultation, and she concluded that

It is difficult to know where to go to find documentary support for this statement, other than by returning to the primary materials that have been used again and again, unless there is a written record of this oral tradition in private hands.

9.3.3 The oral debate

(1) The explanation of the treaty

At the outset it is important to state that, from the British perspective, the terms of te Tiriti were not negotiable at Waitangi on 5 February 1840. As Loveridge noted, the document was offered as a finished product, which they were at liberty to accept or reject. There appears to be no evidence that Hobson or Williams (or anyone else involved at Waitangi) asked Maori if they wanted to make any changes, or that any of the Maori involved requested changes to the document. None were in fact made on the 5th or 6th of February.

Indeed, the chiefs did not focus on the articles of Te Tiriti itself in their speeches at Waitangi, but rather on whether they should accept a Governor (and specifically Hobson). As Phillipson put it:

If [the chiefs’] sentiments have been recorded properly, then there was almost no discussion of the pukapuka itself and the meaning of its particular articles, especially the right of pre-emption and how that might work in practice. Instead, the oral transaction at Waitangi was both personal and particular – it was all about what having a kawana might mean in practice, and whether Hobson in particular should be allowed to remain in that capacity.

In fact, while many questions were asked, we have no record of any specific question being asked about any of te Tiriti’s key terms until the late-April signing at Kaitaia. On the evening of 27 April, before the signing took place the following day, Nopera Panakareao called on William Puckey for advice. According to the journal of the Colonial Surgeon, John Johnston, Nopera asked Puckey ‘as to the nature of the Treaty he was about to sign and particularly as to the meaning of the word Sovereignty, [and] this was endeavoured to be made intelligible to him.’ Salmond suspected that the word Nopera sought an explanation of was ‘kawanatanga’, as he was presumably monolingual. Nopera was evidently satisfied, because he led the Kaitaia chiefs in signing the next day, making his famous remark (which he reversed a year later) that only the shadow of the land had passed to the Queen, with the substance remaining with Māori.

To Phillipson, the oral debate was all-important:

A great deal of what was understood . . . was shaped not merely by the written words, which were read out and explained by Hobson and Williams, but also by the course of debate at the hui on 5 and 6 February. In many ways, the agreement made with the kawana was an oral one and a personal one. Not only was there much shaking of hands, and personal salutations to the Governor throughout the
proceedings, but specific points were addressed to him and (presumably) considered settled.\textsuperscript{119}

That is to say that the written document was elaborated upon and added to during the discussion. Phillipson argued that when Nene told Hobson ‘You must be our father! You must not allow us to become slaves! You must preserve our customs, and never permit our lands to be wrested from us!’, and Hobson presumably agreed, this formed part of the bargain. Phillipson put it that

The words of Nene, clear and influential, would have been part of this picture of what the Treaty was about, and what the Kawana had undertaken to do, just as much as any of the words in the texts composed by Hobson, Busby, and Williams.\textsuperscript{120}

What, then, did those historians appearing before us make of the way the treaty was explained to the rangatira? Phillipson noted the positive gloss in Williams’s 1847 recollection of his explanation at Waitangi: amongst other things, the cession of government was for the ‘preservation of order and peace’, and the chiefs retained ‘their full rights as chiefs, their rights of possession of their lands, and all their other property of every kind and degree.’\textsuperscript{121} As for Hobson's explanation, Phillipson pointed to Mathew’s ‘remarkable account’, which he thought revealed most clearly the relationship in which ‘Maori authority and the Governor’s authority were to stand to each other, and the real power balance that it was believed would rest behind this relationship’. As we have seen, Mathew described the arrangement as the chiefs

throwing themselves on [the Queen's] protection but retaining full power over their own people – remaining perfectly independent, but only resigning to the Queen such portion of their country as they might think proper on receiving a fair and suitable consideration for the same.

In other words, Phillipson concluded, Mathew understood Hobson to be saying that the Queen's sovereignty and the chiefs’ 'perfect independence' could exist alongside one another.\textsuperscript{122}

This would have been a highly unlikely position for Hobson to take, except as a short-term expedient. Ward, for example, thought Hobson would have seen no limitation on British sovereignty in te Tiriti.\textsuperscript{123} But it was a position that would clearly have appealed to certain rangatira. As Phillipson noted, when Pompallier met several of the chiefs before the Waitangi hui, and explained to them the authority that Hobson would command, ‘The chiefs did not want to hear talk of obedience; they supposed that Captain Hobson would be an additional great chief for the Europeans only, but not for them.’\textsuperscript{124} Phillipson concluded that

there is strong reason to believe that there was a deliberate strategy at Waitangi, on the part of the Crown's representatives, to inform Maori that they retained their independence and full power over their own people, whilst ceding kawanatanga to the Queen.\textsuperscript{125}

Among the Crown witnesses, Loveridge emphasised that

the missionaries sought to present the Treaty in the best possible light, and no doubt emphasized the protections which the Crown would afford Maori rather than the changes which would occur under the new regime which came with it.

But Loveridge also argued that the future arrangements for the Government were yet to be decided and ‘the missionaries themselves would have had only a general idea of what shape that regime would ultimately take’:

During the period in which the Treaty-signing process was underway the specifics of the land claims process, the Crown land system and the judicial arrangements (for example) had yet to be decided, and no one – including Hobson himself – would have been able to answer Maori questions on such
matters with any confidence. The supporters of the Treaty were also faced with considerable opposition from some Europeans in New Zealand, particularly those who wished to undermine the proposed land-claims investigation process, and the efforts of the pro-Treaty factions to counter hostile propaganda of this nature may well have affected the way in which they described the Treaty and its probable consequences. This is not to say that their descriptions were inaccurate, but they probably focused on certain issues at the expense of others.126

Ward also accepted that Hobson and his assistants avoided discussion of the Crown's future power, though he found this omission reasonable in the circumstances:

given the exigencies obtaining in 1840, and the sense of urgency that – quite justifiably – operated in the Colonial Office and in the minds of Hobson and his missionary advisers, it is understandable that they would not enter upon full discussion about the extent of the state's future authority. It was simply pragmatic to negotiate the right to introduce the Crown's authority in the first instance and get to grips with the land question. [Emphasis in original.]127

Nonetheless, Ward contended, there was 'a stream of evidence' indicating that 'the rangatira could scarcely fail to realise that the Crown's authority would extend over Maori as well as over Pakeha.'

This evidence was primarily the discussions between the chiefs and the likes of Busby and Williams over the years, in which they had indicated a readiness to come under a civil government or the rule of law.128 Loveridge also pointed directly to Te Kēmara's speech, as recorded by Colenso, as showing that the chief 'clearly understood the essential details of what a transfer of sovereign authority would involve.'129 Carpenter emphasised Busby's invitation to the chiefs to attend the 5 February hui at Waitangi, which referred to Hobson as 'tetahi Rangatira ano . . . no te Kuini o Ingarani' ('a Chief . . . from the Queen of England'), who had come 'hei Kawana hoki mo tatou' ('to be a governor for all of us'). Carpenter posited that 'The personal pronoun “tatou” clearly referred to both Europeans and Māori.' This point was also argued by Parkinson.130

Salmond suggested that Williams did not appear 'to have acted as a faithful translator, at least during the Waitangi meeting, excising some comments unfavourable to the CMS missionaries.'131 But Ward wrote that the claims that Williams deliberately mistranslated on 5 February 'were almost certainly overblown and owed much to the vested interests of the complainants'. The white settlers who complained, for example, were 'self-interested', and Salmond's reliance on their objections rested, he thought, 'on very thin ice'.

Ward also considered Pompallier's contention that the imperfections in Williams's translation were 'doubtless deliberate'132 was partly due to 'sectarian allegiance'. Ward pointed to the opinion of Colenso (who challenged Hobson on the extent of the chiefs' understanding of the treaty) that, while Williams may have omitted some repetition, he did translate 'fairly'.133

Ward explained what he saw as the sincerity of both the missionaries and officials at Waitangi like this:

It is very clear from missionary records and British official papers, that the missionaries and the humanitarians in Britain were very fearful that the Maori people would be overwhelmed and actually destroyed by unregulated white settlement, as had indigenous peoples in the Americas, southern Africa and Australia. That therefore the missionaries and officials at the Treaty negotiations were perfectly sincere in arguing at Treaty negotiations that the introduction of the Crown's authority was urgent and imperative, for the protection of the Maori people and their lands and customs. There was probably very little realisation of the extent to which the state's statutory authority and common law would ultimately impinge upon custom and thereby diminish traditional rangatiratanga. That realisation emerged in subsequent years and then only gradually. [Emphasis in original.]134

Nor could Phillipson 'perceive any intent to deceive on the part of Busby or the missionaries.'135 As an example
of this good faith, he quoted Busby’s 1845 remark that he personally had not understood the British agenda behind pre-emption:

“The only motives alleged were those of benevolence and protection. The chiefs were persuaded to agree to the treaty (so far as it was executed at Waitangi), by their confidence in the missionaries and myself. But had we been aware that it was the intention of Her Majesty’s Government to enter into a competition with the New Zealand Company in colonizing the country by the profits to be realized from the lands to which the natives were invited for their own protection to yield the pre-emption, we could not, with our knowledge of their feelings and sentiments, have conscientiously recommended them to agree to the treaty; nor had it been otherwise, would our recommendations have had any influence with the natives, provided the intentions of the Government had been made known to them.”

Phillipson noted that Busby recorded that both he and the missionaries had developed feelings of ‘of great uneasiness and alarm’ when they ‘first became aware of these intentions on the part of the Government’.

(2) Oratory
Salmond noted that, on important occasions, it was quite possible ‘some speeches might be intended as oratorical pyrotechnics, rather than sober expressions of opinion’. She accepted that several missionaries regarded speeches made against Hobson as being ‘all for show’. But, she wrote, in examining the speeches she found that ‘in many cases’ such an explanation was ‘improbable’.

Johnson, by contrast, noted the tradition related by Sir James Henare (see chapter 8) that the dramatic speeches against te Tiriti were in fact ‘token opposition’ made after a joint decision by the rangatira to sign. Johnson thought that this could explain the confusion about whether Heke spoke in favour of or against the treaty. As he put it:

it seems clear that he [Heke] expressed sentiments of both support and opposition to the treaty. . . . a speech of this

nature was in keeping with Sir James Henare’s oral history of the event.

As we have noted, however, the chronology in the tradition told by Sir James differed from that we set out in chapter 7, and the vehement opposition cannot easily be explained as a concerted decision to offer only the appearance of unhappiness.

Ward wrote of ‘the rather theatrical proceedings which were Treaty negotiations’. In doing so, he portrayed the passionate defiance shown by certain rangatira not as attempts to draw out assurances and denials by Hobson and the missionaries, as the Muriwhenua Land Tribunal suggested. Rather, he depicted them as the conventional raising of alternative perspectives in the course of reaching consensus. As he put it:

My understanding of Maori conventions of oratory and debate on the marae and in comparable formal meetings is that they commonly involve forceful challenges to proposals raised for consideration and possible assent. It seems that orators consider it their responsibility to raise (for the benefit of the whole assembly, including their kin who will not be speaking) relevant aspects of the ‘negative’ case (as well as the case ‘for’) – that this was (is) a necessary part of the search for full understanding, and for an informed consensus; and when a consensus was (is) reached it might well include speakers who had earlier taken contrary positions. This seems to have been the case at Waitangi and other Treaty negotiations although some chiefs held out to the end and did not sign. Even when consenting, it seems that orators could still maintain a formal challenge, perhaps to remind the other party of their obligations.

(3) Missionary assurances on the evening of 5 February
Phillipson wrote that

some sort of agreement must have been reached that evening [of 5 February], as almost all of those who had spoken in opposition on the 5th came forward, signed the Treaty, and shook hands with the Governor the next day.
He thought that the claimants might be able to explain the change in heart – and, as we have seen, Edwards did indeed attempt this with his account of the tiriti tuatahi. In any case, Phillipson clearly thought the rangatira had been sufficiently reassured:

Presumably, chiefs like Te Kemara were ultimately satisfied that the positions of kawana and rangatira would be relatively equal, a very strong stipulation on their part on the 5th, but that the Governor would nevertheless be powerful enough to regulate the practices of European traders, return full authority over land claimed by Europeans, and act as a more effective kai whakarite than Busby had been able to do.¹⁴³

Ward thought it likely that the evening discussions on 5 February were characterised by further ‘search for understanding’ and ‘detail’, and that this was what led the rangatira the next morning to an almost unanimous decision to sign. While such a conclusion appears similar to Phillipson’s, we think Ward’s implication was more that, rather than some kind of reassurance of equal authority, there was more probing by the rangatira and greater frankness on the part of the missionaries. As Ward put it:

Discussion commonly continued (continues) long after the more formal proceedings had (have) introduced the issues – discussion which can last long into the night. The available evidence is fairly clear that this is what happened on the evening of 5 February on the flat at Te Ti; when Henry Williams and others joined the rangatira in further (and probably more detailed) discussion of Te Tiriti, a discussion resulting, by the morning of 6 February, in a general (though not total) consensus to sign, and accept the governor.¹⁴⁴

(4) The signing
In response to Salmond’s suggestion that marks or signatures on te Tiriti may not have signified assent on the part of rangatira who had expressed strong opposition to the kāwana, Parkinson stated that

By 1840 there was a well established practice among chiefs of signing documents with tohu of assent. In some cases these were fragments of moko of various kinds and in others they were simple crosses and on others they were squiggles or attempts at signatures, for those who were fluent writers or copyists.¹⁴⁵

Parkinson gave examples of this practice in the north in the years before te Tiriti, including the Muriwhenua deed signed as recently as 20 January 1840. Signatories’ names and marks were generally introduced with the words ‘Ko te tohu o’ (‘The mark of’) or ‘[name] tona tohu’ or ‘Tihei tona tohu’. Parkinson said that the Waitangi, Waimate, and Mangungu marks conformed to this pattern, although for some reason at Kaitaia only signatories’ names were listed, mainly in Puckey’s hand and without tohu. In sum,

there can be no doubt that the chiefs who gave their tohu to the Treaty assented to it, irrespective of the comments they may have made in the debates preceding the signing.¹⁴⁶

Salmond disagreed with this, pointing to instances in Muriwhenua of rangatira repudiating signed agreements where their understanding of them had been dishonoured.¹⁴⁷ The Ngāti Rēhia claimants also won some support from Salmond for their contention that Mene would not have signed te Tiriti on Tāreha’s behalf. Salmond reiterated her belief that there must necessarily be doubt about the extent to which the tohu of rangatira who had spoken against the treaty signified assent. And she added:

In this case, where a son is said to have signed on behalf of his father, who was present at Waitangi and delivered a strong speech of opposition to the Governor, that element of doubt must be considerable.¹⁴⁸

(5) He iwi tahi tatou
For Carpenter, the ‘one people’ statement was of religious provenance. As we have noted in chapter 7, he thought it likely that Williams suggested to Hobson that he say the words to the chiefs. Carpenter concluded:

Williams had told rangatira at Treaty signings that by consenting to te Tiriti they would be united with their Pākehā
brethren under a unitary state that would be ruled in accordance with a law that was ultimately sourced from God’s law. This perhaps is also the best way in which to understand the statement which Williams encouraged Hobson to announce as rangatira signed te Tiriti: ‘he iwi tahi tatou’ (we are all one people).\textsuperscript{149}

The significance of Hobson’s words was not dwelt upon by other historians who appeared before us.

9.3.4 The meaning and effect of the treaty

What, then, did key historian witnesses who presented evidence on the subject conclude about the meaning and effect of the treaty?

Salmond thought that most rangatira would have understood te Tiriti ‘as establishing an aristocratic alliance between themselves and Queen Victoria – and more immediately, with Governor Hobson’. Under that alliance, the Crown promised to protect Māori from attacks by Europeans. Furthermore, the Governor would serve as ‘a kai-wakarite, a mediator, adjudicator and negotiator in the relationships between Maori and Europeans, to keep things tika – just, proper and correct’.

Salmond suggested that different rangatira would have had different motives for entering this alliance: some would have hoped to further their trading interests and wealth through signing te Tiriti, while others were persuaded to agree to the Governor by the hope of a restoration of stability to a disrupted world. The rangatira were aware of the threats to their independence but were ‘explicitly reassured by the missionaries’ explanations, as well as by the Governor himself’.\textsuperscript{150}

Salmond dismissed the possibility that the rangatira ceded sovereignty to the Queen. To their understanding, in 1840, kāwanatanga was ‘a subordinate and delegated power’. Moreover, the chiefs were constantly assured at treaty hui (which in Salmond’s report included Kaitaia) that their authority would be guaranteed and their property protected. She concluded that

While the rangatira certainly agreed to the introduction of British ture and tikanga (customary rights and practices), and some were fearful about how this might affect their status and freedoms, it seems likely that most were convinced by these reassurances that the scope of these ture (and the Governor’s role as kai-wakarite) would apply primarily to Māori-Pākeha interactions.\textsuperscript{151}

Salmond thus described the effect of the treaty as

a balance of powers within largely autonomous spheres of action, with ture and the Governor’s role as kai-wakarite probably applying to the interactions between them.\textsuperscript{152}

Salmond accepted that the Crown’s definition of sovereignty as indivisible and absolute, as well as the prevailing European view of Māori as uncivilised and barbaric, meant that

there was little chance of a balance of powers between Māori and the Crown emerging in New Zealand, in spite of the countervailing principles of justice and honour.

She felt, however, that kāwanatanga and rangatiratanga ‘need not have been irreconcilable’ if the Crown had, for example, established a protectorate. In fact, she considered that ‘the essential paradox’ within the Māori text lay not between kāwanatanga and rangatiratanga but between articles 2 and 3. As she put it, a

world based on whakapapa and one based on individual rights were grounded upon very different assumptions about humanity and the relations between people and other forms of life – and thus, very different understandings of mutual rights and responsibilities.\textsuperscript{153}

Phillipson, as we have noted, considered that the prospect of having a ‘kāwana’ would have made some chiefs think of Busby. He argued, in this regard, that the choice confronting Māori at Waitangi was not so much between accepting or rejecting the Queen’s authority, but between Busby and Hobson. We have seen an account of Hakiro trying to persuade Busby to take the role of Māori King in 1839 (see chapter 5) and telling Hobson at Waitangi, ‘The
missionaries and Busby are our fathers. We do not want thee; so go back, return, walk away.' To Phillipson:

It seems pretty clear that in seeking a kawana in 1840, the Bay chiefs were expecting a Busby with a little more of everything – a few troops, a warship, more ability to arbitrate than mediate, and (most importantly) ensconced in their midst at the Bay. . . Many of the rangatira referred to a choice between the new kawana and keeping the old situation of the missionaries and Busby. Many wanted to keep the status quo, with Busby and the missionaries continuing as their matua. In other words, the choice was not between accepting and rejecting alliance with the Crown, so much as accepting the new and more intrusive presence of the Crown in the person of the Queen’s Kawana. It was between Hobson and Busby; the old ways of King William and the confederation, or the new ways of kawanatanga and the Queen.

The rangatira, Phillipson thought, were eventually convinced to accept the new kāwana by the constant assurances and promises they were given. This bargain, he wrote, was encapsulated in Mathew’s summation of the proceedings at Waitangi. As Phillipson put it:

Basically, it seems likely that Felton Mathew was correct when he stated that the upshot of the Treaty, as negotiated at Waitangi, was that ‘the native chiefs agreed to cede the sovereignty of their country to the Queen of England, throwing themselves on her protection but retaining full power over their own people – remaining perfectly independent’. He stressed this latter point: ‘During the whole ceremony with the chiefs, nothing was more remarkable than the very apt and pertinent questions which they asked on the subject of the treaty, and the stipulations they made for the preservation of their liberty and perfect independence.’

Phillipson added that Mathew’s impressions were corroborated by George Clarke’s recollections in 1861, when he wrote that both parties understood that the Queen received ‘the shadow of the land’ and the chiefs ‘the substance’. Clarke affirmed that ‘the subject of Tribal rights and the full power of the Chiefs over their own tribes and lands was explained to the natives, and fully understood by the Europeans present.’

Phillipson also considered that, for the rangatira, a key component of their promised independence was that they would not be inundated by settlers. Looking back from 1845, for example, Busby mentioned the Māori ‘dread of seeing foreigners arrive in such numbers as to threaten their independence.’ In contrast therefore to Dr (later Professor) James Belich, whom we have noted as arguing that Māori understood that signing te Tiriti would inevitably lead to a ‘big increase in settlement’ in New Zealand (see chapter 8), Phillipson pointed to Mathew’s record of Te Kēmara telling Hobson, ‘If you like to remain here it is well, but we will have no more white people among us lest we be over-run with them, and our lands be taken from us.’ And because Busby and the missionaries did not know that the Crown planned to fund the New Zealand colony through its pre-emptive right, Phillipson perceived a clear equation between the continued power of Maori over their own affairs, which is what Mathew meant by ‘independence’, and the fact that Busby and the missionaries were not expecting the systematic colonisation of New Zealand.

Despite Phillipson’s notion of Hobson and his treaty as something of a departure from past arrangements, he nonetheless regarded the agreement reached at Waitangi as ‘the alliance reforged between the Crown and Nga Puhi’. Other historians also regarded the treaty as a renewal of a relationship between Bay of Islands Māori and the Crown that had been in existence for some years. As Johnson put it, ‘It is important to realise that Ngapuhi, in signing Te Tiriti, were seeking to renew their former arrangements and alliance with the British monarch.’ Kawharu concurred. She wrote that ‘The Treaty was also approached from the perspective of extending the existing alliance that was established and reaffirmed at the major events of the 1830s.’

Manuka Henare stressed the
northern Māori view that the relationship or alliance with the Crown had begun in 1820 with Hongi and Waikato's meeting with George IV.\textsuperscript{162}

For his part, Ward suggested that land issues were a crucial factor in Māori agreement to the treaty. The rangatira understood that Hobson would protect their rights to the land and fairly investigate previous transactions. In Ward's view, the chiefs also expected the kāwana to control settler behaviour and protect Māori from overseas powers – particularly France. Moreover, the rangatira recognised that the Kāwana would have an authority over them, as could be seen, for example, in Nene's request for Hobson to be 'a father, a judge, a peacemaker'. That the rangatira expected Hobson to have this higher authority was clear from both the Crown's focus on obtaining kāwanatanga and the ongoing discussions that Busby and the missionaries had had with them about the suppression of warfare.\textsuperscript{163} However, Ward also thought that the rangatira

would have considered that the Crown recognised their customary authority over their respective lands and tribes and would work with them rather than unilaterally impose their authority – that there would be some kind of partnership in the shaping of judicial and administrative machinery.

In fact, Ward said, there would be a sense of continuity for those Christian chiefs who had been working with the missionaries to implement the 'one Law, human and divine' that Williams referred to on the evening of 5 February: 'Thus many Maori may not have perceived a radical change from what had gone before.'\textsuperscript{164}

On the subject of whether Māori retained their sovereignty, Ward suggested that this very much depended on how 'sovereignty' was defined. If it meant 'the traditional reciprocal authority of chiefs and people in their own community', then they did retain it – along with 'the mana that went with it'. Furthermore, the right of the Governor to suppress warfare and other violent practices could not be 'exercised unilaterally' but had to be 'in cooperation with them'. However, wrote Ward,

insofar as sovereignty/kawanatanga equated with the rule of law, many rangatira probably accepted it largely because it accorded with an existing aspiration for a nationwide civil government.

This aspiration, argued Ward, was demonstrated by he Whakaputanga.\textsuperscript{165} At the same time, Ward acknowledged that the exact nature of the relationship between kāwanatanga and rangatiratanga remained to be worked out, and that the chiefs had needed to place their trust in the missionaries.\textsuperscript{166} Ward summed up the extent to which he believed that there had been a 'meeting of minds' between the rangatira and the Crown in February 1840. He thought that this had occurred 'to a considerable extent, though there was some confusion as well'. In Ward's view, the points of mutual understanding were that:

- the Crown would keep out the French;
- the Crown would control land transactions;
- some rangatira shared the Crown's understanding of pre-emption;
- a 'common understanding that the customary authority of rangatira among their own people would be recognised, at least for the immediate future and that the Governor and his officials would work with them rather than unilaterally impose their authority' (with this being understood most strongly by Christianised Māori);
- Māori and Pākeha would have the same rights under the law; and
- 'a common understanding that Kawanatanga would be exercised in good faith, for the common good, including that of Maori. This was the moral dimension of the Treaty, or “the spirit of the Treaty” as we say today.'\textsuperscript{167}

In conclusion, Ward accused some historians of practising presentism. As he put it:

I believe that there is a temptation, apparent in some recent historical analysis, to 'read history backwards', and to expect
the participants of 1840, to have understandings and assumptions that are only available to us with hindsight . . .\textsuperscript{168}

He implied that the Crown’s intentions in respect of the treaty have been judged excessively in light of its post-February 1840 conduct rather than by its position at the time. In this regard, he claimed that

the compact negotiated by Hobson, Henry Williams and northern rangatira on 5 and 6 February (and with other rangatira subsequently) was arguably the single most important effort in the nineteenth century to control European imperialism in the interests of an indigenous people.\textsuperscript{169}

Here, Ward stressed the exceptional nature of the treaty in ways that were first and most famously expressed by William Pember Reeves and taken up by many historians thereafter, but more recently called into question. We note also that Ward later confirmed, in answers to written questions, his view that he Whakaputanga was dissolved by a combination of the wording and signing of te Tiriti.\textsuperscript{170}

Loveridge was somewhat more circumspect in his evidence in summing up the meaning and effect of the treaty. The crucial questions, he believed, were what was said to the rangatira to convince them to sign, and ‘what did the chiefs take the explanations given to them to mean? ’ The impediment to finding the answers, however, was the ‘lack of reliable, let alone complete records of what Hobson and the missionaries actually said to Maori at Waitangi’ on 5 and 6 February 1840. For Loveridge, this meant that

any appraisal of what was said, what was not said and what was understood by any of the parties during the Treaty-signing process needs to be treated with a good deal of caution.

Loveridge thought that the best approach to understanding what went on was to consider ‘the wider historical context’. This context included a missionary determination to defeat the objectives of systematic colonisation through ensuring the ‘buffer’ of a cession of sovereignty by the rangatira to the Crown, and the Crown’s equal determination to obtain sovereignty as quickly as possible. As we have noted, Loveridge believed that, in these circumstances, the missionaries put a positive gloss on the treaty, and many chiefs simply accepted their assurances.\textsuperscript{171}

We should add that, in his later written responses to Salmond’s evidence, Loveridge elaborated his views on the chiefs’ level of understanding of the treaty’s provisions. He was reasonably certain that the rangatira realised that they would be subject to a higher authority and British law. Loveridge wrote here that

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

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

McHugh emphasised, however, that the Crown acquired sovereignty in New Zealand not through the treaty but through a ‘series of jurisdictional steps, that
culminated in Hobson’s May 1840 Proclamations. This process was ‘certainly complete’ by October 1840, when the proclamations were approved by the Crown and notified in the London Gazette. In other words, from a British legal standpoint, signature-gathering on the treaty was no longer technically necessary for establishing sovereignty after the proclamations. But it continued, according to McHugh, because the Crown regarded ‘its self-imposed commitment of securing Maori consent’ so seriously.176

McHugh argued that the May proclamations ‘achieved a principal end of establishing British sovereignty for purposes of jurisdiction over British subjects’ – the key object having been to assert control over the settlers at Port Nicholson. On a constitutional level, though, sovereignty now also applied to Māori. But in McHugh’s view imperial officials knew full well that Māori would not ‘immediately defer to the Crown and switch to English law’, and so – on a practical basis – allowed ‘the legislative accommodation of some forms of Maori custom’.

9.3.5 What if the rangatira had refused to sign?
The Crown-commissioned historians also addressed the hypothetical event that the rangatira had refused to sign te Tiriti. Ward wrote that

probably Hobson would have had to return to Sydney for further instructions, but he and Gipps might well have decided to assert Crown sovereignty over the South Island on the ground of discovery, and possibly over enclaves in the North Island based on the fact of British settlement, especially in [the] region of Port Nicholson. [Emphasis in original.]178

This was a rather more tentative speculation about what the British would have attempted than appeared in Ward’s An Unsettled History in 1999, in which he had suggested that the British would have annexed New Zealand regardless (see chapter 8).

For his part, Loveridge thought that much hinged on the response of the chiefs who had signed he Whakaputanga:

I think it is highly likely that if Hobson had been unable to persuade a clear majority of the chiefs of the Confederation to accept the Treaty in February, he would have suspended his efforts to obtain further signatures until this goal was achieved. If, ultimately, this proved impossible he might well have given up altogether and returned to Sydney, although the fallback plan may well have been to acquire the cession of a ‘factory’ somewhere outside the Bay of Islands, in order to establish a British foothold in New Zealand.179

However, Loveridge did see European control over New Zealand as inevitable, and suggested that Māori were better off with the treaty’s protections than they would have been had no treaty been signed:

It was almost inevitable that New Zealand would come under European control of some kind during the 19th century – none of the other of the Pacific islands escaped this fate, and New Zealand’s climate and resources offered many attractions. Due to its proximity to the Australian colonies Great Britain was always the imperial power most likely to take such a step. The Treaty which Māori got may not have been the perfect outcome, in hindsight, but the outcome could easily have been much worse had different choices been made in London, or had the British Government decided not to do anything at all at this time. If Britain had not been prepared to offer such a Treaty, or had that Treaty been rejected in whole or in part, it is difficult to see how Māori would have been benefitted in either the short or the long term.180

McHugh was reluctant to be drawn on the issue of what would have happened if Māori consent had not been obtained. Asked by counsel for Ngāti Hine whether, in such circumstances, the May proclamation would have been a usurpation of Māori sovereignty, he said, ‘That did not occur though, that is counterfactual history’. Counsel was essentially pursuing a different matter from that commented on by Ward and Loveridge, but it seemed implicit in McHugh’s answers that Hobson saw Māori consent as a prerequisite to any assertion of sovereignty. As he put it:

I cannot answer that because
that did not happen. . . . There was very clearly a belief that [in securing Māori signatures to the treaty] the Crown had discharged the obligation it had set itself.181

When questioned by us, he conceded that ‘failure was not an option’ for Hobson. He added, however, that

I suspect he would have got on his boat and sailed elsewhere to see if he could have, at least established sovereignty over parts . . . And if that hadn’t worked, well we’re getting into really, really speculative history there.182

9.4 Closing Submissions

We turn now to consider the closing submissions of the Crown and claimants. The claimants were of course represented by many different lawyers, through whom they put forward a broad range of views. We attempt here to set out the core aspects of the claimant submissions. We do so under similar headings to those we have used for the historians and claimants, although counsel also traversed other subjects that we need to summarise separately, such as the applicability of international law.

9.4.1 Claimant submissions

(1) On the Crown’s ‘reluctance’

We begin by recording what claimant counsel had to say about the Crown’s motives in the lead-up to Hobson’s arrival in the Bay of Islands in January 1840. Counsel for the Ngāti Torehina ki Matakā claimants noted that the Crown portrayed itself as a reluctant actor, encouraged to colonise New Zealand for humanitarian purposes. But counsel argued that Hobson’s commission made explicit the object of expansion of the Queen’s territories and did not mention humanitarian aims. Normanby’s instructions also stressed the ‘national advantage’ to Britain of obtaining sovereignty over New Zealand because of the country’s great natural resources, touching on humanitarian considerations only much further on. Just as there was immense speculation in New Zealand land from Sydney, so was the Crown taken with ‘an impulse of gain’. The Crown’s primary motivation, counsel said, was economic.183

Other counsel submitted that the treaty was merely the ‘preface’ or legal basis for the ‘inherent violence of colonisation and dispossession’ that was to come, or that it was ‘absurd’ to think there was ‘[a]ny benevolent purpose’ behind the treaty.184 Counsel for Ngāti Kuta, Patukeha, and Ngāti Kahu contended that the Crown had predetermined that it would acquire sovereignty over New Zealand. The January proclamations ‘were the act of a government, preparing for what they considered was inevitable, in a country where they had no effect’.185

By contrast, however, Tavake Afeaki and Gerald Sharrock, who acted for 10 claims, submitted that there was evidence that Britain’s professed reluctance to intervene was genuine, but that, when the decision was made to acquire sovereignty, all the British really sought was the ‘power merely to impose a jurisdiction on British subjects[‘] misdeeds and manage landsales’. This, they suggested, was entirely in keeping with the contemporary British acquisition of ‘quasi sovereignty’ in places such as India and West Africa.186

(2) Oral history and te tiriti tuatahi

Dr Bryan Gilling, who acted for Edwards and others, argued that the Crown lacked the appropriate linguistic expertise to comment on the significance of the words of Te Tiriti, and that the Ngāpuhi evidence – which included that of two past or present Māori Language Commissioners (Hohepa and Erima Henare) – should be given ‘significant weight’. Counsel also thought that, given their generally limited knowledge of te reo and reliance on documentary sources, both Crown witnesses and Carpenter were unqualified to comment on matters of Ngāpuhi tikanga and history generally, such as the relationship of he Whakaputanga to te Tiriti.187

In this regard, Gilling was perhaps most critical of Parkinson, whose evidence was ‘so problematic as to merit little weight being accorded it’. In his view, Parkinson had attempted to speak as an expert in Ngāpuhi tikanga
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without any proper knowledge. The Crown’s offering of such material, he said, was ‘condescending Eurocentrism’. In responding to Parkinson’s rejection of the traditional account of a ‘tiriti tuatahi’, counsel defended the reliability of Maning’s writings. In any case, said counsel, Edwards did not learn the story of te tiriti tuatahi from Maning but from tribal oral history. Maning, counsel argued, provided a corroboration of Ngāpuhi oral history, not a source for it. While Parkinson argued that such a draft treaty would have been archived, counsel suggested that the very reason that it had not been archived was that it was indeed buried with Hobson. Altogether, counsel argued that Phillipson, Salmond, and McRae were all willing to accept the possibility of te tiriti tuatahi, and that Ward and Loveridge had agreed that there might be oral evidence of such a document. Parkinson was alone, he argued, in unequivocally rejecting the idea.188

In general, submitted Gilling, oral history must be given significant weight, because Māori culture was oral. Furthermore, the large amount of oral evidence submitted by Ngāpuhi should be given primacy because of the paucity of written records from the time, and because it is the Māori understanding of te Tiriti that is crucial. The oral evidence, he said, is ‘potentially more informative and reliable’ than Colenso’s account.189

Several other counsel also argued that oral tradition should be regarded as of equal if not more validity than documentary history.190 A differing emphasis was provided, however, by counsel for Te Uri o Te Aho. He explained that his clients’ submission ‘takes into account both oral history and the historical records that have survived and those that the hapu members have had an opportunity to read’, as the passage of time means ‘there can never be complete certainty over the finer detail of what is remembered’.191

(3) The wording of te Tiriti

Both Gilling and counsel for Te Kapotai warned against over-analysing individual words in te Tiriti, instead of taking a more holistic approach that included, for example, the ‘verbal context’.192 That said, the general position of claimant counsel was that mana, kingitanga, or rangatiratanga would have been more accurate translations of sovereignty than kāwanatanga, and that no chief would have ceded these. Counsel rejected what they saw as the Crown’s attempt to alter the meaning of rangatiratanga. Linda Thornton, for example – who represented 14 claims – submitted that the Crown’s post-treaty depiction of tino rangatiratanga as ‘the right to dispose of a few forests’ was ‘a shameful reading down of one of the fundamental assertions of human political and legal power and authority’.193

Claimant counsel generally argued that kāwanatanga was a delegated and temporary authority rather than a hereditary one such as those held by both monarchs and chiefs. To demonstrate this, counsel pointed to the use of rangatiratanga and kāwanatanga in both the Bible and in the Whakaputanga; the wording of the back-translations (such as Richard Davis’s use of ‘entire supremacy’ for ‘tino rangatiratanga’); and the chiefs’ experience of New South Wales governors.194

On the Whakaputanga specifically, counsel for Te Rarawa wrote that the Crown was left in the difficult and contradictory position of saying that the use of words such as mana, kingitanga, and rangatiratanga were appropriate in the non-legally binding document which the rangatira signatories used to assert their sovereignty and independence to the world, but not in Te Tiriti / The Treaty, in which according to the Crown the rangatira ceded forever their sovereignty and independence.195

Counsel also thought that the overall wording of te Tiriti invited a different interpretation. Using the Kawharu back-translation, counsel argued that, given the emphasis on protection in the preamble, the Kāwana would govern only land the Queen acquired. Thus, the reference in article 1 to the Queen having kāwanatanga ‘over their land’ must mean the chiefs’ land which had been conveyed by tuku or hoko to the Queen. Counsel submitted that articles 1 and 2 were quite consistent on this reading, as
there was no other qualification on tino rangatiratanga (pre-emption, for example, was no such fetter as worded). Māori rights and duties under article 3 applied only when Māori were on land the Queen had received, she argued – otherwise they would be regulated by tikanga.  

(4) The relevant treaty text
As they advocated for a priority to be placed on their clients’ own evidence, so did counsel argue for the primacy of the Māori text over the English text. Like claimant witnesses, counsel argued that the text of te Tiriti was the only one of any relevance or significance. Gilling argued that the two texts were separate documents, and that te Tiriti’s terms could not be readily rendered in English. Counsel for Ngāti Torehina ki Matakā submitted that common sense dictated that the English version was not a record of the treaty. He added that the Treaty of Waitangi Act’s assumption that there are two versions of the same agreement is a false premise. For the Tribunal to give equal weight to the English text would breach the very principles the Act purports to uphold, he said. Counsel suggested that we recommend a change to our own legislation to reflect this.

Annette Sykes and Jason Pou, who represented 20 claims, argued that the Tribunal’s obligation to ‘have regard to’ the two texts meant that it could disregard the English text if it so chose. ‘Have regard to’ meant ‘open minded receptiveness without limiting discretion within the decision-making process.’ That point was also argued by counsel for Te Rarawa. She added that the Crown had produced no authority for its position that the treaty is one document in two languages. It had even said itself that the Māori understanding would have been through the Māori text. The Crown drafted te Tiriti and Hobson signed it, but Māori neither drafted nor signed the English text. The Tribunal, they said, simply does not have to ‘give effect to’ the English text or ‘reconcile’ the two texts.

Arguments about the relevant text were also a significant aspect of the submissions we received about international law, which we discuss in more detail at section 9.4.1(7).

We note finally here that, in citing the tapu nature of the transaction and the idea of te Tiriti as a sacred covenant, Mireama Houra, who acted for four sets of claimants, submitted that the emphasis on the English text has been a kind of sacrilege.

(5) The oral debate
Thornton submitted that it was ‘apparent that the idea of British protection in New Zealand was the dominant discourse’ during the oral discussions at Waitangi, and that there was no evidence that anyone explained to the chiefs that they would be giving up their rights. Counsel for the Tai Tokerau District Māori Council, Donna Hall, noted that the chiefs focused on whether they wanted a kāwana, not on what sovereignty meant, and thought that Patuone’s gesture encapsulated the understanding Māori would have taken from the discussions. As counsel put it:

The metaphor of two fingers held together, side-by-side and equal, was given at Waitangi by Patuone. This is the natural consequence of [the] prevailing narrative given to Maori. This is reflective of a form of power-sharing, but not of the transfer of sovereignty in the British sense. Whilst that korero came in the finely balanced debates of 5 February 1840, it represents the best interpretation of both the text of Te Tiriti and of the additional discussions held with Maori by the Crown and missionaries.

Counsel for Ngāti Kuta, Patukeha, and Ngāti Kahu stressed that, as Manuka Henare had said under questioning from the Crown, it is impossible to know what words rangatira like Rewa used in expressing their concerns about the future authority of the kāwana, and therefore to know exactly what they were thinking. Counsel said ‘it is inappropriate to rely on non-Maori resources when considering a Maori viewpoint’. In this regard, counsel doubted the completeness of Henry Williams’s account of his explanations to the rangatira: as a representative of the Crown it was

extremely unlikely that he would have reported on any deceit or doubts he may have had, and therefore his account is not determinative of the rangatira’s understandings.
Counsel for Te Rarawa noted that rangatira who expressed concern that the Queen's authority would be above them were a small proportion of those who signed at Waitangi on 6 February. She did not make submissions on whether those statements should be taken at face value or whether they may have been attempting to draw out a denial from Hobson and the missionaries. By contrast, Sykes and Pou did not rely on statements by rangatira during the oral debate, as 'assertions made within the diplomacy of negotiation might be made to progress negotiations toward an outcome rather than to express a desired one'. Counsel for Te Rarawa concluded that Rewa and Te Kēmara assented not because they suddenly accepted the authority they had previously opposed, but because they had received adequate assurances from the British Crown and its agents. Without such assurances, counsel added, the chiefs' assent is 'inexplicable.'

(6) The meaning and effect of the treaty
Some counsel thought Hobson genuine in his belief that Māori had willingly ceded their sovereignty. But others thought the Crown and the missionaries self-deluded, duplicitous, and deceitful. In general, counsel stressed that rangatira and the Crown had no mutual understanding of the treaty. Gilling rejected Ward's suggestion that there was a 'meeting of minds' to a 'considerable extent' at the treaty signing, and that the Crown had merely departed from this 'spirit' of the treaty in subsequent years. He submitted that Ward had failed to grasp that there were major differences of opinion between Māori and the Crown at Waitangi in 1840. Moreover, a 'meeting of minds' was a legal concept (consensus ad idem) about parties to an agreement having the same understanding, and this had hardly been possible in the circumstances.

Claimant counsel submitted that the Māori understanding was that they would retain their 'perfect independence', as the missionaries and others had assured them, or their mana. Gilling contended that, even if (as Ward argued) Hobson and Henry Williams did not want to strip Māori of their mana, for the Crown to acquire sovereignty the chiefs would still have had to relinquish what they – Māori – defined as mana. But they could not do so. If they had suspected even a hint of diminished authority, counsel said, the chiefs would not have signed.

Counsel for Te Rarawa argued that he Whakaputanga was crucial to the chiefs' understanding of te Tiriti. She enumerated the parallels between the two documents, including the terms used, the cross-over of signatories, Henry Williams's translations, and so on. He Whakaputanga, she said, was a collective expression of mana, and te Tiriti was no different; it stemmed from the same context and confirmed the existing interests of te Whakaminenga. There was thus no relinquishment of sovereignty. Other counsel made this link, and submitted that te Tiriti was just another event (or 'degree in the whakapapa') in the series of engagements between Māori and the British Crown stretching back to the meeting between Hongi and King George IV in 1820. Counsel for Ngāti Hine put it thus:

The rangatira to rangatira relationship with the English sovereign established by Hongi was maintained and taken a stage further in He Whakaputanga and Te Tiriti.

The Chiefs sought and believed they had obtained an honourable and mutually beneficial relationship through which they would share in the benefits of increased trade and access to European technology.

If Māori retained their mana or independence, what, then, of the authority they did cede to the Crown? Counsel broadly agreed that this was limited and certainly less than sovereignty. Within this consensus, however, there were differences of opinion as to what degree of control the Crown had acquired. While it is not possible to divide the submissions into neatly separate camps, we note that some counsel regarded the Crown's authority as less than that retained by the rangatira, and essentially designed to ensure that the settlers did not impinge on the mana of iwi and hapū. In other words, the authority was strictly subordinate, just as kāwanatanga was an inferior authority to rangatiratanga, and not to be applied to Māori. Counsel for Gibbs-Smith went further than this, submitting that, in the case of Te Kēmara specifically, 'rangatiratanga meant being in charge of Pakeha.' In another variation, counsel...
for Te Rarawa maintained, in accordance with her interpretation of the words of Te Tiriti, that the Crown’s ‘limited right of kawanatanga’ applied only to the lands the Queen acquired progressively over time, through purchase.\textsuperscript{215} Other counsel, however, suggested that the Crown’s new authority would exist on more of a dual or equal basis with that of the chiefs, and would apply in some ways to Māori. Hall said that te Tiriti was a ‘power sharing arrangement’, whereby the Kāwana was to be involved in ‘matters of mediation and enforcement issues’, and that that this was not ‘inconsistent with the continuing tino rangatiratanga of the chiefs.’\textsuperscript{216} Similarly, Moana Tuwhare, in her submission on behalf of a number of claims, stated that the rangatiratanga of chiefs continued, ‘on an equal footing and dual power basis’ with the Queen, with whom Māori would have a ‘Rangatira to Rangatira relationship’. The Crown’s kāwanatanga was an authority to be exercised over Europeans and ‘in conjunction with Rangatira in respect of Māori pakeha interactions’. What was envisaged, she stated, was ‘equality of power and dual jurisdictions.’\textsuperscript{217} Afeaki and Sharrock agreed that the Governor had a peacemaking role which included the management of land transactions,\textsuperscript{218} while counsel for Ngāti Kuta, Patukena, and Ngāti Kahu submitted that te Tiriti was a ‘strategic alliance’ whereby ‘[c]ontrol, mana, authority were not given up, rather they were mutually respected within their own contexts.’\textsuperscript{219} Counsel for the clients’ tūpuna, Pororua, did not sign te Tiriti and ‘the corollary of that is Te Uri o Te Aho did not cede sovereignty’. He also contended that Pororua did not sign ‘because of his fear of the effect [on] his mana.’\textsuperscript{224} Most counsel, however, submitted that the rangatiranga had no knowledge or understanding of the English text and no reason to believe that they were ceding their sovereignty or mana through signing te Tiriti.

What, though, of te Tiriti’s effect on he Whakaputanga? Claimant counsel generally submitted that he Whakaputanga had not been cancelled out by the signing of te Tiriti, and remained today a source of Māori authority and independence. Counsel argued that there was no mention of he Whakaputanga being revoked, and this could not be ‘unilaterally . . . implied’ by the Crown. Counsel also argued that he Whakaputanga was New Zealand’s ‘primary constitutional document’, and that the treaty was an expression of it.\textsuperscript{225} This was contradicted in part by counsel for Gibbs-Smith and counsel for Ngāti Rēhia, who referred to their clients’ views that te Tiriti either negated he Whakaputanga or was not signed by their tūpuna because of the existence of the earlier document.\textsuperscript{226}

\textbf{(7) International law}

Several counsel made submissions about the status and application of international law at the time of te Tiriti’s...
signing. Foremost among these was counsel for Te Rarawa. She argued that the rules of *contra proferentem* and *in dubio mitius* existed in the 1830s, and were therefore applicable to the task of interpreting the treaty’s meaning in 1840. *Contra proferentem* is the rule that any ambiguity in a treaty should be construed against the party that drafted it, while *in dubio mitius* means that, where a treaty provision is not clear, it should be interpreted in the way that involves the minimum obligation on the parties. In applying these principles, said counsel, any inconsistencies should be resolved in favour of the Māori text and, ‘in the absence of compelling evidence, the Tribunal should not find that Māori took the highly significant step of ceding sovereignty.’

Counsel discussed the Vienna Convention of 1969, arguing that it codified existing international law about treaty interpretation rather than creating new law. In support, counsel referred to provisions in the Convention (articles 31 and 32) that require a treaty’s purpose and context to guide its interpretation, and submitted that the International Court of Justice had applied those principles to treaties made in the 1850s and 1890s. She also cited several cases that, in her submission, confirmed the application, at the time of te Tiriti, of the various rules of international law to which she had referred.

On the matter of the two texts of the treaty and whether they must or can be reconciled, counsel for Te Rarawa cited article 33 of the Vienna Convention, which deals with the authoritativeness of ‘authenticated’ texts, and argued that only the Māori text ‘provides an authoritative record of the agreement reached between rangatira and the British Crown.’ Sykes and Pou also contended that only the Māori text was ‘authenticated.’ They argued that neither the Tribunal’s establishment Act nor international law require the two texts to be reconciled, which renders unnecessary any arguments based on *contra proferentem*. By contrast, Afeaki and Sharrock submitted that section 5(2) of the Treaty of Waitangi Act 1975, which directs the tribunal to have regard to the two texts of the treaty, breaches international law on authenticated texts.

Several counsel argued that the Crown’s assumption of sovereignty based on the cession by Māori of their own sovereignty breached long-established international law principles, including the principle of *pacta sunt servanda*. As that principle is stated in article 26 of the Vienna Convention, ‘Every Treaty in force is binding upon the parties to it and must be performed by them in good faith’. Counsel for Te Rarawa submitted this meant that the Crown was bound by the treaty, even though the treaty granted it a ‘significantly lesser jurisdiction than full sovereignty.’ Afeaki and Sharrock added that the notion of a Māori cession of sovereignty breached article 27 of the Convention, which holds that a party cannot be excused its treaty obligations by relying on its domestic law. Other counsel also stressed the need for free and clear consent to the transfer of sovereignty, and what they saw as the Crown’s singular failure to achieve it – as evidenced, they said, by the concessions of the Crown’s own historian witnesses.

(8) Concluding comments and challenges

Counsel for Ngāti Hine argued that

The modern New Zealand state is built upon a false premise. The idea that rangatira who signed Te Tiriti agreed to cede sovereignty to the British Crown is historically wrong, yet it remains the foundation upon which the nation rests. So long as this is so New Zealand is weakened by a moral, political and legal deficit.

Orally, counsel added that

the Crown argument at the heart has this irreconcilable and completely illogical tension because the Crown cannot get out of the cession box. And once it is stuck in the cession box, it is essentially forced into a number of logically fraught reasoning[s].

Counsel spoke of the ‘challenge’ facing this Tribunal, citing Erima Henare’s description of the ‘inherent institutional bias against our claim’. As Henare put it:

The bias comes with the myths that explain and justify the New Zealand state and the idea of undivided parliamentary
sovereignty. The history invoked is not the Māori history. The Treaty invoked is the English version, not the Māori version.238

The Tribunal, counsel said, had in the past been inconsistent on whether sovereignty was ceded: ‘A number of the Tribunal’s earlier reports reflect the politics of the time and a palpable reluctance to confront the sovereignty question.’ Here, though, there was no longer any scope for compromise. The Tribunal, he said (as we have noted),

having finally had the courage to launch this waka must not now take fright at the depth or size of the ocean. The Crown must now wade out beyond the shallow waters of de facto power and what Erima Henare has called ‘squinty legalism’.239

Sovereignty was simply not ceded, counsel submitted, and the statement in the Orakei report that such a cession was ‘implicit from surrounding circumstances’ was ‘plain wrong’. The Crown, he said, no longer even argued that Māori had knowingly ceded their sovereignty; instead, the Crown case now

appears to be that the English and Māori versions of the Treaty can be reconciled at least to some extent on the basis that the term ‘sovereignty’ is a working approximation of the rule of law or civil government.240

Counsel argued that modern scholarship was now catching up with the Māori perspective and cited Dame Claudia Orange, Belich, Ross, McHugh, and Professor Jock Brookfield to this effect. But, perhaps to pre-empt any charges of ‘presentism’, counsel also stressed that ‘there is no shortage of knowledgeable European observers in the 1840’s who also recognised the difficulties reconciling the Māori and English texts’. To this end, counsel quoted from the likes of Servant, Pompallier, Colenso, Mathew, and William Swainson (in his capacity as New Zealand’s first Attorney-General).241

Sykes and Pou took counsel for Ngāti Hine’s description of a false premise a stage further, delivering a particularly strong critique of what they saw as the Tribunal’s and the courts’ complicity in perpetuating the falsehood. The Tribunal, they said, had over the years developed a vague and inconsistent set of principles that have ‘legitimised the re-siting of sovereign authority out of hapu hands and into those of the Crown. The Court of Appeal in the Lands case should have followed the correct legal approach in interpreting a treaty by first giving effect to the actual provisions and resorting to other methods of interpretation only where there was ambiguity. Instead, Sykes and Pou argued, the court failed to extract principles from the essence of the actual agreements in the treaty, but rather ‘considered the contemporary constitutional arrangements’ and developed principles to match. ‘These principles were then wrapped in an illusion of Māori consent and defined as the “Spirit” of the Treaty’. This ‘spirit’ involved ‘the acquisition of sovereignty . . . in exchange for the protection of rangatiratanga’, with Māori pledging loyalty to the Queen, and the Crown having ultimate authority. This, they submitted, had freed the Crown from an obligation to adhere to the treaty’s terms, although under the principle of pacta sunt servanda the Crown remained bound to do so.242

Sykes and Pou called for the Tribunal to reject the ‘over-arch principle that Māori sold their sovereignty for the protection of their rangatiratanga’.243 In like fashion, Hall submitted that the Tribunal should not approach this case as if the transfer of sovereignty to the Crown were the default position and Māori must prove otherwise.244

While they did not use the term presentism, Sykes and Pou quoted from Salmond on the general subject. She had argued that, unless one writes about events in Te Tai Tokerau from 1835 to 1840 from a position of expert knowledge of te ao Māori, the evidence is

likely to be anachronistic and misleading . . . , projecting the power relations of 2010 (in which European people, the English language, Western ways of thinking and living dominate) into Te Tai Tokerau of 1835 or 1840.245

Other counsel also argued that the notion of a cession of sovereignty is an essentially presentist perspective. Houra, for example, asked:
is it not discourteous to view the actors of the past from a presentist perspective? Are we all to ignore the obvious? Counsel submits that there is a real risk that the sacred and tapu aspects of He Whakaputanga me Te Tiriti will be forgotten and that we shall be the poorer for it if we do not bring it to the forefront as it was brought to the forefront and consecrated when those ancestors signed those documents 1835–40.  

9.4.2 Crown submissions

At the outset, Crown counsel, Andrew Irwin and Helen Carrad, submitted that there were a number of matters the Crown and claimants agreed upon. With respect to the treaty, said counsel, these were that:

- Te Tiriti / the Treaty built upon and cemented a relationship between the Crown and Māori.
- Rangatira did not cede their ‘mana’ through te Tiriti / the Treaty.
- The Māori understanding of te Tiriti / the Treaty would have been through the Maori text of that document as well as the context in which the document was signed.
- There are differences between the English and Māori texts of te Tiriti / the Treaty.
- The ‘tino rangatiratanga’ referred to in the Māori text Article Two of te Tiriti / the Treaty is more than the English text’s guarantee of property rights.
- Immediately following the signing of te Tititi / the Treaty, and with but a few exceptions, tikanga was to remain unaffected by the Crown’s ‘Kawanatanga’.
- There is evidence of an oral history that a first draft of te Tititi / the Treaty was put to rangatira prior to 6 February 1840, in which rangatira were asked to cede ‘mana’; and that they rejected this. There is, however, no documentary record that this event took place.

Counsel also noted what the Crown saw as the key points of disagreement, including the meaning of kāwana-tanga; the issue of whether the treaty should be seen as one document in two languages or two separate documents; and the effect of the treaty on he Whakaputanga.

In the body of the Crown’s closing submissions, counsel devoted considerable space to arguing that, in the late 1830s, pressures built from all sides on a reluctant Crown to intervene in New Zealand. In summary, as counsel put it, the treaty and the May 1840 proclamations were ‘the outcome of intense pressures placed on the British Government in 1838 and 1839 to do something about the increasingly dire situation in New Zealand’. Even the missionaries, said counsel, had eventually swung in behind annexation, and Normanby’s instructions were informed by both a concern for Māori independence and the doubt that Māori could effectively govern New Zealand themselves in the face of the new threats. The ‘tipping point’ for the Government was the New Zealand Company’s decision to begin settlement with or without Government approval. At the same time, it became clear to the Colonial Office that Hobson’s factory scheme was inadequate for this scale of colonisation. Counsel rejected the argument that the Crown should have done more to stop British subjects moving to New Zealand, saying that this ignored the economic and political realities of the time. Britain could not ‘stop its citizens travelling, trading, and settling abroad.’ Moreover, submitted counsel, Britain had no jurisdiction in a place like New Zealand, and so it was impossible to control any settlers.

Citing the evidence of McHugh, counsel contended that the Crown ‘acquired sovereignty in New Zealand through a series of jurisdictional steps’. There was no specific point at which sovereignty was acquired, but rather a process, in which the treaty was ‘a significant step’. In essence, the treaty ‘was the means by which the Crown obtained its self-imposed condition precedent to British sovereignty, Māori consent’. Hobson’s 21 May proclamations were further ‘important steps in the process’, declaring the Queen’s sovereignty over New Zealand. They were in turn gazetted in London in October 1840, an event which meant the process was ‘certainly complete’. Counsel submitted that the proclamations were, as McHugh suggested, not a ‘pre-emptive disowning of the signature gathering process then in train’. Instead, the continuation of the signature-gathering indicated that British officials remained sincerely committed to meeting the self-imposed condition precedent of Māori consent even
if those consents that remained outstanding had now become matters of form rather than actual necessity.  

As for the treaty itself, counsel reasoned that the Crown’s 1840 understanding was to be found in the words of the English text. In other words, the Crown understood that the rangatira who signed their names ceded all their sovereignty in return for various property guarantees, a ‘settled form of Civil Government’ would be established, and the Crown would have the sole right of ‘pre-emption’. Counsel submitted that

It would have been clear to the Crown that rangatira who signed te Tiriti / the Treaty and the groups they represented consented to this state of affairs. That is, te Tiriti / the Treaty was the means by which the British Crown would obtain from Māori the free and intelligent consent that the British Crown had required itself to obtain. The words of the English text of the Treaty also made this clear.

Counsel put it that the British understanding of ‘sovereignty’ at the time was of ““civil government”, especially government by legislation’. In this regard, counsel cited the arguments raised by Carpenter and Ward on the subject – that is, that Blackstone’s position was that the King- or Queen-in-Parliament (the legislature) had absolute sovereign power, but that the King or Queen alone (that is, the executive branch of government, administered by the sovereign’s ministers) was subject to the law. While Tuwhare and others had argued that the treaty created dual or shared sovereignty, this was not the Crown’s understanding. Rather, counsel submitted, the Queen-in-Parliament had unfettered sovereignty and the chiefs retained rangatiratanga ‘within the rubric of an overarching national Crown sovereignty’.

Counsel conceded that it was unclear how and whether Māori law and custom would continue after 1840, adding that the ‘fourth article’ did not provide any guidance. Counsel noted McHugh’s view that imperial officials recognised the fact that Māori would not ‘instantaneously adopt English law’. However, counsel added that

The legal application of the Crown’s sovereignty to all inhabitants (non-Māori, Māori signatories and Māori non-signatories), whilst debated in New Zealand in the early years following 1840, was definite in the eyes of the Colonial Office.

Counsel submitted that, in seeking Māori consent to British sovereignty over parts or the whole of New Zealand, the Crown was looking to establish a new form of authority, as there was no ‘functioning nation state that held sovereignty over the entirety of New Zealand’ at the time. In this counsel concurred with Carpenter and Ward. However, counsel disagreed with Carpenter’s position that there was, accordingly, no loss of Māori authority in the treaty. Rather, counsel put it that ‘Britain sought both a cession from Māori and their recognition of British sovereignty’ (emphasis in original).

Crown counsel noted that it was inherently more difficult to gauge the Māori understanding of the treaty in 1840, but thought it fair to draw certain conclusions. These included that the Governor would have authority over both Māori and non-Māori; that British laws would apply to all people in New Zealand; and that the chiefs would retain authority over their people and properties. This understanding, said counsel, would have stemmed both from the Māori text of the treaty and the surrounding circumstances. On the text, counsel endorsed Henry Williams’s skills as a linguist and translator, as well as his honesty and integrity, and argued that it was wrong to compare the use of language in he Whakaputanga with that in the treaty, as words have different meanings in different contexts. The words Williams used were appropriate, said counsel, especially the translation of sovereignty as kāwanatanga, because sovereignty amounted to government. To this effect counsel quoted Parkinson’s argument that, from their experiences in New South Wales and knowledge of the New Testament, Māori would have understood kāwanatanga as meaning ‘the rule and authority of governors’. Counsel also quoted Carpenter’s conclusion that kāwanatanga denoted nothing less than ‘the controlling civil power of the land’ (that is, ‘government’).
Counsel added that, in 10 back-translations made from the 1840s to the 1980s, there were only two instances where ‘government’ was not used to translate kāwanatanga: Busby, who used ‘sovereignty’, and the anonymous translator, who used ‘governorship’.

Counsel responded to the claimant position that ‘mana’ was the most appropriate translation for sovereignty by arguing that it was too broad a term to distinguish between ‘the sovereignty (or imperium) that the Crown sought through Article One and the property (or dominion) that the Crown sought to protect through Article Two’. Mana was a different sort of power, said counsel, and one that neither the Crown sought from the chiefs nor the chiefs would have ceded. It had a spiritual dimension and derived from individual actions or from whakapapa. Counsel cited the evidence of Parkinson, Carpenter, and Ward in support of this position, as well as that of Hohepa for the claimants, as Hohepa had said that mana on its own was not an accurate translation of sovereignty. Essentially, said counsel, mana could not be ceded and the Crown had no intention of stripping the chiefs of it; rather, the chiefs entered the treaty to preserve their mana, and the Crown wished to keep Māori society functioning under this chiefly authority. Counsel cited the Tribunal’s comments in the 1985 Manukau report that Williams’s translation was ‘fair and apt’ and that use of mana would have been inappropriate.

Counsel also rejected as inappropriate the other options for translating sovereignty – kīngitanga, ariki-tanga, rangatiratanga, and the phrase ‘ko te kingitanga ko te mana’ – and called Ross’s 1972 analysis ‘superficial’. That kāwanatanga would clearly apply to Māori and to Māori land, said counsel, was clear from (among other things) the reference in the preamble to ‘nga wahikatoa’, the words in article 1 suggesting an absolute cession (tuku rawa atu; ‘ake tonu atu; and ‘katoa’), and Māori having, under article 3 (as per Hohepa’s translation), the duties and obligations, as well as the rights, of those in England. Counsel quoted the comments in the Tribunal’s Muriwhenua Fishing and Ngai Tahu reports that it was ‘obvious’ and ‘clear’ the Queen’s authority was supreme as, in order to act as the protector of Māori interests, the Crown necessarily required an overriding power. The Crown’s position was that Māori welcomed an authority to regulate Māori–Māori as well as Māori–Pākehā interaction.

Counsel rejected the notion that tino rangatiratanga in article 2 was unqualified. It was fettered, said counsel, since it applied ‘only’ to whenua, kainga, and taonga katoa; it was subject to the Crown’s right of pre-emption; it was effectively subject to British law under the terms of article 3; and other parts of the treaty showed that kāwanatanga applied to Māori and their lands. Counsel submitted that the broad interpretation placed on ‘taonga katoa’ by Hohepa was not consistent with the back-translations and that the usual translation was ‘valuable property’.

Counsel further rejected that argument of certain claimant counsel that the Crown could have protected Māori sovereignty in 1840 through a ‘protectorate’ arrangement. Counsel submitted that arrangements designed for other circumstances – where there were ‘powerful rajahs and sultans’, for example – could not be readily imported into New Zealand. In fact, the ‘concept of a “protectorate” did not develop as a primary instrument in Euro-imperial practice until the mid- to late-nineteenth century’. Moreover, said counsel, a protectorate would have provided Māori with less legal protection than British subjecthood, which had been one reason why Busby’s idea of a protectorate modelled on the arrangement in the Ionian Islands had been rejected. Counsel also submitted that officials knew that there was insufficient time ‘to foster and support an emerging Māori authority given the threats of the French and the New Zealand Company’, and the acquisition of sovereignty was the only practical option.

Counsel submitted that there were ‘four key surrounding circumstances’ that confirmed the likely Māori understanding of te Tiriti. These were as follows:

- Busby’s invitation to the rangatira to meet at Waitangi referred to Hobson as a Governor for both Pakeha and Māori.
- Te Tiriti/the Treaty was explained to the rangatira. The
concept of sovereignty must have been explained by Hobson and translated into Māori by Henry Williams.

An account of the missionaries’ explanations on the evening of 5 February indicates that Māori would have understood te Tiriti / the Treaty to mean that they would come under the authority of the Governor and that British law would apply to them.

The accounts of what rangatira said at the signings of te Tiriti / the Treaty indicate their understanding that by te Tiriti / the Treaty they would come under the authority of the Governor. 

In support of the last point, counsel referred to the statements made by Te Kēmara, Rewa, and Tāreha at Waitangi, and by Taonui and Papahia at Mangungu, and submitted that Manuka Henare had agreed here with the Crown’s position. Despite the shortcomings in Colenso’s record, counsel submitted, the chiefs clearly understood what they were signing, and the claimants were simply ignoring what the chiefs had said. As support for the Crown’s position, counsel pointed to the Ngāti Rēhia submission that Tāreha would not sign because he was being asked to agree to the Queen being above him. Counsel said Tāreha was right, and understood the agreement.

With respect to Edwards’s account of a tiriti tuatahi, counsel accepted that this was Ngāpuhi tradition, but noted that there was no reliable documented evidence to support it, Maning being the sole source. On the broader issue of oral history, counsel rejected the argument (made with respect to Colenso’s account of the proceedings at Waitangi) that it was inappropriate to rely on non-Māori sources when considering the Māori understanding as going ‘too far’.

In sum, submitted counsel, Māori understood the Crown’s authority and welcomed it as being to their advantage. They placed their faith in the advice of the missionaries, and their expectations were these:

- land transactions would be controlled;
- the Governor would protect Māori from aggressive Pākehā and foreign powers;
- the Crown would work with Māori in partnership, and not unilaterally impose its authority; and
- rangatira would retain their traditional authority and mana over their communities.

Counsel argued that the way history unfolded after 1840 should in no way be read as an indication that the Crown’s intentions in 1840 had been to deceive or dispossession. Counsel quoted Ward: ‘Neither in logic nor sound historical method is it appropriate to read the outcomes of a later period as proof of the intentions of an earlier one’ (emphasis in original). Later treaty breaches, said counsel, did not mean ‘the initial compact was a fraud’. Rather, all evidence pointed to ‘the conclusion that officials and missionaries acted with only the best of intentions’.

On issues of international law concerning treaty interpretation, counsel submitted that rules such as contra proferentem and in dubio mitius dated only from the inception of the Vienna Convention in 1969 and thus had no application when the treaty was signed in 1840. Even if those rules did apply, ‘the well-established interpretation of the Treaty as having ceded sovereignty to the Crown remains’. Moreover, the Tribunal’s job is to act in accordance with section 5(2) of its establishment legislation, not the rules put forward by counsel for Te rarawa. Contra proferentem, said counsel, relates to ambiguities in treaty drafting, not ‘the wholesale preferment of one text to the interpretation of another’. Counsel added that, under article 33(4) of the Vienna Convention, contra proferentem and in dubio mitius had to be balanced against the ‘central principle’ that ‘the meaning which best reconciles the texts, having regard to the object and purposes of the treaty, is to be adopted’.

Finally, counsel submitted that he Whakaputanga was nullified by the treaty. Once the Crown’s sovereignty was asserted over New Zealand, it was inconsistent for there to remain ‘any residual form of Māori sovereignty’. The Crown would agree, however, that the treaty built upon past events such as those of 1835.

9.4.3 Claimant submissions in reply

(i) General response to the Crown’s approach

Gilling queried whether the Crown’s list of agreements between the parties was ‘helpful’, as many were ‘not actually points in contention’. In general, he submitted, the
Crown had not engaged with the challenges to its witnesses’ evidence or acknowledged their concessions. For example, counsel argued that the Crown’s closing submissions did not reflect the ‘very significant acknowledgments’ made by Ward and Loveridge, respectively, that there was ‘a degree of mutual incomprehension’ between Māori and Pākehā at the time, and that ‘it is very difficult for us to know exactly what everybody thought that whole [Waitangi] package consisted of.’ Overall, counsel submitted,

instead of engaging at a direct and specific level with the claims and evidence of Ngapuhi presented in Te Paparahi o Te Raki Inquiry District, or the extensive submissions by Claimant Counsel, the Crown’s Closing Submissions effectively . . . use this Inquiry as a forum for the further perpetuation of its longstanding perspective, which is preoccupied with and gives pre-eminence to Pakeha history, the English perspective of Te Tiriti, and the Treaty ahead of Te Tiriti.

Several counsel argued that the Crown had selectively quoted sources to make its point, omitting important context in doing so. For example, counsel for Ngāti Kuta, Patukeha, and Ngāti Kahu submitted that the Ngai Tahu Tribunal’s reference to there being ‘two texts [but] . . . only one treaty’ was part of an observation made about the Tribunal’s jurisdiction that went on to state that ‘considerable weight should . . . be given to the Maori text since this is the version assented to by all but a few Maori.’ Counsel for Te Rarawa pointed also to the Crown’s use of Justice Richardson’s comment in the Lands case that it now seemed ‘widely accepted’ as a matter of colonial and international law that British sovereignty had been ‘authoritatively established’ by the May proclamations and their 2 October 1840 gazettal. Counsel noted in particular the two sentences that followed that remark, in which Justice Richardson acknowledged that debate existed about ‘the precise legal basis for British sovereignty and . . . the legal status of the Treaty under New Zealand law’ (see chapter 8).

Gilling also gave several examples. One was the Crown’s quotation from the Tribunal’s Manukau report that Henry Williams’s translation of sovereignty as kawanatanga was ‘fair and apt’, and that “mana” would not have been a workable translation for “sovereignty”. Counsel submitted that the Crown had failed to note that the Manukau Tribunal also said that kawanatanga was ‘something less than the sovereignty (or absolute authority) ceded in the English text’, while tino rangatiratanga meant ‘full authority status and prestige with regard to their possessions and interests’. Furthermore, the Manukau Tribunal said that ‘in Maori thinking “Rangatiratanga” and “mana” are inseparable – you cannot have one without the other.’

(2) The wording of te Tiriti
The claimants rejected the Crown’s argument that kawanatanga was the right word to translate sovereignty and that mana would have been inappropriate. Gilling submitted that the Crown’s reliance on Parkinson’s linguistic evidence was ‘both concerning and insulting to the Claimants’, as his evidence went ‘far beyond his demonstrated expertise’. It was for Ngāpuhi, the claimants said, to explain the meaning of terms in te reo Māori. Counsel for Ngāti Korokoro, Ngāti Whararā, and Te Poukā also criticised the Crown for failing to engage with the claimant evidence and for relying on witnesses lacking the appropriate linguistic expertise.

Claimant counsel rejected the Crown’s argument that he Whakaputanga and te Tiriti had different meanings because of their separate contexts. Afeaki and Sharrock said that this ‘requires the constitutional language of Maori as established by He Wakaputanga to have been rewritten and accepted by Maori in 24 hours’. Tuwhare submitted that, if the Crown wanted the highest form of authority, then it should have used the words in he Whakaputanga that expressed this: ‘ko te Kingitanga ko te mana.’ She noted too that Parkinson had defined mana at one point as ‘power and authority’ and Carpenter had called it ‘Maori authority or prestige’. The claimants argued that the Crown in 1840 had chosen words in order to secure an agreement, and that Crown counsel had even admitted as much. Counsel for Te Rarawa further contended that, while the parties agreed that the rangatira did not give up their mana, a Tribunal finding in favour of the
Crown would require the Tribunal to conclude that ‘Te Tiriti nevertheless constituted such a cession,’ an outcome she said would be ‘perverse.’

Afeaki and Sharrock rejected the Crown’s position that the text of te Tiriti did not change between 5 and 6 February. If Williams had wanted to convey sovereignty unambiguously in Māori terms, they said, he would have used ‘ko te Kingitanga ko te mana’ in his draft. However, the final version used ‘the lowest smallest most confined level of power described in He Whakaputanga’: kāwanatanga. Accordingly, they submitted, Edwards’s account of te tiriti tuatahi is the ‘logical inference’ and ‘The case for a pivotal meeting of the evening of the fifth removing mana from the text is compelling.’

Similarly, Gilling urged the Tribunal to give great weight to the tribal oral histories in explaining the chiefs’ decision to sign on 6 February.

By contrast we note that, by way of response to the Crown’s arguments about contra proferentem (see below), counsel for Te rārāwa submitted that there was ‘nothing to indicate that the rangatira present at Waitangi engaged in any negotiation with the British Crown over the written terms’ of te Tiriti. Its signing, she added,

was one of those rare cases in which a draft of an international treaty presented by one party (ie Te Tiriti presented by the Crown) was apparently accepted in toto by the other (ie the rangatira signatories, with any oral conditions that those rangatira made not being recorded in the text).

We take from this that not all claimants agreed that a draft text ceding mana was put to the chiefs and rejected.

(3) The relevant treaty text
Gilling referred to Crown counsel’s submission that there was only one document, ‘Te Tiriti/the Treaty’, which the Crown said was ‘translated into the Maori language’. Counsel found this point ‘hard to follow’, because the English draft could not be called ‘Te Tiriti/the Treaty’. The translation of the English text, ‘the Treaty of Waitangi’, created ‘a related but substantially different document’, ‘Te Tiriti’. Counsel submitted that, in general, ‘the Crown’s insistence on the “Te Tiriti/the Treaty” nomenclature has led to confusion and flaws in Crown reasoning.’

Counsel for Te Rarawa responded to the Crown’s argument that the Tribunal’s obligation under section 5(2) of the Treaty of Waitangi Act to ‘have regard to’ both texts of the treaty meant the English text needed to be applied in determining the parties’ rights and obligations. She submitted that, while the Tribunal was required to have regard to the English text, it did not have to ‘give effect’ to it, and there was no obligation on the Tribunal to ‘reconcile’ the two texts. She cited New Zealand case law which she said showed that a requirement to ‘have regard to’ something meant a decision maker ‘may decide to give little weight to it in making his, her or its decision.’

Similarly, counsel for Ngāti Hine argued that he was not suggesting, as Crown counsel alleged, that the Treaty of Waitangi Act allowed the Tribunal to ‘discard’ the English text. However, the principles of treaty interpretation favoured the Māori understanding of the treaty, which of course came through te Tiriti. Counsel concluded:

If as a matter of historical fact the Tribunal concludes that the two texts of the Treaty cannot be reconciled on the question of a cession of sovereignty, then that is a conclusion open to the Tribunal pursuant to its jurisdiction to determine the meaning and effect of the Treaty as embodied in the two texts.

(4) The oral debate
Gilling in particular rejected the Crown’s argument that the speeches of certain rangatira demonstrated that they knew that the Governor would have a superior form of authority over them. The sources had too many limitations, said counsel, and the speeches could be construed in different ways. For example, Makoare Taonui’s statement, ‘We are glad to see the Governor let him come to be a Governor to the Pakeha’s as for us we want no Governor we will be our own Governor’ did not mean, as the Crown asserted, that Taonui understood Hobson would be a Governor for both Māori and Pākehā. Instead, said counsel, ‘the literal meaning would appear to be that
the governor was welcome to stay but that the expectation was that he would be a governor to the Pakeha only. Counsel stressed what he saw as the irony of the Crown relying on statements made in opposition to the Treaty as being evidence of a clear understanding of it when they signed Te Tiriti. He described the Crown’s submissions as ‘at best unconvincing, and at worst logic defying’, and as failing to consider the ‘real issue’ of ‘What was said to persuade these Rangatira to sign?’

In this regard, counsel for Ngāti Hine submitted that Kawiti, his sons and other rangatira who signed Te Tiriti did so because they believed the assurances of the missionaries and others that they would not come under the authority of the Governor. Their ‘perfect independence’ would be preserved. The Governor would have no power in relation to the authority of the Chiefs over their people and lands. That was the message conveyed to them and they signed because they trusted the word of the officials and missionaries who delivered the message.

Tuwhare said that, for Māori, these oral assurances would have sufficed, and the chiefs’ stipulations ‘are to be considered under Maori custom and usage as qualifications to the written agreement.’

In response to the Crown citing their submissions about Tāreha as confirming that the chiefs understood that the Queen’s authority would be supreme, counsel for Ngāti Rēhia submitted a clarification. They explained that Tāreha did not sign Te Tiriti or The Treaty because he understood what the meaning of He Whakaputanga was. Tāreha believed that the tohu he had put on He Whakaputanga provided the basis upon which he and his people could continue living by their laws and lore, and it provided the protection they needed in trade.

(5) The meaning and effect of the treaty
Tuwhare noted Crown counsel’s explanation that dual sovereignty was impossible from a British perspective. She submitted that this amounted to a proposition that the Crown had ‘the absolute authority to do anything whatsoever’. But she submitted that the Crown had failed to convey this honestly, rather giving the impression that the full, natural and absolute authority power and independence of rangatira was guaranteed and [that] the governor was to be granted authority for specific purposes, namely to bring law and order to British subjects and control land trade.

Counsel for Ngāti Hine likewise submitted that Ngāti Hine never agreed to the ‘huge shift of power’ in 1840 claimed by Crown counsel.

In any event, said the claimants, the Crown’s perspective on what sovereignty meant was irrelevant. As Gilling put it,

Counsel have no submissions to make about the Crown’s lengthy discussion of Blackstone on this legal point apart from submitting that it is irrelevant to Ngapuhi as they knew nothing of it. Their framework was mana and Rangatiratanga within the tribal structure.

And where they did engage with the argument, the claimants rejected the Crown’s position as flawed. Counsel for Ngāti Hine submitted that civil government ‘is an emanation of sovereign power, but it is not the same thing as sovereign power itself.’ Counsel for Te Rarawa submitted that Henry Williams had missed the first step in the two-step process of, first, acquiring sovereignty and, secondly, setting up a government. That ‘government’ is subordinate to sovereign power, she stated, was demonstrated in both He Whakaputanga and the Constitution Act 1852. She contended that, even today, government remains subordinate to the sovereign in important ways, such as the need for royal assent to legislation. In this regard she quoted from the statement in the 2008 Cabinet Manual that ‘the Queen reigns . . . but the government rules’.

Counsel for Ngāti Torehina ki Matakā argued that the Crown’s case that its intentions were clearly communicated at Waitangi in 1840 was based not so much on ‘cogent . . . evidence’ as on ‘speculation and opinion’. He pointed, for
example, to Crown counsel quoting Loveridge saying he was 'quite certain' Hobson considered the Treaty and te Tiriti to be 'two forms of the same document', as well as to Crown counsel's remark that Hobson's explanation of the treaty 'must have necessarily included an explanation of the British conception of sovereignty'. The claimants also rejected the Crown's position that rangatiratanga was 'fettered' because it applied 'only' to things like 'taonga'. Counsel for Ngāti Hine wrote that this 'demonstrate[d] a surprising failure to engage with the extensive Tribunal jurisprudence confirming the breadth of the concept of taonga'. Counsel also rejected as 'novel and tenuous' the notion that rangatiratanga was subject to British law under article 3. And he saw no possible basis for the Crown's submission that it was agreed at Waitangi that the rangatira would retain their 'customs', 'at least for the time being'. Counsel for Te Rarawa likewise described this contention as 'extraordinary'.

Afeaki and Sharrock submitted that Hobson may have failed to explain the object of acquiring sovereignty simply because he was not seeking it. As they put it, 'Hobson merely wanted a limited jurisdiction to undertake judicial and enforcement functions.' Counsel also rejected the Crown's assertion that protectorate arrangements were not normal practice for the Crown at the time of the treaty. The evidence was clear, they said, that in the 20 years before the treaty the British Government was 'entering into a succession of protectorate relationships in India, Asia, Middle East, Pacific, and Africa', including one with the Sultan of Herat agreed on 13 August 1839. Counsel also pointed to the Hawaiian protectorate in the period 1840 to 1870.

Most claimant counsel reinforced the point made in their closing submissions that kāwanatanga was a circumscribed authority over Europeans only. As noted, counsel for Ngāti Hine thought it went somewhat further, agreeing with Crown counsel that Māori would have expected the Crown to protect New Zealand from foreign powers. By contrast, counsel for Te Rarawa again denied this (and reiterated that kāwanatanga applied on lands conveyed to the Queen through tuku or hoko only). Hall acknowledged that her submission that power was to be shared between Māori and the Crown was a 'more conservative' interpretation than others. But she added:

The fundamental position held in common with all claimant counsel is that the transfer of sovereignty or absolute power to the Crown, when any Māori view is taken into account, is incorrect in both historical and legal senses.

(6) International law

The claimants disagreed strongly with the Crown's position that international law principles such as contra proferentem, in dubio mitius, and informed consent – as well as the very body of legal principles known as 'international law' – have developed only since 1840.

Counsel for Te Rarawa submitted that the recognition of binding international obligations had existed in Europe for centuries and, arguably, had its roots in laws agreed between states several thousand years ago. Contrary to the Crown's submission that there was no 'international law' in the 1830s because such law could not be enforced, and she argued that this was wrong, because even today, international law cannot be enforced in the way that domestic law can. Thornton likewise submitted that European legal rules around treating with indigenous people dated back to the sixteenth-century Americas and that their application in New Zealand was part of a longstanding legal tradition.

In a similar vein, Hall described the Crown's submission that in dubio mitius and contra proferentem could apply only to differences in detail between the texts, rather than to the wholesale preferment of one text over another, as 'entirely unprecedented'. She submitted that such an approach would 'rob the rules of any substantial effect'. Lastly, we note a matter of disagreement between the claimants. Counsel for Te Rarawa submitted that
being considered directly under British common or constitutional law and/or under domestic Māori customary law.

By contrast, Gilling submitted that ‘our Claimants are of the view that Te Tiriti o Waitangi should be viewed through an interpretative framework of tikanga Māori as expressed in Te Reo Maori’.

9.5 Conclusion
In this chapter, we have related the claimants’ evidence, which included some understandings of the meaning of te Tiriti and the circumstances of its signing not previously known outside tribal communities. We are grateful to the claimants for sharing their traditions with us. We were impressed by the retention of this kōrero tuku iho, and the commitment by the claimants to the take handed down to them by their tūpuna. We noted the variation of emphasis in the evidence from hapū to hapū, as one might expect, but were made well aware of the common understandings across all claimant groups. Principal among these was, of course, that Māori did not cede their sovereignty or their mana through te Tiriti in February 1840.

We also appreciated the endeavours of the technical witnesses, who in our view presented their evidence professionally and without advocating for the parties for whom they appeared. These scholars have certainly contributed to an advance on the already broad and comprehensive historiography about the treaty that we discussed in the previous chapter. We also found the legal submissions of considerable value to us in helping to crystallise the issues. The large number of separate clamant groups represented in the inquiry meant we benefited from a broad range of submissions on the matters at stake. Counsel challenged our thinking on many issues.

At this point in the report, therefore, we have introduced the British and Māori worlds at first encounter, traversed their increasing contact in the north, and reflected on the factors that led to their willingness in 1840 to reach an agreement on how they would henceforth live alongside each other. We have set out the detail of the making of that agreement, as it was recorded at the time, and the perspectives on the treaty that have developed since then.

In this chapter, we have summarised the evidence and submissions placed before us during our own inquiry, by claimants, historians, and lawyers. It remains to provide our own conclusions on the fundamental questions that arise. These are momentous questions indeed. What was the meaning and effect of the treaty in February 1840? Did Māori cede their sovereignty to the British Crown, or anticipate a different arrangement? Was Hobson to be the equal of the rangatira, or was his authority to be superior? It is these matters we turn to next.

Notes
1. Document A30(a), p 3
2. Document A25, p 1
3. Ibid, p 2
4. Ibid, pp 6, 94
5. Document A25(b), pp 5–6, 12
6. Transcript 4.1.1, p 20. As an example, when telling us about whakapapa, Hōne Sadler remarked, ‘You must listen carefully because . . . this will be the first time that you have heard this’: transcript 4.1.1, p 160.
9. See, for example, submission 3.3.35, p 3.
11. Transcript 4.1.1, pp 245, 249
13. Ibid, pp 215, 221 as adapted by the Tribunal
14. Document B14, p 5. It is not clear whether the missionaries were present at these discussions.
15. Document A20, p 102
17. Ibid, p 63
18. Ibid, pp 60–63, 65
19. Ibid, p 62
20. Transcript 4.1.1, p 50
21. Ibid, pp 254, 263
22. Ibid, p 300
24. Document A32(c), pp 4–5
25. Document A30(c), p 6
26. Document C10(a), p 7
27. Transcript 4.1.4, p 182
28. Document D4, p 63
30. Document D4, p 48
31. Document A24, p 21
32. Document A25, p 92
33. Ibid, pp 92–94
34. Document A24, p 26
35. Document D2, pp 11, 12–13
36. Document A30(a), pp 4–5
37. Document D2, p 18
38. Document D4, p 63
40. Transcript 4.1.4, p 120
41. Ibid, pp 56
42. Document D10, p 8
43. Ibid, p 24
44. Transcript 4.1.1, p 310
45. Document A19(a), p 23; see also transcript 4.1.3, pp 257–258
46. Document A17, pp 161–165
47. Document D4, p 40
49. Document C19, p 15
50. Document A30(a), p 11
51. Ibid, p 56
52. Transcript 4.1.4, p 119
54. Transcript 4.1.4, p 120
55. Ibid, p 56
56. Document D10, p 8
57. Document A19, p 75
59. Ibid, p 23
60. Ibid, p 17
61. Ibid, p 24
62. Document A19(a), p 23; see also transcript 4.1.3, pp 257–258
63. Document A17, pp 161–165
64. Document D4, pp 51, 54, 63
65. Document A19(a), p 23
67. Transcript 4.1.4, p 119
69. Document A19(a), p 23
70. Document A25, p 93. Edwards used the word ‘masquerade’ instead of ‘mask’.
73. Ibid, p 22
74. Ibid, p 23
75. Ibid, p 17
76. Ibid, p 24
77. Carpenter argued that Dr Samuel Johnson’s dictionary of the English language, first published in 1755, helped define the language at the time as well as into the nineteenth century: doc A17, p 7 n 25.
78. Ibid, pp 159–160
79. Document A19(a), p 23; see also transcript 4.1.3, pp 257–258
80. Document A17, pp 161–165
81. Document D1, p 94
82. Document A19, pp 74, 77
83. See doc A21, pp 5–6, 44; see also doc A19(a), p 75
84. Document D1, p 88
85. Document A19(a), p 39; doc A17, p 163
86. Document A17, pp 161–163
87. Document A19(a), p 24
88. Document A17, pp 84–85; doc A19, pp 83–84
89. Document A19(a), p 39
90. Document D1, p 18
91. Document A1, p 276
92. Ibid, p 278
93. Document A19, p 75
94. Document A17, p 195
95. Document A19(a), p 29
96. Document A22(d), pp 4–5
97. Ibid, p 12. See Hugh Carleton, The Life of Henry Williams, 2 vols (Auckland: Upton and Wilsons and Horton, 1874–77), vol 1, p 7, where we note in this regard that Carleton, Williams’s biographer and son-in-law, wrote of Williams: ‘When duty was once in question, he would not – perhaps could not – see or think of anything beyond that duty. [He was born] with an instinct of order, which manifested itself in the smallest details of domestic life, and which was developed, through that noblest school of training – the British navy, into the most punctilious regard for discipline.’ See also doc A17, pp 10–11.
98. Document A19(a), p 23; see also transcript 4.1.3, pp 257–258
100. Document A19(a), pp 56–58
101. Document A17, pp 166–167
102. Document A1, p 273
103. As we have seen, Williams’s original draft of te Tiriti theoretically kept by Taylor has not been located.
104. Document D1, p 9
105. Document A19(a), p 81
106. This idea was supported by counsel appearing for Edwards: see submission 3.3.37, p 168.
108. Ibid, pp 4–5
109. Ibid, p 9
110. Ibid, p 6
111. Phillipson wrote (doc A1(a), pp 5–6): ‘Erima Henare’s evidence, which is sourced to Ngati Hine whare wananga, states that hui and discussions about possible arrangements with the new Governor
took place for about a month leading up to 6 February. The food at Waitangi was exhausted by the end of that time, hence the recorded trouble of feeding so many guests. According to this oral tradition, more than one document was drafted and debated during that time, in anticipation of Hobson’s arrival. It seems clear to us that Erima Henare’s mention of the drafting of different documents was a reference to Edwards’s kōrero, not to his own tradition of a January 1840 gathering.

112. Document A22(d), pp 19–20
113. See memoranda 2.5.42 and 2.5.46
114. Submission 3.1.295, pp 3–4
115. Document A18, p 196
117. Document A22, p 74
118. See Orange, *The Treaty of Waitangi*, pp 82–83
119. Document A1, p 280
120. Ibid, p 280
121. Ibid, pp 218–282
122. Mathew summarised the day’s proceedings thus (doc A1, pp 282–283): ‘During the whole ceremony with the chiefs, nothing was more remarkable than the very apt and pertinent questions which they asked on the subject of the treaty, and the stipulations they made for the preservation of their liberty and perfect independence.’
123. Document A19(a), p 40
124. Document A1, p 296
125. Ibid, p 284
126. Document A18, pp 239–240
127. Document A19, p 112
128. Document A19(a), pp 25–26, 29
129. Document A18, p 198
130. Document A17, p 141; doc d1, p 22
131. Document A22, p 10
133. Document A19, p 111; doc A19(a), pp 41, 58
134. Document A19(a), pp 41–42
136. Document A1, p 264
137. Ibid, p 264
138. Document A22, p 31. This was a general comment on Salmond’s part; she did not give specific examples.
139. Document A5, pp 37, 40
140. Document A19(a), p 80
141. Ibid, p 61
142. Document A1, p 298. Phillipson wrote this not in the context of the titiri tuatahi story but in his earlier, main report.
143. Ibid
144. Document A19(a), pp 61–62
145. Document D1, p 100
146. Ibid, pp 100–101
147. Document A22(d), pp 9–10
148. Document A22(b), pp 1–2
149. Document A17, p 143
150. Document A22, pp 86–87
151. Ibid, p 87
152. Ibid
153. Ibid, pp 88–89
155. Ibid, pp 250, 256
156. Ibid, pp 302–303
157. Ibid, p 284
158. Ibid, pp 264, 283–284
159. Ibid, p 302
160. Document A5, p 47
161. Document A20, p 97
162. Document B3, p 82
163. Document A19(a), p 29
164. Ibid, p 30
165. Ibid, pp 31–32
166. Ibid, pp 30–31
167. Ibid, pp 38–40
168. Ibid, p 43
169. Ibid, pp 44–45
170. Document A19(c), pp 18, 31
171. Document A18, pp 237–240
172. Document A18(a), pp 37–38
173. Document A21, p 73
174. Ibid, p 68
175. Ibid, pp 94–95
176. Ibid, p 96
177. Ibid, pp 71–72, 96–97
178. Document A19(a), p 33
179. Document A18(a), p 28
180. Document A18, p 241
181. Transcript 4.1.4, pp 553–556
182. Ibid, pp 606–607
183. Submission 3.3.15, pp 43–45
184. Submission 3.3.28(a), pp 97, 101; submission 3.3.19, pp 5, 19
185. Submission 3.3.14, pp 85–86
186. Submission 3.3.13, pp 30–31, 40–41
187. Submission 3.3.2, pp 9–10, 92, 108; submission 3.3.3, p 22. Other counsel also submitted that Carpenter’s evidence should be given ‘minimal weight’: submission 3.3.28(a), p 12.
188. Submission 3.3.2, pp 77–78, 84–88, 143, 157–158
189. Ibid, pp 168–169
190. Submission 3.3.14, p 45; submission 3.3.26, pp 38–39; submission 3.3.30, p 53
191. Submission 3.3.35, p 3
192. Submission 3.3.21, p 31; submission 3.3.2, p 125
193. Submission 3.3.20, p 27
194. Submission 3.3.13, p 16; submission 3.3.24, pp 2, 16; submission 3.3.11(c), pp 46, 48
195. Submission 3.3.11(c), pp 48–49
196. Ibid, pp 52–55
procedures for authentication, a treaty will usually be authenticated. If states which negotiated a given treaty do not agree on specific provisions. If states which negotiated a given treaty do not agree on specific procedures for authentication, a treaty will usually be authenticated by signature, signature ad referendum or initialling by the representatives of those States. See article 10, Vienna Convention on the Law of Treaties 1969.

227. Submission 3.3.11(c), pp 34–37. Hall likewise submitted that the two texts were too different to reconcile and that, given the 'unequal negotiation, drafting and consequence' that characterises 'a treaty of cession with indigenous peoples', the treaty 'ought not to be treated in the current ordinary manner of bilingual treaties': submission 3.3.24, p 7.

228. Submission 3.3.30, p 10
229. Submission 3.3.13, p 12
230. Submission 3.3.11(c), p 44
231. Submission 3.3.33, p 33
232. Submission 3.3.23, p 9
233. Submission 3.3.11(c), pp 81–82; submission 3.3.20, p 4; submission 3.3.23, p 14; submission 3.3.2, pp 208, 211
234. Submission 3.3.33, p 3
235. Submission 3.3.23, p 11
236. Submission 3.3.23, p 3
237. Transcript 4.1.5, p 273
238. Submission 3.3.23, p 9
239. Ibid, pp 10–11
240. Ibid, pp 12, 14
241. Ibid, pp 52–58
242. Submission 3.3.30, pp 12–17
243. Ibid, p 86
244. Submission 3.3.24, p 4
245. Submission 3.3.30, p 65. Counsel for Te Kapotai likewise asked the Tribunal to remember 'that the historiography of the Treaty of Waitangi is confused, and it has been prone to persistent anachronism and is inherently biased': submission 3.3.30, p 10
246. Submission 3.3.6(a), p 10
247. Submission 3.3.33, pp 5–6
248. Ibid, pp 6–7
249. Ibid, pp 46–48
250. Ibid, pp 178–179
251. Ibid, p 86
252. Ibid, pp 85–100
253. Ibid, p 98
254. Ibid, pp 94–95
255. Ibid, pp 104–117. The 10 back-translations cited by Crown counsel were the three provided to JR Clendon (those of Gordon Davis Brown, James Busby (the ‘Littlewood’ document), and an anonymous translator) and those produced or published by Richard Davis, Samuel Martin, Henry Williams (in his 1847 letter to Bishop Selwyn), TE Young, Sir Hugh Kawharu (both his literal and ‘reconstructed’ translations), and Parkinson (his ‘new synthesis’ of 2005). Despite including all ‘known back-translations of the Māori text made prior to this inquiry (from 1840 through to the late 1980s), counsel omitted that of Edward Jerningham Wakefield published in Adventure in New Zealand, from 1839 to 1844, 2 vols (London: John Murray, 1845), which Parkinson had earlier included in his own study of back-translations (see Parkinson, ‘Preserved in the Archives of the Colony’, p 95 n 65). This was because Parkinson had called it ‘a mocking version’ composed by Wakefield for ‘humorous effect’ ‘to defend the failing New Zealand Adventure in New

236. Submission 3.3.23, p 3
237. Transcript 4.1.5, p 273
238. Submission 3.3.23, p 9
239. Ibid, pp 10–11
240. Ibid, pp 12, 14
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236. Submission 3.3.23, p 3
237. Transcript 4.1.5, p 273
238. Submission 3.3.23, p 9
239. Ibid, pp 10–11
240. Ibid, pp 12, 14
241. Ibid, pp 52–58
242. Submission 3.3.30, pp 12–17
243. Ibid, p 86
244. Submission 3.3.24, p 4
245. Submission 3.3.30, p 65. Counsel for Te Kapotai likewise asked the Tribunal to remember 'that the historiography of the Treaty of Waitangi is confused, and it has been prone to persistent anachronism and is inherently biased': submission 3.3.30, p 7.
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249. Ibid, pp 46–48
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251. Ibid, p 86
252. Ibid, pp 85–100
253. Ibid, p 98
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255. Ibid, pp 104–117. The 10 back-translations cited by Crown counsel were the three provided to JR Clendon (those of Gordon Davis Brown, James Busby (the ‘Littlewood’ document), and an anonymous translator) and those produced or published by Richard Davis, Samuel Martin, Henry Williams (in his 1847 letter to Bishop Selwyn), TE Young, Sir Hugh Kawharu (both his literal and ‘reconstructed’ translations), and Parkinson (his ‘new synthesis’ of 2005). Despite including all ‘known back-translations of the Māori text made prior to this inquiry (from 1840 through to the late 1980s), counsel omitted that of Edward Jerningham Wakefield published in Adventure in New Zealand, from 1839 to 1844, 2 vols (London: John Murray, 1845), which Parkinson had earlier included in his own study of back-translations (see Parkinson, ‘Preserved in the Archives of the Colony’, p 95 n 65). This was because Parkinson had called it ‘a mocking version’ composed by Wakefield for ‘humorous effect’ ‘to defend the failing New Zealand Adventure in New
Zealand Company’ (submission 3.3.33, p.121 n.373). For a fuller discussion of all back-translations, see chapter 7.

256. Submission 3.3.33, pp.122–126
257. Ibid, pp.127–141
258. Ibid, pp.65
259. Ibid, pp.141–144
260. Ibid, pp.77–78
261. Ibid, p.146
262. Ibid, pp.151–161
263. Ibid, pp.160, 162–163
264. Ibid, p.171. In this regard, counsel rejected Gilling’s ‘overly legalistic approach’ in cross-examining Ward about the extent of a ‘meeting of minds’. There was considerable agreement between Māori and the Crown, said counsel: submission 3.3.33, p.180.

265. Submission 3.3.33, pp.172, 175
266. Ibid, pp.181–185
267. Ibid, p.189
268. In submission 3.3.39, p.2, counsel for Ngāti Korokoro, Ngāti Whararā, and Te Poukā likewise submitted that ‘The Crown fails to address the substantial body of evidence from claimant witnesses who provided insight into the Maori world view, the evolution of Maori politico-legal thought and of early Maori society from the time of Kupe.’

269. Submission 3.3.37, pp.12–13, 32, 35, 157–158
270. Ibid, p.14
272. Submission 3.3.35, p.142
273. Submission 3.3.37, pp.126–128
274. Ibid, pp.130–131
275. Submission 3.3.39, p.3. David Stone and Augencio Bagsic (who represented 64 separate claims) also described the Crown’s perspective on whether mana was the correct term to translate sovereignty as ‘ethnocentric’: submission 3.3.46, p.7.
276. Submission 3.3.49(a), p.37
277. Submission 3.3.50, pp.3, 5
278. Submission 3.3.51, pp.118; submission 3.3.44, p.7
279. Submission 3.3.51, pp.115–116
280. Submission 3.3.49(a), pp.30–31, 34–35
281. Submission 3.3.37, p.160
282. Submission 3.3.51, pp.132, 136
283. Submission 3.3.37, pp.45–46
284. Submission 3.3.51, pp.84–85
285. Submission 3.3.40, pp.4, 6
286. Submission 3.3.37, pp.155–156
287. Submission 3.3.40, pp.6–7
288. Submission 3.3.50, p.10
289. Submission 3.3.45, para.13
290. See transcript 4.1.5, p.311
291. Submission 3.3.50, p.9. In submission 3.3.42, p.11, counsel for Ngāti Korokoro and Te Poukā submitted that it was in any event normal for Māori to expect that British settlers would live under a separate authority: ‘It was in line with what hapu had been practising for centuries. Many hapu lived side by side with different tikanga very successfully.’

292. Submission 3.3.40, p.13
293. Submission 3.3.37, p.94. Stone and Bagsic made a similar point: submission 3.3.46, p.6.
294. Submission 3.3.40, p.10
295. Submission 3.3.51, pp.120–125
296. Submission 3.3.43, pp.1–2; submission 3.3.33, pp.102, 148
297. Submission 3.3.40, pp.11–12
298. Submission 3.3.51, p.115
299. Submission 3.3.49(a), pp.8, 48–49
300. Submission 3.3.40, p.10
301. Submission 3.3.51, pp.64–65, 70–71, 126
302. Submission 3.3.47, p.2
303. Submission 3.3.51, pp.23–28, 38
304. Submission 3.3.44, pp.2–7
305. Submission 3.3.47, p.2
306. Submission 3.3.51, p.7
307. Submission 3.3.37, p.185
CHAPTER 10

OUR CONCLUSIONS

10.1 Introduction
When te Tiriti was signed in February 1840 at Waitangi, Waimate, and Mangungu, what did it mean to the parties involved? Did the rangatira who signed it cede sovereignty to the Crown, and thereby grant the Crown the power to make and enforce laws applying to Māori territories and communities? If not, what was the nature of the relationship that rangatira and the Crown assented to? What commitments did they make to one another?

We are now ready to answer these questions.

We arrive at this point having examined a very full range of evidence about the relationship between the British and Māori of the Hokianga and Bay of Islands, from the time of first contact through to those first treaty signings.

We have considered, in chapter 2, the differing systems and concepts of law and authority that Māori and the British brought into the relationship – the Māori system structured around autonomous but related hapū, and the British system based on a single, overarching, sovereign power vested in Parliament.

We have examined the history of the relationship from the earliest encounters between Māori and Captain James Cook onwards. In chapter 3, we saw that Bay of Islands and Hokianga rangatira engaged with the outside world and the opportunities it offered, with many journeying to Port Jackson, London, and other places where they forged relationships with British leaders. Whalers, traders, missionaries, runaway convicts, and others came to New Zealand in growing numbers during the early decades of the nineteenth century, and sometimes challenged Māori systems of law and authority. As French political and commercial interest grew in this part of the world, Māori aligned themselves with Britain and sought British protection against perceived French threats.

When Hongi Hika met King George IV in London in 1820, he initiated a relationship that – to Māori, we were told – was one of enduring alliance and friendship. In 1831, some 13 rangatira petitioned King William IV, seeking British protection from a perceived threat of French invasion, and asking the King to control troublesome British subjects, who otherwise would face ‘te riri’ (the anger) of the Māori people. In 1832 Britain appointed its first official representative in New Zealand, the British Resident James Busby; and in 1834, Māori of the Bay of Islands and Hokianga attended a hui that Busby had called at Waitangi, where they adopted a national flag.

In chapter 4, we examined the origins, creation, and meaning and effect of He Whakaputanga o te Rangatiratanga o Nu Tireni – a translation of an English text drafted
by Busby and known as The Declaration of Independence of New Zealand. In he Whakaputanga, which was signed in 1835, rangatira responded to a perceived foreign threat to their authority by declaring that they, and they alone, possessed rangatiratanga, kingitanga, and mana over their territories. They also asked for King William IV to provide protection against foreign threats to their rangatiratanga, just as they would protect British subjects in New Zealand.

In chapter 5, we considered the impact on Bay of Islands and Hokianga Māori of increased contact with Europeans as traders, settlers, missionaries, and others arrived in increasing numbers. We noted that, at the end of the 1830s, Māori continued to vastly outnumber Europeans in the Bay of Islands and Hokianga, and we concluded that, although there were challenges to their authority, Māori remained in control of almost all Bay of Islands and Hokianga territories at the end of that decade.

In chapter 6, we traced the history of official British policy regarding New Zealand, culminating in the arrival of William Hobson in 1840 with instructions to treat with the aborigines of New Zealand in the recognition of Her Majesty’s sovereign authority over the whole or any part of those Islands which they may be willing to place under Her Majesty’s dominion.²

Hobson arrived in the Bay of Islands on 29 January 1840, almost immediately proclaiming himself Lieutenant-Governor and announcing that the boundaries of New South Wales had been extended to include New Zealand. An invitation was sent to rangatira to attend a hui at Waitangi, and over the first few days of February, the Treaty of Waitangi was drafted and then translated into Māori, as te Tiriti o Waitangi. On 6 February, some 43 to 46 rangatira signed te Tiriti at Waitangi. Six others signed at Waimate a few days later, and some 64 signed at Mangungu in the Hokianga on 12 February. In chapter 7, we described in detail how the treaty was drafted and translated, the wording of each of its articles in both English and Māori, how it was explained to rangatira, and what discussions they had both with Hobson and among themselves. We also described the signings. We concluded that chapter by noting that, in May 1840, Hobson proclaimed British sovereignty over the North Island on the basis of cession through the treaty, and the South Island on the basis of discovery.

In chapter 8, we considered how the treaty has been interpreted in New Zealand scholarship and by courts and other Tribunal panels. In particular, our focus was on what has been written since the early 1970s, and on what scholars, courts, and the Tribunal have said about the differences between the treaty’s Māori and English texts.

In chapter 9, we set out the views of the parties to this inquiry and of the witnesses they and the Tribunal called. We recounted the claimants’ explanations of what their tūpuna intended – their kōrero tuku iho, which they said had never before been shared in a public forum – along with the other evidence they presented. We summarised both the submissions of claimant and Crown counsel and the views of a wide range of experts in fields such as constitutional law, history, te reo Māori, and anthropology.

We have taken a comprehensive approach because – as both the Crown and claimants emphasised – the treaty must be understood in its historical context. To determine what the treaty meant to its signatories in February 1840, we must first understand the parties themselves, and their relationships with each other. We must understand how their systems of law and authority worked; the challenges each faced as a result of the contact they had prior to February 1840; and their motives and intentions as they came to debate and sign te Tiriti. Only then can we determine what those parties understood the treaty to mean, and what they believed its effect was.

We remind readers that this is a contextual report – an essential first step in our inquiry into treaty claims by Te Paparahi o Te Raki claimants. The Treaty of Waitangi Act 1975 requires us to determine the treaty’s ‘meaning and effect’ as part of our inquiry into claims by Māori that the Crown has acted inconsistently with the principles of the treaty and so has caused them prejudice. This report, which completes stage 1 of our inquiry, focuses solely on the treaty’s ‘meaning and effect’ in February 1840.

We turn to our conclusions now. Before we consider the treaty, we will recap our conclusions about the declaration.
10.2 He Whakaputanga and the Declaration of Independence – Meaning and Effect

He Whakaputanga o te Rangatiratanga o Nu Tireni was signed on 28 October 1835 by 34 leading Te Raki rangatira, almost all from the Bay of Islands and Hokianga. Over the next four years other leading rangatira from the Bay of Islands and Hokianga signed, as well as leaders from other parts of the north, and further afield.

He Whakaputanga was debated and signed in Māori, though the text was a missionary translation from a draft in English by the British Resident James Busby. That English text, known as The Declaration of Independence of New Zealand, contained four articles. In the first article of that text, the rangatira from ‘the Northern parts of New Zealand’ declared their independence and also asserted that their country was an independent state. In the second, they declared that ‘All sovereign Power and Authority’ resided with them ‘in their collective capacity’; that they would not permit the existence of any lawmaking authority ‘separate from themselves in their collective capacity’; and that they would not permit ‘any functions of Government to be exercised’, except by people appointed by them and operating under the authority of their laws. In the third article, they agreed to meet ‘in Congress’ at Waitangi every autumn, to frame laws ‘for the Dispensation of Justice, the Preservation of Peace and good Order, and the Regulation of Trade’. They also invited tribes from south of Hauraki to set aside past intertribal animosities and join them. In the fourth article, they thanked the British King for recognising the flag they had adopted in 1834. They also proposed that, in return for their friendship towards and protection of British subjects in New Zealand, the King ‘continue to be the Parent of their Infant State, and . . . become its Protector from all Attempts upon its Independence’.

The declaration was a response to a specific set of circumstances. In early October 1835, Busby received a letter from the Anglo-French adventurer Baron Charles de Thierry, who claimed to have acquired both sovereignty and large tracts of territory in Hokianga. De Thierry said he was coming to New Zealand to establish himself as ‘Sovereign Chief’. Busby’s response was to call the rangatira together and ask them what they wished to do about de Thierry, proposing that they respond to his claim of sovereignty by declaring their independent statehood.

There was also a broader context. Busby had been sent to New Zealand to further British interests. In particular, he had been instructed to control disorderly British subjects, protect orderly ones, and foster goodwill between Britain and Māori. In the absence of any legal authority over anyone in New Zealand, Busby was to fulfil his instructions by working with and influencing Māori. Working through indigenous leaders in this manner was a characteristic of Britain’s approach to empire.

From the time Busby landed, his intention was to establish a congress of rangatira able to make laws for all people in the north of New Zealand, and to adjudicate in disputes. He believed that this congress would do his bidding, and so allow Britain to establish ‘almost entire authority’ over the north in a manner that remained consistent with its previous recognition of Māori independence.

The Māori whom Busby encountered had their own systems of law and authority, which did not easily bend to his wishes. Among the descendants of Rāhiri, political authority resided in autonomous hapū. Rangatira played significant roles as hapū leaders and representatives, but were expected to serve hapū interests, and ultimately – like all Māori – to serve their atua. The Māori system of law centred on the imperatives of tapu and utu, handed down by atua but interpreted and applied in the temporal world by rangatira and tohunga.

Though hapū were autonomous, kinship ties with other hapū created mutual obligations. Related hapū had long traditions of meeting regularly and acting together as circumstances demanded. At times they shared resources, worked together in communal gardens, and formed alliances to fight alongside each other against people who were unrelated or more distantly related. To some of the claimants, it was this combination of hapū authority and autonomy, close kinship ties, and the ability to act in concert with others where that served hapū interests, that defined the Bay of Islands and Hokianga system of political authority. In contrast, the congress that Busby hoped to establish would have power to make laws for all.
In other words, it would be a higher authority to which hapū would be subordinate. For rangatira to take part, they would have to set aside hapū interests and agree to be bound by collective decisions. On this, Busby’s approach differed from that of the Additional British Resident in the Hokianga, Thomas McDonnell, who had recently been involved in the adoption – by a meeting of rangatira and Europeans – of a ‘law’ banning imports of liquor in the Hokianga. Busby saw this local initiative as undermining his goal of establishing a congress of all rangatira.

When Busby called rangatira together to discuss de Thierry’s intentions, he was seizing on an opportunity to declare the existence of that congress, as well as dealing with the immediate threat apparently presented by de Thierry. When the rangatira gathered at his residence on 28 October 1835, he presented them with He Whakaputanga, the Māori-language translation of the Declaration. He advised them that by signing it they could see off de Thierry and any other foreign pretenders who might lay claim to their authority. In He Whakaputanga ‘Independence’ was translated as ‘Rangatiratanga’, and ‘independent State’ as ‘Wenua Rangatira’. ‘All sovereign Power and Authority’ was translated as ‘ko te Kingitanga ko te mana i te wenua’, law as ‘ture’, and ‘any functions of Government’ as ‘Kawanatanga’. He Whakaputanga referred to the gathering of rangatira variously as ‘to matou huihuinga’, ‘te Wakaminenga o nga Hapu o Nu Tireni’, and ‘te wakaminenga o Nu Tireni’; and it used another term, ‘te runanga ki Waitangi’, for the proposed future gatherings at Waitangi. None of these terms conveyed Busby’s intention that all sovereign power would rest with rangatira only ‘in their collective capacity’. The King was asked to be ‘matua’ (parent) to the rangatira and to protect them against threats to their ‘Rangatiratanga’.

Rangatira debated He Whakaputanga at length, and signed for their own purposes. It was they alone who signed – there were no British signatories.

Both the Crown and the claimants agreed that the declaration was an unambiguous assertion of its signatories’ authority in relation to their territories. Specifically, though the claimants argued that mana and sovereignty are far from interchangeable concepts, they submitted that he Whakaputanga amounted to a declaration of both, on grounds that mana amounted to supreme authority within a particular territory. The Crown’s view was that he Whakaputanga was ‘a clear assertion of sovereignty and independence by those rangatira who signed it’.

Crown counsel said that, prior to the declaration, the Crown had not claimed sovereignty over New Zealand, and the declaration ‘did nothing to change that’. In terms of where sovereignty was to reside, Crown counsel submitted that the declaration proposed the establishment of ‘a supreme confederative form of sovereignty in one new entity, te Whakaminenga’, which was to have ‘power to make laws for the hapū of signatory rangatira’. However, the proposed annual assembly never met, and so ‘hapū autonomy remained intact’. This left the signatories with ‘a form of sovereignty and independence that was consistent with hapū autonomy’. In the absence of a functioning legislative assembly with powers over all, Crown counsel submitted, Britain’s response to the declaration amounted to a recognition of ‘tribalised’ Māori sovereignty.

The claimants argued that, notwithstanding Busby’s intentions, the rangatira who signed he Whakaputanga never intended to create a supreme legislature. Rather, the claimants said that the signatories to he Whakaputanga saw ‘te Whakaminenga’ as a gathering of the leaders of autonomous hapū; and the agreement by rangatira to meet each year did not imply any transfer of authority from hapū to another body. Some claimants argued that te Whakaminenga had already existed for many years as a formal gathering of the rangatira, and that those gatherings continued after 1835 without European involvement.

Both the Crown and claimants saw article 4 as strengthening and deepening the relationship between northern Māori and Britain, and as involving a request for British protection against foreign threats to Māori sovereignty and independence. The claimants also emphasised the mutually beneficial nature of this alliance, involving as it did Māori protection of British interests as well as British protection of Māori from threats to their rangatiratanga, whether this meant protection from foreign threats or protection from harm caused by Europeans in New Zealand.
In terms of its overall constitutional effect, Crown counsel submitted that the declaration 'expressed the aspiration of rangatira to establish a functioning nation state', but said that no state was in fact established. Many claimants saw he Whakaputanga as both a sacred document, and a founding document of Ngāpuhi nationhood, though there were differing views among claimants about whether such a state already existed prior to he Whakaputanga, whether he Whakaputanga established one or whether it merely heralded an intention to establish one. Several claimants told us the purpose of the declaration was to ensure that the mana and tikanga of northern Māori endured within their territories: as Erima Henare put it, ‘what our people hoped for in He Whakaputanga was that the Māori worldview would remain dominant in this country’.

In our view, to understand the meaning and effect of he Whakaputanga, it is important to acknowledge the specific context in which it was signed. The rangatira had gathered at Waitangi because Busby had told them of a foreigner who wanted to be their king and take their land, and the Resident was seeking their response. Unsurprisingly, they said no. There can be no doubt that he Whakaputanga was a resounding declaration of the mana and rangatiratanga of those who signed it on behalf of their hapū. Nor can there be any doubt that it amounted to a declaration of sovereignty and independence of those hapū; on that, the claimants and the Crown agreed. We have defined sovereignty as the power to make and enforce law. In the Whakaputanga, rangatira explicitly declared that no other person or group would be permitted to make laws within their territories, nor to exercise functions of government except under their authority and in accordance with their laws and decisions.

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

While rangatira agreed to meet annually at Waitangi, they would have seen this simply as an extension of the traditional practice of gathering when there were important matters to discuss. In the case of he Whakaputanga, they agreed to meet in order to frame ‘ture’. They might have understood ‘ture’ as laws, guidelines, or simply decisions, but would certainly have seen these as a European form of rules, distinct from tikanga or ritenga. These ture were to concern specific matters: justice, peace, good order, and trade. The word ‘ture’, the purposes for which ture would be framed, and the context (a perceived foreign threat) all suggest that these rules or decisions would be aimed principally at challenges that were created by contact with Europeans. We do not think that rangatira saw the proposed gatherings as being intended to make ture that would apply to the exclusively Māori world: that is, to intertribal or inter-hapū relations, or to hapū and whānau. Overall, then, in accepting Busby’s invitation to meet and make ture, rangatira did not relinquish hapū authority to a supreme legislature, and nor indeed did they agree to set aside tikanga in favour of western-style law. They simply agreed to meet as leaders of autonomous hapū, to hold discussions about the actions of foreigners in their territories, and to reach agreements where they
could. That, of course, was what they were doing when they met and debated He Whakaputanga – acting not as a novel or distinct decision-making body but as representatives of hapū coming together for common purpose, just as they had been doing for generations.

Yet historical discussion about He Whakaputanga – meagre as it has been – has typically focused on questions of lawmaking and government. The declaration was dismissed as a failure by British observers in the 1830s, and by many commentators since, precisely because they based their understanding on Busby's English text, in which it was intended to establish a supreme legislature which never subsequently operated. In our view, the focus on these matters has distracted attention from the broader significance of He Whakaputanga in its assertion of Māori authority, rejection of foreign authority over Māori people and territories, and pursuit of an alliance with Britain to those ends.

This brings us to the meaning and effect of article 4. The text in both English and Māori referred to a mutually beneficial relationship between Māori and Britain, in which each would protect the other’s interests where it was in their power to do so. The description of the king as ‘matua’ in our view did not imply British superiority except in international affairs, and there the request was not for Britain to usurp Māori authority but to foster it and protect it from foreign threat. The rangatira who signed He Whakaputanga had previously sought to align with Britain for exactly that purpose, as well as to advance trade. We think they would have seen article 4 as deepening what they understood as a mutually beneficial alliance, through which Britain would support and foster Māori in their emerging international relationships, as it had with the adoption of the flag.

Busby later sought to present the article as a request that New Zealand be placed under Britain's protection, in an arrangement that would see British officials carrying out the functions of government under the nominal authority of a Māori legislature, which would enact laws proposed by the British. This, however, reflected his own political motivations and cultural preconceptions, as well as his concerns about inter-hapū conflict and about violence by British subjects in the Bay of Islands around the time he was writing. It did not reflect what was actually said in He Whakaputanga.

In summary, then, He Whakaputanga was a declaration by rangatira in response to a perceived foreign threat to their authority, in which they:
- emphatically declared the reality that rangatiratanga, kingitanga, and mana in relation to their territories rested only with them on behalf of their hapū;
- declared that no one else could come into their territories and make laws, and nor could anyone exercise any function of government unless appointed by them and acting under their authority;
- agreed to meet annually at Waitangi and make their own decisions about matters such as justice, peace, good order and trade involving Europeans and Māori-European relationships in their territories;
- acknowledged their friendship with Britain and the trading benefits it brought; and
- renewed their request for British protection against threats to their authority, in return for their protection of British people and interests in their territories.

To those rangatira who signed, none of this – including the agreement to meet annually – would have implied any loss of authority on the part of either themselves or their hapū, or any transfer of authority to a collective decision-making body. Rather, He Whakaputanga was an unambiguous declaration that hapū and rangatira authority continued in force – as, on the ground, it undoubtedly did – and that Britain had a role in making sure that state of affairs continued as Māori contact with foreigners increased.

Britain’s immediate response to the declaration indicated that it did not see itself as being bound by Busby’s actions. It had already accepted the independence of Māori hapū, and it had made an offer of friendship and alliance to Bay of Islands Māori in the King’s response to the 1831 petition. The official response to the declaration in 1836 by the Secretary of State for War and Colonies, Lord Glenelg, did not take those commitments any further, and rather signalled only a very conditional willingness to protect Māori independence. But whatever Britain’s official position, Busby was Britain’s representative, and the
rangatira who signed he Whakaputanga would have seen his actions as those of Britain.

During 1836 and 1837 there were outbreaks of tribal conflict, rangatira lost faith in Busby’s residence as a safe place to meet, and Busby no longer felt able to call all northern leaders together at once. To British observers, this was a failure of te Wakaminenga, since it meant that no supreme legislature was in operation and – from a British point of view – no Māori authority existed that was capable of keeping order. The critical point, however, is that for the most part hapū remained in control of their territories, and continued to act in ways that were consistent with their own system of law, both in relation to their own people and in relation to Europeans. Taua muru continued to occur against Europeans who violated tapu or failed to fulfil obligations to their hosts. Hapū continued to act separately or in concert depending on which course suited their interests, but in either case remained wholly autonomous; cooperation or conflict depended, as it always had, on what best served atua, as expressed through tapu.

There were, by the end of the decade, some signs that Māori control was coming under pressure. In Kororāreka, local merchants had during the 1830s sought to assert their own authority; the missions had achieved a degree of economic independence; the settler population was growing and the number and scale of land transactions was increasing in ways that caused some Māori leaders concern. But these were exceptions to a general rule. Māori continued to heavily outnumber Pākehā in the Bay of Islands and Hokianga. Within their own communities, they continued to live according to Māori law. Their traditional political structures remained intact. And they had capacity to impose their own laws on resident and visiting Pākehā should it serve their interests to do so. These, then, were the circumstances as the 1830s drew to a close.

10.3 The Making of the Treaty

We turn now to discuss the treaty itself, building on the entire report’s narrative, and more specifically chapters 6, 7, 8, and 9. In chapter 6, we set out the factors influencing the British Government in the late 1830s to establish a greater authority in New Zealand, while in chapter 7 we described in detail the events in the Bay of Islands and Hokianga of February 1840. Chapters 8 and 9 related the perspectives on these events of both a range of commentators and the parties to our inquiry.

As we have done previously, we structure our discussion around, first, the written texts of the treaty; secondly, the oral debate that took place during the hui at Waitangi and Mangungu; and, thirdly, the treaty’s meaning and effect in February 1840. Before that, we deal with two important matters. We give our view on the motives underpinning Britain’s decision to establish Crown Colony government in New Zealand; and on whether an initial draft of te Tiriti was put to the rangatira in which they were asked to cede their ‘mana,’ as was argued by the claimants.

It is useful, at this point, to summarise the parties’ positions on the treaty. Like their tūpuna in February 1840, the claimants inevitably expressed a range of views. However, all were agreed that their tūpuna had ceded neither mana nor sovereignty. Some thought that the agreement reached with the Crown was for the Kāwana merely to have control over Pākehā settlers, while others foresaw a shared authority between the chiefs and the Crown over Māori–Pākehā interaction, with the Kāwana playing a mediating role. The claimants drew these understandings from te Tiriti and from the oral debate at Waitangi and Mangungu, and not at all from the English text of the treaty, which they regarded as having been entirely irrelevant to their ancestors’ decisions at that time. Moreover, the claimants regarded he Whakaputanga as the parent document to te Tiriti. Given the repetition in te Tiriti of key terms such as rangatiratanga and kāwanatanga, the claimants did not regard he Whakaputanga as superseded by it. Some claimants used the principles of international law to reinforce their interpretations.

By contrast, the Crown, while acknowledging that there were several points of agreement between it and the claimants, contended that the rangatira had agreed to cede sovereignty. This was because they had agreed to have a kāwana at the head of a government exercising authority over them, and ‘sovereignty’ was understood
at the time as meaning ‘civil government’ and ‘especially
government by legislation’. That, the Crown stressed, was
the authority the rangatira agreed to cede. Crown counsel
emphasised that the speeches of those who opposed the
Kāwana having the power to govern them were evidence
that the chiefs understood the treaty in this way. Counsel
also submitted that sovereignty was explained fully both
at the hui on 5 February at Waitangi and later that evening
as the chiefs gathered at Te Tou Rangatira to reflect on
whether to agree to te Tiriti.  

With those differences in mind, we begin by assessing
the intentions behind Britain's decision to acquire sov-
ereignty in New Zealand, and how it planned to put this
into effect.

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

However, a clear contrast had long existed between the
attitudes of those at the centre of the empire and the colo-
nial officials at the periphery, in New South Wales. As trade
with New Zealand had continued to develop, the author-
ories in New South Wales feared it might be disrupted by
violent treatment of Māori by the masters of British ships
and the resulting risk of retaliation. In 1804, for example,
one captain was charged with 'firing on the Natives of
New Zealand, and flogging them on board the ship.'
Governor Philip Gidley King issued an order the follow-
ing year protective of Polynesian seafarers in New South
Wales, explaining that it was 'of the utmost consequence
to the interest and safety of Europeans frequenting those
Seas, and more particularly the South Sea Whalers, that
these people should suffer no ill Treatment.' Missionaries
like Samuel Marsden also lobbied King's successors about
the need to protect Māori, and in 1813 New South Wales
Governor Lachlan Macquarie issued an order that went
further than King's by asserting his authority to punish
serious criminal acts committed in New Zealand itself.
Macquarie noted that the unjust behaviour of British sail-
ors in New Zealand had at times led 'to the indiscrimi-
nate Revenge of the Natives of the said Islands, exasper-
ated by such Conduct', and that this in turn had greatly
endangered 'further Trade and Intercourse with the said
Islands.' The following year, Macquarie issued another
order that referred to New Zealand as a 'dependency' of
New South Wales (see chapter 3).

Macquarie's orders did not bear close legal scrutiny, for
New Zealand lay outside Britain's jurisdiction – a matter
made clear by the Murders Abroad Act 1817, which specif-
ically referred to New Zealand as being among 'Countries
and Places not within His Majesty's Dominions.' Further
Imperial Acts of 1823 and 1828 established New South
Wales courts with jurisdiction to deal with crimes com-
mitted in New Zealand. But these measures too were inef-
fective unless the perpetrators returned or were brought
back to British territory. It was clear that gaining effect-
ive jurisdiction would require arrangements with ranga-
tira, but after 1817 the Colonial Office maintained a policy
of minimum intervention. As John Ward put it: 'British
authority would be exercised in the South Pacific only to
the extent necessary to avoid a scandal to the British name
and to preserve British trade from the worst consequences
of extreme disorder.'

The Elizabeth affair of 1830, however, had such major
ramifications that it prompted the British decision – urged
by New South Wales – to appoint a diplomatic represent-
ative. Coincidentally, the visit of a French warship to New
South Wales in 1831 also prompted a petition by Bay of Islands rangatira to King William IV seeking both protection from 'te Iwi o Marion' and firm control of British subjects in New Zealand. When James Busby arrived as British Resident in May 1833 he carried the King’s response to this petition, expressing the King’s intention to do all he could to control the behaviour of his subjects. But the familiar problem existed, in that Busby would have no legal authority over anyone and no military or police power. He was, thus – through no choice of his own – a ‘man-of-war without guns’, a term first used in the House of Commons in 1838 but applicable before then.

Busby’s Residency at Waitangi accustomed Māori in the north to a British presence on the ground and drew New Zealand more into the empire’s orbit. But, for the British Government, the ongoing challenge posed by its lack of jurisdiction over its subjects was significantly increased in 1837 with pressure from the backers of organised emigration. And when Busby’s June 1837 dispatch – which exaggerated the impact of uncontrolled British settlement on Māori population numbers – arrived in London, even Glenelg thought it better to have a colonisation ‘organised and salutary’ than the state of affairs alleged in Busby’s dispatch. The missionaries, however, were a powerful lobby against any intervention beyond their own work, and an impasse ensued in 1838. Hobson’s own suggestion in 1837 to create ‘factories’ – that is, sovereignty over limited territories in which British settlers were concentrated – became the favoured option, although in late 1838 Glenelg decided to appoint a British Consul. As this wavering continued, Edward Gibbon Wakefield, ever the opportunist, reasoned that possession was nine-tenths of the law. At his strong urging the New Zealand Company ships set sail for New Zealand.

The British Government reacted hastily, dispatching Hobson to follow the Tory, the Company’s first ship, whose passengers were intent on purchasing land and preparing the way for the settlers. The final instructions to Hobson of the new Secretary of State for War and the Colonies, Lord Normanby, allowed, for the first time – in August 1839 – that Britain might acquire sovereignty over the whole country. Hobson was permitted, after first treating with Māori for ‘the recognition of Her Majesty’s sovereign authority over the whole or any parts of those Islands which they may be willing to place under Her Majesty’s dominion’, to exercise his own discretion over such matters in consultation, where possible, with New South Wales Governor George Gipps. Sovereignty over the whole was in any event now Hobson’s strong preference and thus became the primary object of his mission.

As we have seen in chapter 9, the parties held opposite views on the subject of why the Crown sought to acquire sovereignty in New Zealand. Crown counsel described the Crown as a reluctant actor forced into action by ‘intense pressures’ and the ‘increasingly dire’ situation in New Zealand. In this, said the Crown, the departure of the New Zealand Company ships was the ‘tipping point’, and only at this late stage did it become apparent that the factory scheme was inadequate. Crown counsel essentially took Normanby’s instructions, with their references to ‘extreme reluctance’ and ‘higher motives’, at face value. On the other hand, the claimants generally regarded the Crown as much more driven by economic considerations and an ‘impulse of gain’, with its eye on New Zealand’s natural resources and a presumption of the ‘right to dispossess’.

Our view is that Britain was by no means a reluctant imperialist – it had long seen New Zealand as part of its de facto realm, and was prepared to ratchet up its level of official involvement when events on the ground necessitated it. But it had been consistently reluctant to add New Zealand to its formal empire, preferring instead to pursue its imperial interests through working with Māori leaders. Busby’s exaggerated June 1837 dispatch prompted Glenelg to acknowledge that the Government’s policy would have to change. But the principal factor that decided the ultimate approach was the pre-emptive action of the New Zealand Company in May 1839. The prospect of large-scale private colonisation in New Zealand was not one the authorities felt they could tolerate. Humanitarian concerns continued to have some influence: the perceived need to protect Māori from settlers, and bring them to a point of ‘civilisation’, contributed to the decision of the British authorities to adopt the model of Crown Colony government in their plans for New Zealand. Britain’s
primary motive, however, was to protect its imperial interests. It therefore determined to take control of the land trade and prevent a private company setting itself up as a colonial government.

So, when the British authorities chose to dispatch Hobson with the intention of acquiring sovereignty over parts or all of New Zealand, the issue of reluctance to move from informal to formal colony had become irrelevant. At that point, the Government proceeded emphatically. Letters patent were issued on 15 June 1839 that provided for the incorporation into New South Wales of ‘any territory which is or may be acquired in sovereignty by Her Majesty . . . within that group of Islands in the Pacific Ocean, commonly called New Zealand.’ Instructions were prepared stipulating that, at least in the North Island, Hobson was to achieve the acquisition of sovereignty through informed Māori consent to a treaty. Armed with these instructions, Hobson sailed for the South Pacific. As Hobson left Sydney to sail on to the Bay of Islands, Gipps published proclamations that were intended to put an immediate stop to the land trade in New Zealand and to expand New South Wales’s boundaries to include ‘any territory which is or may be acquired in sovereignty’ in New Zealand. And, when Hobson arrived in the Bay of Islands shortly after, he read out proclamations to the same effect.

For our purposes, the most important point is that the British clearly and consistently expressed the view that, in achieving their objectives, they had what Glenelg called ‘no legal or moral right to establish a Colony in New Zealand, without the free consent of the Natives, deliberately given, without Compulsion, and without Fraud.’ What this meant in practice, however, was another matter. Although consent was expressed as a requirement, it was left to Hobson – as the official on the ground in New Zealand – to judge whether Māori consent had been obtained. The British authorities barely acknowledged the possibility that Hobson might fail in his mission. Normanby’s instructions expressed utmost confidence in Hobson overcoming any difficulties he might encounter. The officers of the Treasury made contingency plans for how expenses would be met if Hobson’s mission failed, but there was little other recognition of the possibility.

### 10.3.2 Was a draft treaty put to the chiefs?

Obtaining Māori consent would involve holding meetings with rangatira. The position of some claimants was that important hui took place in the north even in advance of Hobson’s arrival. Erima Henare, for example, said that the missionaries convened meetings with the chiefs at Waitangi a full month earlier to discuss the potential treaty and would-be Governor. Pereme Porter said there were hui for five days at Waitangi before the signing, and one kaumātua told Merata Kawharu that there were 60 hui in the north in the lead-up to 5–6 February at Waitangi. The written record, by contrast, discloses none of this. Mission head Henry Williams was probably already aware, by early January, of Hobson’s arrival in Sydney. But it was not until 10 January that Bishop William Broughton wrote to Williams from Sydney instructing him to support Hobson’s efforts to get the chiefs to cede their sovereignty. It is questionable whether the missionaries would have hosted the chiefs at Waitangi before Hobson had arrived in New Zealand or before they had received instructions from Broughton, and whether such important discussions would have gone unrecorded. However, we do not doubt that, especially after hearing from Broughton, they would have had conversations with rangatira about Hobson’s mission prior to his 29 January 1840 arrival. Williams, we believe, would have wished to take an early opportunity to act on Broughton’s instructions.

The more significant claimant contention derived from oral history was Rima Edwards’s presentation of a tradition about a ‘tiriti tuatahi’, or first draft of Williams’s translation of the Treaty into Māori. This was said to ask the rangatira to cede ‘mana’ not ‘kawanatanga’. Edwards did not say exactly when this draft was put to the rangatira, but it could only have been in the evening of either 4 or 5 February. He said the tradition about this document, which was also said to have a fourth article concerning religions, had been handed down through Te Whare Wānanga o Te Ngākahi o Ngāpuhi. In this tradition, the chiefs rejected the draft, and Edwards thought Williams and Busby would have gone back with this news to Hobson, who presumably sanctioned the change to ‘kawanatanga’. Edwards explained that the rangatira believed...
the draft was a curse on Hobson and led to his death two years later, when they asked that it be buried with him.41 Edwards added under questioning that Frederick Maning had made a written record of these events.42

The very notion of a tiriti tuatahi made no sense to Crown witnesses – Dr Phil Parkinson called it ‘inconceivable’ and Professor Alan Ward also thought it ‘highly unlikely’.43 Crown counsel said it was ‘most unlikely’ for a number of reasons, including: the lack of any written evidence; the improbability of Williams proposing a cession of ‘mana’; the short amount of time for the events in question to have taken place; and the unreliability of Maning as a source.44

As we explained in chapter 9, we asked archival expert Dr Jane McRae whether any written sources existed that supported the tradition about a tiriti tuatahi.45 She could not find any.46 But Dr Grant Phillipson thought Edwards’s evidence had to be taken ‘very seriously’ and that the oral tradition ‘confirms’ what historians have long suspected: that Māori would not have agreed to a cession of their mana. He suggested that the absence of a written record was not significant, because Williams and others gave so little detail about what took place on the evening of 5 February (which is when he thought the meeting would have occurred) anyway. He thought the fact that the Williams draft, which Richard Taylor rewrote late on the 5th, cannot be located could well be explained by the chiefs requesting it from Taylor so it could be buried with Hobson.47 Professor Dame Anne Salmond could also not see the basis for Parkinson’s adamance that no meeting to discuss a tiriti tuatahi could have taken place on the evening of 4 February (the date to which they both considered the tradition referred).48 And, among claimant counsel, Dr Bryan Gilling defended Maning’s reliability; suggested that the draft’s absence was explicable by its burial with Hobson; and pointed to what he submitted was a willingness by Phillipson, McRae, and Salmond to accept the possibility of the tiriti tuatahi’s existence.49

While the tradition about te tiriti tuatahi probably reflects the Ngāpuhi belief that the rangatira would not, and did not, cede their mana at Waitangi in February 1840, it was presented to us as a set of events that we should accept as fact. Edwards’s counsel submitted that the claimants’ oral evidence was ‘potentially more informative and reliable’ than William Colenso’s account.50 Counsel for a separate group of claimants further submitted, in the context of discussing both Edwards’s testimony and accounts written in English, that ‘the best evidence is the oral evidence we have heard’ (emphasis in original).51 It is not usual to dissect and analyse an oral tradition in the way we would a written source to test its ‘veracity’ or ‘truthfulness’, as this would misrepresent the function and purpose of oral tradition. However, the claimants’ submissions do make it necessary for us to make some observations about the tradition related by Edwards.

First, we doubt that Williams would have asked the rangatira to cede their mana. This matter was not canvassed by Phillipson, but as Salmond confidently wrote elsewhere, indeed in reference to Williams, ‘No-one with any knowledge of Māori life in 1840 . . . would have asked the rangatira to surrender their mana, which came from their ancestors, and was not theirs to cede.’52 In his written evidence, Erima Henare stated that anyone asking the rangatira to cede their mana would have been ‘ejected or annihilated’.53 He did not seem to connect this assertion that ‘all hell would have broken loose’ to Williams’s supposed first draft, despite his support for Edwards’s tradition.54 If he was right about the likelihood of such a violent response, it seems fair to assume that the tiriti tuatahi draft would have provoked a sufficient reaction either for the entire signing to be jeopardised, or at least for the missionaries to mention it in their journals. Edwards himself observed, in response to Alan Ward’s rejection of Ruth Ross’s argument that ‘mana’ should have been used in the treaty to show exactly the kind of power the British sought, that:

Ko te kaupapa kua oti mai i Ingarangi mai rano ko te tango i te whenua me te mana ara ka whakamahia etahi kupu e ratou hei huna i enei whakaaro a ratou.

The overall plan from way back in England was always to take the land and the mana and some words were often used to [mask] this fact.55
We infer that one of the words used to disguise the intention to take mana was ‘kawanatanga’.

Edwards did not say that te tiriti tuatahi was placed inside Hobson’s coffin or grave, but rather that the rangatira had asked for it so it could be so disposed of. As we can see, though, both counsel and Phillipson thought a possible explanation for the document’s absence from the archival record is that it was buried with Hobson. However, from what we know of the burial on 13 September 1842, which was a significant public event in the small township of Auckland, we doubt very much that a draft of the treaty was included with Hobson’s casket. For one thing, it is difficult to imagine his family or Acting Governor Shortland agreeing to it. Some Māori were present but they would not have come from the Bay of Islands, as Hobson had only died three days earlier. We note that Phillipson did not consider any issues around Hobson’s burial in his assessment of Edwards’s evidence.

Phillipson did, however, note that the tradition that te tiriti tuatahi had an article about freedom of religions directly contradicted the written sources about the emergence of the ‘fourth article’ of the treaty, and was not easily explained. Bishop Jean Baptiste Pompallier did not raise the religious freedom issue until 6 February, and we consider that Williams’s indignant reaction that day indicates that a draft of the treaty was most unlikely to have included such a clause.

We accept that Williams may possibly have canvassed certain Bay of Islands Māori about which word might best convey the meaning of ‘sovereignty’, since – as nearly all witnesses seem agreed – he would have understood that ‘mana’ was not a suitable option. But it is also by no means certain that he engaged in any such consultation. Phillipson thought this discussion ‘must have begun’ before 4 February, but it seems he reached this view by conflating Erima Henare’s account of earlier meetings with the missionaries with Edwards’s own version of events. We note, in any event, that Williams was not asked to prepare the translation by Hobson until 4 pm on 4 February, and he would have had no reason prior to that to assume he would definitely be called upon. Williams was not the leading translator among the missionaries and, as Parkinson pointed out, Hobson might very well have opted for Busby.

In sum, therefore, we accept that a tradition exists about Williams putting to the chiefs a first draft of te Tiriti that asked them to cede their mana, reflecting a belief that the rangatira did not cede their mana at Waitangi in February 1840 – and a displeasure both with Hobson’s role during the treaty hui and his subsequent interpretation of the agreement. However, we do not agree with claimant counsel that this tradition is ‘potentially more informative and reliable’ than Colenso’s written account.

10.3.3 The formulation of the texts of the treaty

Here we come to the shaping of the words of the treaty itself – or rather, the two separate texts. We begin with the English text and then consider the Māori text, before turning to discuss the translation of key terms.

(1) The English text

We can see from the English text that Hobson clearly had a good idea of what the treaty was expected to contain, given certain similarities with recent African treaties. For example, the phrase ‘Rights and Privileges of British Subjects’ was identical to words used in the 1825 Sherbro treaty (see the table on pages 510 and 511). Not only that, but Hobson had also been guided by his instructions from Normanby and his time spent in Sydney with Gipps.

Hobson’s first draft of the treaty – that is, his clerk James Freeman’s notes – conveyed a rather narrow British view of the transaction: the Crown was described as a reluctant interventionist with protective intent in the preamble; and Māori yielded up their sovereignty in article 1, agreed to Crown pre-emption in article 2, and were granted the rights and privileges of British subjects in article 3. Busby, who knew enough about Māori systems of law and authority, and their relationships with land and other resources, to understand that Māori would not agree to this, then inserted the guarantee of ‘their Lands and Estates Forests and Fisheries and other properties’ into the second article. Busby’s intervention was the first of two important qualifications to Hobson’s intended text by an agent with local knowledge. Hobson’s previous visit to New Zealand on
HMS *Rattlesnake* did not qualify him to the same extent on local matters.

We do not think, however, that Busby’s insight originated solely from his New Zealand experiences. He must have had some knowledge of what Keith Sorrenson suggested, on the basis of certain west African treaties, was a ‘treaty language that was in fairly widespread use’.

For example, Busby’s expression ‘full exclusive and undisturbed possession’ bore a striking similarity to the words ‘full, free, and undisturbed possession’ used in the 1825 Sherbro treaty. Where and when Busby became acquainted with such matters we do not know. Sorrenson thought both he and Hobson had been briefed at the Colonial Office not long before the Treaty was drafted, but this cannot have been the case with Busby, who had not left New Zealand since he arrived there in 1833. As his biographer Eric Ramsden wrote, Busby’s arrival in Sydney in April 1840 offered him ‘his first glimpse of civilisation for almost seven years’.

To show the British intent behind the treaty, we therefore set out, in the table over, a comparison of the 1825 Sherbro treaty, Normanby’s August 1839 instructions, Gipps’s unsigned Sydney treaty of February 1840, and the (final) English text of the Treaty of Waitangi. Considering the Treaty text alongside these three additional texts provides the clearest indication of what Hobson was expected to achieve through a treaty. That is because the Sherbro treaty provides an insight into Britain’s broader international treaty-making activity; the instructions set out what the Treaty was to contain; and Gipps was Hobson’s immediate superior and the official from whom he was meant to seek further guidance en route to New Zealand.

From these texts, it is apparent that Hobson was to secure the cession by Māori of their sovereignty and their recognition of the Queen’s sovereignty over all or parts of New Zealand. He was also to grant to Māori the Queen’s protection (specifically in respect of their rights over territory and, for the time being, ‘the observance of their own customs’) as well as the rights and privileges of British subjects. Furthermore, he was to obtain an agreement that henceforth Māori would sell land only to the Crown. We can see that the English text of the Waitangi treaty largely fulfilled these requirements, although – perhaps because of Busby – the land guarantee had much more in common with the Sherbro treaty than with anything put forward by Normanby or Gipps. Hobson’s use of the term ‘pre-emption’ was also much less clear than the language used by Normanby in his instructions and Gipps in his draft treaty, although it had been used in North America.

There are other matters to note about the English text that was presented to Henry Williams to translate. The preamble stressed the Crown’s protective impulses and desire for sovereignty, given the number of British settlers, the lack of (British) laws, and the need therefore (from the British perspective) to establish a government. That government was to be British, although its primary objective was said to be to protect Māori as well as settlers and to keep the settlers in check. It was not stated whether the ‘undisturbed possession’ by Māori of their ‘Lands and Estates Forests Fisheries and other properties’ would entail their continued exercise of authority over land and people. However, Hobson did later guarantee to protect ‘Māori custom’ in the so-called ‘fourth article’.

Article 3 guaranteed to Māori the rights and privileges of British subjects, which, as we noted in chapter 2, included rights to property and personal freedom. It did not mention the corollary obligation to obey British laws as soon as these were made and enforceable. To that extent, it omitted major elements of what it meant to be a British subject. Moreover, the requirement to sell land only to the Crown at once placed Māori in a different position from other British subjects. However, the English text of the treaty foresaw Māori becoming British, and it is in this context that articles 2 and 3 need to be understood. This goal required the application of British law and concepts of order. In the minds of British authorities, Māori welfare would necessarily be enhanced through British rule, with Māori ‘civilisation’ progressing in line with the expansion of settlement and imperial economic enterprise. As Hobson said in 1839, the acquisition of sovereignty would bring to New Zealand the ‘blessing of civilization and liberty’, and Normanby referred in his instructions to Māori being ‘brought within the pale of civilized life, and trained to the adoption of its habits’.


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### Sherbro treaty

**Cession**

‘King of Sherbro [et al] for them, their heirs and successors for ever ceded, transferred, and given over, unto his said Excellency Charles Turner, Governor of the said Colony of Sierra Leone, and his successors, the Governors of the said Colony for the time being, for the use and on the behalf of His Majesty the King of Great Britain and Ireland, and his successors, the full, entire, free, and unlimited right, title, possession, and sovereignty of all the Territories and Dominions to them respectively belonging, being situate [geographical description]; together with all and every right and title to the navigation, anchorage, waterage, fishing, and other revenue and maritime claims in and over the said Territories, and the rivers, harbours, bays, creeks, inlets, and waters of the same.’

**Guarantee**

Charles Turner agrees to accept the said cession, 'giving and granting to the [list of names] and the other native inhabitants of the said Territories and Dominions, the protection of the British Government, the rights and privileges of British subjects, and guaranteeing to [list of names] and the other native inhabitants of the aforesaid Territories and Dominions, and to their heirs and successors for ever, the full, free, and undisturbed possession and enjoyment of the lands they now hold and occupy'.

**Pre-emption**

'It is further necessary that the chiefs should be induced, if possible, to contract with you, as representing Her Majesty, that henceforward no lands shall be ceded, either gratuitously or otherwise, except to the Crown of Great Britain.'

### Normanby’s August 1839 instructions

‘... Her Majesty's Government have resolved to authorize you to treat with the Aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any part of those islands which they may be willing to place under Her Majesty's dominion.’

‘... until they can be brought within the pale of civilized life, and trained to the adoption of its habits, they must be carefully defended in the observance of their own customs, so far as these are compatible with the universal maxims of humanity and morals’

‘The acquisition of land by the Crown for the future settlement of British subjects must be confined to such districts as the natives can alienate, without distress or serious inconvenience to themselves.’

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A comparison of the 1825 Sherbro treaty, Normanby's August 1839 instructions, Gipps's unsigned Sydney treaty of February 1840, and the final English text of the Treaty of Waitangi

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<th>Gipps’s unsigned Sydney treaty</th>
<th>Treaty of Waitangi (English text)</th>
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<tr>
<td>‘It is therefore hereby agreed between the said parties that Her said Majesty, Queen Victoria, shall exercise absolute Sovereignty in and over the said Native Chiefs, their Tribes and country, in as full and ample a manner as Her said Majesty may exercise Her Sovereign authority over any of Her Majesty’s Dominions and subjects . . .’</td>
<td>‘The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.’</td>
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<td>‘and to grant Her Royal protection to the said Natives Chiefs, their tribes and country, in as full and ample a manner as Her Majesty is bound to afford protection to other of Her Majesty’s subjects and Dominions.’</td>
<td>‘Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession’</td>
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<tr>
<td>The Crown’s sole right of purchase (see below) is to be ‘upon the express understanding that the said Chiefs and Tribes shall retain for their own exclusive use and benefit such part of their said lands as may be requisite and necessary for their comfortable maintenance and residence.’</td>
<td>‘. . . Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.’</td>
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<tr>
<td>‘And the said Native Chiefs do hereby on behalf of themselves and tribes engage, not to sell or otherwise alienate any lands occupied by or belonging to them, to any person whatsoever except to Her said Majesty upon such consideration as may hereafter fixed . . .’</td>
<td>‘but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.’</td>
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(2) The Māori text

Williams had little time to translate the text into Māori. He faced a difficult task, and his approach is unclear. As we have noted in chapter 7, he recalled later that ‘it was necessary to avoid all expressions of the English for which there was no expressive term in the Maori, preserving entire the spirit and tenor of the treaty’. Presumably by this he meant that he had to find new ways of translating difficult English terms, and thus his translation was not always literal. That was inevitable, particularly because the two languages had so little in common. As Dr Patu Hohepa put it, English and Māori are ‘as radically different as chalk and cheese’. But was Hobson able to ‘preserve entire the spirit and tenor of the treaty’, as he claimed? That is clearly – famously – a matter of some debate.

Professor Bruce Biggs explained that translators in such a situation can either coin a neologism based on a word in the source language or give new meaning to an existing word in the target language. Williams did both. The ideal solution, as Biggs observed, would have been for him to include a separate set of definitions of Māori terms chosen to translate key concepts. But this was a mid-nineteenth-century treaty between the world’s most powerful nation and a distant indigenous people, and at that time the British would have given no thought to such practicalities. Yet, we must also recognise that the very existence of an indigenous-language treaty text set Waitangi apart from previous north American or African treaties, which did not have them. As Sorrenson has remarked, ‘It is the Māori text that gives Waitangi its most distinctive quality.’

So how did Williams translate the Treaty? Let us say in advance that his was by far the greater of the two local modifications (the other being Busby’s) of Hobson’s English text. Indeed, if Busby expanded the narrow treaty terms Hobson originally had in mind by adding his property guarantee, the Māori text fundamentally changed them. For a start, in the preamble, the Queen’s desire to protect the ‘just rights and property’ of Māori became a desire to protect their rangatiratanga (and their whenua) – that is, a desire to protect their authority. Williams then translated both ‘civil government’ and ‘sovereign authority’ as ‘kawanatanga’, and it is the meaning of kāwanatanga – and indeed its relationship to rangatiratanga – that lies at the heart of the debate about the meaning of te Tiriti. The preamble thus foreshadowed the tension between article 1 and article 2.

Article 1, then, had Māori conveying to the Queen ‘te kawanatanga katoa o o ratou whenua’, which has been generally rendered as the complete government or governorship of their lands. ‘Kawanatanga’ was a neologism but a word already familiar to Māori from the Bible and indeed from the text of he Whakaputanga. Kāwana had also been known to Māori since Tuki and Huru encountered Lieutenant-Governor Philip Gidley King in 1793. Māori knew, as Dr (later Professor Dame) Judith Binney pointed out, that kāwana wielded power, even though kāwana-tanga was a lower level of authority than kingitanga and rangatiratanga in he Whakaputanga and, as others told us, in the Bible. Much depended, therefore, on how the exercise of this power was explained verbally to the chiefs.

In article 2, Māori were guaranteed ‘te tino rangatiratanga’ over all their taonga. This was a significant departure from the English text, which made no mention of authority. Moreover, here Māori were guaranteed not just their rangatiratanga – used in he Whakaputanga for ‘independence’ and in the Bible for ‘kingdom’ – but the fullest extent of it through the use of the adjective ‘tino’.

Williams’s use of ‘taonga’ as a catch-all for the properties listed in the English text (‘Lands and Estates Forests Fisheries and other properties’) was in effect another expansion. As we saw in chapter 3, ‘taonga’ was used by William Williams in 1833 to translate expressions such as ‘all . . . things which you desire’ and ‘all good things’. We believe it was a word with a wide application.

Henry Williams’s translation of pre-emption – as the ‘hokonga’ of land to the Queen at agreed prices – certainly shifted the meaning from what Hobson intended to acquire: the sole right of purchase by the Crown. Williams wrote in 1861 that he had explained ‘pre-emption’ as meaning

The Queen is to have the first offer of the land you may wish to sell, and in the event of its being refused by the Crown, the land is yours to sell it to whom you please.

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That is a description of a first option to purchase, not a sole (monopoly) right of purchase. But Williams had presumably read Hobson's 30 January 1840 proclamation, in which it was declared that any future private land purchases from Māori would be considered 'absolutely null and void, and will not be confirmed, or in any way recognised, by Her Majesty'. As we noted in chapter 8, Dr (later Dame) Claudia Orange thought it likely from this that Williams did understand that the Crown was to have an exclusive right of purchase. Whatever the case, the British had a clear policy and the Māori text did not convey this.

We have serious doubts that the British intention to obtain a monopoly right of purchase, had it been accurately translated (and properly explained on 5 February), would have been acceptable to the rangatira. However, we note that the refusal of the southern chiefs in Sydney to sign Gipps's treaty, with its clear explanation of the Crown's monopoly right of purchase, is not conclusive evidence of how the rangatira at Waitangi would have reacted to that same explanation. This is because those chiefs were in Sydney to enter a transaction with land speculators and would hardly have been interested in signing up to such a condition.

In article 3, Williams used 'tikanga katoa' to convey 'all the rights and privileges' of British subjects. As we saw in section 7.5.4, there is no consensus among recent back-translators of te Tiriti whether Māori would have interpreted this as imposing obligations as well as granting benefits and entitlements. Ultimately, though, there was nothing explicit about the need for obedience to British laws as the corollary of the cession of kāwanatanga in article 1, even though the translation of article 3 provided a further opportunity to explain to Māori the workings of British sovereignty. As we have said, article 3 foresaw Māori becoming 'civilised' and living like Britons, and this assimilative intention sat uneasily alongside the guarantee of rangatiratanga in article 2.

When Busby reviewed Williams's translation on the morning of 5 February he suggested only one amendment: substituting the word 'whakaminenga' for 'huihuiringa'. He would have known that Williams had shifted the meaning of the English text in important respects, but he made nothing of it. With Williams's acceptance of Busby's minor change, this was the final text that was presented to the rangatira for their signatures.

(3) The translation of the key terms

The claimants were not particularly interested in the English text, regarding it as irrelevant to their tupuna. They were adamant that the true treaty – the only treaty – was te Tiriti. But many said that, if Williams had meant to convey 'sovereignty' through the use of 'kawanatanga', then he chose his word poorly. They argued this on the basis of the subordinate status of kāwanatanga in the Bible and he Whakaputanga. Some went as far as to question Williams's honesty and integrity.

There were several schools of thought about how Williams should have translated 'sovereignty' in order to capture what the British intended. Some argued that 'kawanatanga' was the correct selection, although for varied reasons. Samuel Carpenter and Alan Ward, as well as the Crown in its closing submissions, argued that sovereignty essentially equated to civil government, thus making 'kawanatanga' an appropriate choice. Māori had wanted civil government, they said, and would have understood what the term signified. Moreover, said Carpenter, Māori were being asked to agree to a new and overarching authority – one which they did not themselves possess. As he put it, the rangatira granted the Queen 'the authority to establish the kāwanatanga that they did not in reality exercise'.

On the other hand, Binney in 1989 believed that using 'mana' to translate sovereignty would have been entirely inappropriate, and so considered 'kawanatanga' a 'careful choice' and 'deliberately pragmatic'. We assume she thought it also equated to the level of authority Māori were prepared to concede, and do not take it that she thought kāwanatanga meant sovereignty. The Tribunal in its Manukau report likewise thought that kāwanatanga – which was 'subject to an undertaking to protect particular Maori interests' – was 'well chosen by the missionary translators'. By contrast, said the Tribunal, 'Sovereignty or "Rangatiratanga" is not conditioned'. In other words, some
have taken the view that ‘kawanatanga’ was the right word because Māori could not have ceded their ‘full authority status and prestige’, as the Manukau Tribunal defined ‘tino rangatiratanga’.

Another school of thought has it that, especially given its use in he Whakaputanga, ‘mana’ would have been the right word to use for a cession of sovereignty. We have seen how Ross made this point in 1972 and was followed, in due course, by scholars including Alan Ward, Dr (later Professor) Donald McKenzie, Dr (later Professor) Paul Moon and Dr Sabine Fenton, and Salmond. Claimants such as Edwards and Professor Margaret Mutu also suggested that ‘mana’ would have conveyed the Crown’s intentions better. But many of those who thought mana the best translation of sovereignty also agreed that Williams could not have used it. The claimants agreed that ceding mana was in equal parts unthinkable and impossible – it was an authority that derived from the achievements and status of ancestors and was exercised in accordance with tikanga. Most scholars since the 1980s – including now Alan Ward – have thought the same way and understood why Williams needed to find an alternative. The discussion on this intractable point can go round in circles. Williams should have used mana but he could not use mana as Māori would not have signed in that case; he should have used another word but that other word would not have conveyed sovereignty in the way mana would have, but he could not use mana; and so on.

We consider that a straightforward explanation of sovereignty could not have avoided the use of ‘mana’. As we have set out, the assertion of mana in he Whakaputanga expressed the highest level of authority within the signatories’ territories. This declaration of mana, together with the accompanying declarations of rangatiratanga and kīngitanga, collectively amounted to an assertion of the authority to make and enforce law. This is the essence of sovereignty. It is as well to remember the way the colonial government used the word ‘mana’ to explain the Crown’s authority in the Native Department’s 1869 back-translation (see chapter 7). Āpirana Ngata, who was similarly motivated to have Māori better understand what they had ceded in the English version, called sovereignty ‘te tino mana’ in 1922. The ‘rangatiratanga’ guaranteed to the chiefs had also been appropriated as a word for British sovereignty by Hobson himself as early as April 1840. In other words, the Crown soon enough attempted to convey to Māori that they had ceded the very authority they thought they had retained.

Williams, then, faced the significant hurdle of translating (and explaining) ‘sovereignty’ both in an accurate manner and in a way that would ensure that Māori signed. Moreover, he had made his achievement of this near-impossible task even more complicated by including ‘tino rangatiratanga’ in article 2. It might perhaps be argued that he did not believe rangatiratanga amounted to much – that he shared Normanby’s view of Māori society as comprising only ‘dispersed . . . and petty tribes’, and that rangatiratanga was akin to ‘possession’ of land and other resources, as Lyndsay Head has suggested. But we do not think this idea is credible. After all, Williams knew ‘rangatiratanga’ had been used to translate ‘kingdom’ in the Bible, and he had used it himself for ‘independence’ (in a context where it was used to refer to independent statehood) in he Whakaputanga. And, as we have noted, it was appropriated by the British as a means of expressing ‘sovereignty’ only shortly after te Tiriti was signed. British officials undoubtedly regarded Māori sovereignty as altogether of a lesser status than their own, but this does not mean they equated it to mere ‘possession’ of land and other resources.

While Williams may have been honest in his choice of ‘kawanatanga’ to translate ‘sovereignty’, he must, however, have known that tino rangatiratanga conveyed more than what was set out in the English text. We note that the claimants were not focused on how Williams might better have conveyed ‘possession’ of land and other resources. We agree with Phillipson that Williams ‘put things in the way most calculated to win Māori support’. As a result of the gulf between the two texts, he said, ‘everything depended . . . on the oral explanations and contracts entered into at the Waitangi hui’.

In sum, therefore, those with sufficient local experience
Our Conclusions

– first Busby and then, more particularly, Williams, who was following instructions to assist Hobson in gaining Māori support – shifted the meaning of the original draft of the Treaty because they understood what it would take to convince Māori to sign. As Binney put it,

Hobson's texts were both shaped at the Bay, through the experiences of the older European residents, and most particularly James Busby and the Reverend Henry Williams. Busby and Williams understood Māori systems of law and authority and their relationship to the land. The treaty was thus adapted to local conditions, especially (and significantly so) in its translation. Hobson – who, like Normanby and Gipps, had assumed that Māori would cede their sovereignty in exchange for various 'protections' – did not speak Māori and we do not know how Williams explained his translation to him. But we are confident that he and Williams must have discussed their approach before the hui with the rangatira began at Busby's house at Waitangi on the morning of 5 February 1840, for reasons that we discuss next.

10.3.4 The oral debate
We are well aware that we do not have the full picture of what was said at either Waitangi or Mangungu on the basis of the surviving written record. And we recognise that this problem is amplified by the lack of any record of what was said in Māori beyond the odd word and comment (such as 'He iwi tahi tatou'). As noted in chapter 7, Dr Donald Loveridge described the available written record of the discussions at Waitangi as providing only 'a very rough outline of what happened,' and the record of the Mangungu speeches as 'certainly no better.' Dr John Owens considered Mohi Tāwhai's reference at the Mangungu hui to the Māori words sinking like a stone to be 'a prescient remark,' for 'today the written treaty is constantly worked over for all the meaning which can be extracted,' while the 'speeches and verbal understandings are only partially preserved and then only because they happened to be written down.' We agree, but still consider we have enough information to draw conclusions about what was said to the rangatira, and how they responded, at both venues.

(1) The Crown's message
The British representatives – Hobson himself, but also Busby and the missionary translators – were very consistent in their messages. Hobson set the tone with his opening address: he explained that he had been sent by the Queen to ‘do good’ to the rangatira and their people (as well as to the settlers), but he would not be able to do so until the chiefs had given him their consent. For him to be able to restrain the Queen's subjects, he required the rangatira to sign his treaty. He noted that the chiefs had previously asked for the King's protection – which was a reference either to article 4 of he Whakaputanga or the 1831 petition (or both) – and ‘Her Majesty now offers you that protection in this treaty’. He concluded by saying, 'I think it not necessary to say any more about it,' and read the treaty.

Put simply, Hobson's message was 'Give me the authority to protect you and control the settlers'. He later told both Gipps and Major Thomas Bunbury that he had spoken ‘in the fullest manner’, but he clearly held back many details. Felton Mathew noted that Hobson had spoken ‘briefly’. He did not spell out to the rangatira that, if they signed te Tiriti, British law would apply to them. The particular focus of Hobson's message was, however, in keeping with the emphasis Normanby instructed him to place on the protection from settlers the rangatira would receive in return for recognising British sovereignty.

In a 25 April 1840 letter to Bunbury, Hobson wrote that he had assured the chiefs that ‘their Property their Rights and Privileges should be fully preserved’. Mathew's account of Hobson's address confirmed this approach: the chiefs would cede their sovereignty to the Queen, ‘throwing themselves on her protection but retaining full power over their own people – remaining perfectly independent’ (and selling what land they thought fit upon receiving ‘a fair and suitable consideration’). The cession of sovereignty appears to have been put to the chiefs as
a mere formality or technicality. It would have no impact at all on their rights and independence but would, at the stroke of a pen, at last allow the ‘Governor’ to control the Europeans. We note that the rangatira referred to Hobson as ‘Governor’ and not ‘Lieutenant-Governor’, and we adopt this usage from this point forward when discussing the Māori perspective.

But Hobson spoke in English, and Mathew could understand only that language. What did Henry Williams tell the rangatira in Māori? As Williams himself put it, he told them the treaty was an act of protection – ‘love’, in fact – on the part of the Queen, designed to preserve their property, rights, and privileges, and it would safeguard them from any foreign power, like France. In a letter to Bishop Selwyn of 12 July 1847, Williams did not shed much light on how he explained the implications of the Queen having ‘government’, but did say he had emphasised that the Queen was ‘desirous to protect them in their rights as chiefs, and rights of property’, and that they should admit the Queen’s Government, given the number of settlers arriving in the country.

A French observer, Father Louis Catherin Servant, whose understanding of the Māori spoken by Williams may have been better than his understanding of the English spoken by Hobson, explained the Crown’s message thus:

‘The governor proposes to the tribal chiefs that they recognise his authority: he explains to them that this authority is to maintain good order, and protect their respective interests; and that all the chiefs will retain their powers and possessions.’

At Mangungu, Hobson’s approach was very similar. After his exchange with Maning, whom he rebuked for suggesting Māori would be better off if they rejected the treaty, Hobson told the rangatira they would be stripped of their land by disreputable British subjects unless they gave him their authority to control such people. This message would have reassured Taonui, for example, who had said, ‘We are glad to see the governor let him come to be a Governor to the Pakeha’s as for us we want no Governor we will be our own Governor’. The Wesleyan missionary John Hobbs recalled how he had translated Hobson’s repeated assurances... that the Queen did not want the land, but merely the sovereignty, that she, by her officers, might be able more effectually to govern her subjects who had already settled... or might... arrive, and punish those of them who might be guilty of crime.

Hobbs thought that these promises had been important in securing the chiefs’ signatures.

We note that Crown witnesses acknowledged that this method of gaining Māori agreement to the treaty – through reassurances and promises – was utilised during the public hui on 5 February. Loveridge said there was ‘no doubt that the missionaries sought to present the Treaty in the best possible light’, emphasising Crown protection rather than ‘the changes which would occur under the new regime’. Alan Ward accepted that the Crown’s representatives had failed to ‘enter upon full discussion about the extent of the state’s future authority’, although he thought this omission was ‘understandable’ given the Crown’s sense of urgency.

Crown counsel, however, did not make any such concession, arguing, for example, that ‘The concept of sovereignty must have been explained by Hobson and translated into Māori by Henry Williams’, as Hobson went through the treaty clause by clause. Here, in the absence of any written record corroborating Hobson’s claim to have spoken so fully, Crown counsel relied on Hobson having dutifully followed Normanby’s instructions to be frank, rather than on the range of evidence to the contrary. At this point, we note Mathew’s remark that Hobson’s speech was brief and that we have no record that it gave any explanation of sovereignty.

Crown counsel also pointed to the discussions between the rangatira and the missionaries on the evening of 5 February at Te Tou Rangatira as an occasion at which a full explanation of the Treaty’s meaning and effect was given. A fragment of evidence from Williams provides the
basis for counsel’s confidence that a full explanation was provided. Williams recalled in later years of this encounter that:

We gave them but one version, explaining clause by clause, showing the advantage to them of being taken under the fostering care of the British Government, by which act they would become one people with the English, in the suppression of wars, and of every lawless act; under one Sovereign, and one Law, human and divine.\(^92\)

Crown counsel felt that this indicated that ‘Māori would have understood Te Tiriti / the Treaty to mean they would come under the authority of the Governor and that British law would apply to them’.\(^93\)

Among the historians, Crown counsel found some support for this position from Alan Ward, who suggested that this discussion was ‘probably more detailed’ than had occurred during the day-time hui and that it had led to the ‘general (though not total) consensus’ the following morning to sign.\(^94\)

We consider Orange’s proposition of what occurred on the evening of 5 February to be convincing. As set out in chapter 8, she suspected that Williams had kept up his persuasive line of argument adopted during that day’s meeting, emphasising the beneficial aspects of the treaty and distracting Maori attention from matters to which they might take exception.\(^95\)

It is this reassurance, we think, that best explains why rangatira like Te Kēmara signed te Tiriti. If Crown counsel is correct, then Te Kēmara would have had to accept that there was indeed some basis for his fear that the Governor would be ‘up and Te Kemara down’,\(^96\) and yet still signed the following day. Patuone would have had to accept that his desire for the rangatira and Hobson to be of equal status was a false hope, and yet still signed te Tiriti. It seems most unlikely that, after the Governor had earlier avoided the subject, the missionaries would that evening have fully explained Hobson’s law-making and enforcement capacity, and even less likely that this would have swayed reluctant rangatira to sign.

We might add that speculation about what may have been said on the evening of 5 February, and to whom, cannot in itself provide the basis for a compelling case for either the Crown or claimants. We recall that Loveridge lamented the lack of any adequate record of the informal meeting at Te Tou Rangatira beyond Williams’s ‘brief reference’.\(^97\) It is, however, this reference – rather than the fuller accounts of the daytime hui by Colenso and others – that Crown counsel relied upon as compelling evidence of the impossibility of the rangatira understanding the treaty as meaning ‘anything other than coming under the authority of the new Governor and subject to British laws’.\(^98\)

(2) The understanding of the rangatira

It can be seen that the understanding of the rangatira had several foundations. First, it was based on te Tiriti’s key words, including, in particular, kāwanatanga and rangatiratanga, which we discussed above, as well as the explicit guarantees about Māori retention of their land. Secondly, it was based on the assurances during the 5 February and 12 February hui at Waitangi and Mangungu offered up by Hobson and his missionary agents. As we have shown, these did not spell out the full implications of British sovereignty. Thirdly, there was the chiefs’ kōrero with the missionaries on the evening of 5 February. As noted, we do not know the nature of this discussion, but there is no reason to believe that the missionaries would not have continued with the same assurances made during the day’s hui. We do not doubt that this kōrero was influential in the decision of most rangatira to sign on 6 February. As Hōne Heke had remarked during the first day’s hui, the chiefs looked to the missionaries for advice: ‘it is not for us but for you, our fathers you missionaries – it is for you to say, to decide, what it shall be’.\(^99\)

We focus here on the recorded speeches of the rangatira. What light do they shed on the Māori understanding? The chiefs did not, of course, speak with one voice. It would be wrong to suggest there was unanimity of understanding,
even among those who signed. Accordingly, we proceed with caution.

None of the rangatira dwelled on the specific wording of the Māori text, let alone the English text. Their focus was on concepts rather than terms. If there was a common theme at Waitangi and Mangungu, it was whether they would have a governor and how powerful he would be. Some rangatira also expressed concern about the extent of European occupation of their lands. Mathew was impressed by their questions: as he put it:

During the whole ceremony with the chiefs, nothing was more remarkable than the very apt and pertinent questions which they asked on the subject of the treaty, and the stipulations they made for the preservation of their liberty and perfect independence.\(^{100}\)

Servant characterised the speeches in a similar way:

A great number of chiefs then speak, displaying one after another all their Maori eloquence. The majority of orators do not want the governor to extend his authority over the natives, but over the Europeans exclusively.\(^{101}\)

Some rangatira expressed great concern at the prospect that the Governor might sit above them, and rejected him for that reason. It was this resistance that the Crown seems to have regarded as its strongest point.\(^{102}\) As Crown counsel put it,

it seems quite clear from the evidence available concerning the speeches made by rangatira in deciding whether or not to sign that they understood the fundamental change to be effected by the document being put to them: the Governor would be in a position of authority over them.\(^{103}\)

Here, Crown counsel relied upon the recorded statements of rangatira like Te Kēmara, Rewa, and Tāreha at Waitangi, and Taonui and Papahia at Mangungu. To underline his point, he referred to Ngāti Rēhia's view that this knowledge was what prevented Tāreha from signing.\(^{104}\) Those who did sign, argued the Crown, did so in spite of their concern that the Governor would be above them. In other words, all signatories accepted the supremacy of the Governor.

We disagree. While we cannot be certain this applies to every rangatira who accused the Governor of having a plan to subjugate and enslave them (as ‘mischievous’ Pākehā had predicted), we consider that some at least were doing so to draw out a denial. The same motive would have prompted some rangatira who objected to the Governor having a much higher authority than their own. This conclusion is supported by the analysis in the Tribunal’s *Muriwhenua Land Report* that rangatira were using ‘impassioned declamation’ at the treaty hui as a ‘standard oratorical tool’.\(^{105}\)

Moreover, we consider that the signatories believed – with justification – that the oral undertakings and assurances they received from Hobson and the missionaries were part of the agreement. There are several examples of these oral additions. Te Kēmara demanded that the rangatira not be ‘over-run’ with white people,\(^{106}\) and the promise he received of his ‘perfect independence’ would have reassured him in this regard. When Busby promised that any land found not to have been properly acquired from Māori would be returned, that also became part of the agreement, especially after Hobson repeated the promise. Mohi Tāwhai’s reference at Mangungu to ‘fair purchases’\(^{107}\) suggested, too, that the rangatira expected their understanding of the transactions to apply. A further example involves the so-called ‘fourth article’ of the treaty. While it may appear to have essentially been a concession by Britain to Pompallier, with the protection of Māori custom the incidental by-product of sectarian rivalry,\(^{108}\) we think it correct to regard it as an oral addition to the Crown’s treaty undertakings to the rangatira.

We also consider that, where the rangatira placed certain conditions upon their agreement, and neither Hobson nor the missionaries voiced any direct or indirect opposition, these too became part of the bargain. No fewer than three rangatira who signed – Te Kēmara and Patuone at Waitangi and Papahia at Mangungu – and one whose assent is in doubt (Tāreha), told the Governor that they must be ‘equal’ with him. Te Kēmara and Tāreha said that,
if there was no such equality, Hobson could not stay. In Patuone’s case, according to Pompallier, the chief brought ‘his two index fingers side by side’ to demonstrate that he and Hobson ‘would be perfectly equal, and that each chief would similarly be equal with Mr Hobson.’ There is no record of Hobson contradicting this understanding. When the rangatira signed or affixed their marks to te Tiriti, therefore, they were agreeing not just to the written text but also to a series of verbal promises, express or implied.

Conversely, matters that were not discussed or set out in the Māori text could not form part of the agreement. As we have said above, there is no evidence that Hobson explained that English law would apply to Māori. We agree with the Muriwhenua Land Tribunal, which observed that:

the Treaty debate is more significant for what was not said than for what was. It was not said, for example, that, for the British, sovereignty meant that the Queen’s authority was absolute. Nor was it said that with sovereignty came British law, with hardly any modification, or that Maori law and authority would prevail only until they could be replaced.

Nor was there any explanation that the Crown would have a monopoly over land transactions with the rangatira. Indeed there is confusion about whether the words even conveyed a right of first refusal, although Williams himself stated in later years that this – rather than a Crown monopoly – was how he had explained pre-emption to the rangatira. But none of the back-translations of te Tiriti we discussed in chapter 7 – modern or historical – clearly support this idea. On 11 February 1840, only a few days after te Tiriti was signed at Waitangi, Colenso wrote to the Church Missionary Society (CMS) stating that the rangatira were fully unaware of the British intention behind the pre-emption text: ‘As to their being aware that by their signing the treaty they have restrained themselves from selling their land to whomsoever they will; I cannot for a moment suppose that they can know it.’ Colenso noted that one signatory, the Ngāti Rangi chief Hara, had just offered land to a settler. When told that this was disallowed Hara reportedly replied ‘What! do you think I won’t do as I like with my own?’

Colenso had written to the CMS to justify his interruption of Hobson on the morning of 6 February, when he had ventured that the chiefs did not understand the treaty. By this he clearly meant they did not understand the British intentions (which had not been fully explained to them). The rangatira had their own understanding, and this was what allowed them to step forward and sign.

What was that understanding? We return to this in our discussion of the treaty’s meaning and effect, below. Suffice it to say here that, to the extent we can generalise, we believe that the rangatira regarded the treaty as enhancing their authority, not detracting from it. On the evidence presented to us, the view put by the Crown at our inquiry – that the rangatira willingly handed full control of their territories to the British Crown – is not sustainable. Our view is that, in Māori eyes, the authority over New Zealand that the Governor would have – te kāwanatanga katoa – was primarily the power to control British subjects and thereby keep the peace and protect Māori. This was the message conveyed by Hobson. He would be the Pākehā rangatira and a partner in the alliance that had been developing for decades between Bay of Islands and Hokianga rangatira and the Crown. The rangatira may also have understood kāwanatanga as offering Britain’s protection against foreign threats, as Williams had said. On the question of land transactions, some kind of relationship would be established between the British and the rangatira. While not explicitly part of the treaty itself, moreover, rangatira would also have understood that – in keeping with its offer of protection – the Crown would enforce Māori understanding of pre-treaty land transactions, and therefore return land that settlers had not properly acquired.

It could be contended that the rangatira must have recognised that their ongoing ‘independence’ could not literally be ‘perfect’ with the arrival of a British kāwana. Many had been to New South Wales and, as Binney pointed out, knew that kāwanatanga ‘was a term for a position of authority, associated with the idea of rule by mediation and by force. This [in New South Wales] was
an intervening authority." The rangatira were aware that Britain was a powerful nation. Many must have understood that one of Britain’s primary concerns was to preserve the peace. Some must have expected that the British would exert its power to that end. To a greater or lesser extent, therefore, all the rangatira were aware that they were taking a risk by welcoming British authority into their country. That, we think, is precisely why they sought assurances that Hobson would be their equal, rather than being ‘up’ while they were ‘down’. In light of the changes that were already occurring, they wanted a powerful rangatira to control Pākehā and protect them from foreign powers. But they also knew that agreeing to the Governor’s presence constituted a significant step with ongoing ramifications. Therefore, they were not willing to accept such an arrangement without first seeking a guarantee that they would retain their independence and authority (their rangatiratanga), and not be treated as the indigenous people of New South Wales had been.

Ultimately, we agree with Orange that the chiefs placed ‘a remarkable degree of trust’ in their advisers. They are very likely to have signed te Tiriti with some lingering doubts, although, as Orange put it, ‘Maori expectations of benefits from the agreement must in the end have outweighed fears, enabling reluctant chiefs to put aside reservations.’ That decision to sign may have been a collective one by those who signed, made the evening before at Te Tou rangatira. Mathew recorded that two unnamed rangatira told him that ‘yesterday they had not understood the matter, but . . . now they had made enquiry and duly considered it, and thought it was good, and they would sign it.’ Alternatively, some rangatira may have felt pressure to sign when they saw their rivals step forward to do so, thereby potentially securing benefits that might not be available to non-signatories. Few, if any, however, would have foreseen that signing te Tiriti would lead to immutable arrangements. Rather, the very nature of the agreement meant that questions of relative authority remained to be negotiated over time on a case-by-case basis.

We note at this point that some claimants suggested that care be taken in analysing the signatures or marks on the Waitangi Tiriti sheet. Some names appear without a mark next to them; others are recorded as being on behalf of another person – in one case, a rangatira who was already deceased. We ourselves noted some discrepancies between the form of the chiefs’ tohu on he Whakaputanga and te Tiriti that are not readily explicable. But we do not believe there was any attempt at subterfuge by the missionaries who collected the signatures, or that the number of signatories has been overstated. The Waitangi Tiriti sheet is difficult to interpret and it is not surprising that it contains some curiosities, but we are certain that the subscription to te Tiriti was largely as has been recorded.

(3) He Whakaputanga
There is one other matter to note about the Waitangi hui before we elaborate on the meaning and effect of the treaty in February 1840. That is the striking absence of any explicit mention of he Whakaputanga, at least in European observers’ accounts. There was certainly direct reference to its existence in Busby’s invitation to rangatira to attend the gathering, as well as references in the text of the treaty itself to ‘te Wakaminenga o nga hapu o Nu Tirani’ (or, in English, ‘the Confederation of the United Tribes of New Zealand’). Occasional reference to it may also have been made in the speeches – for example, in Hobson’s mention of the chiefs’ prior request for protection (of their independence). But there was no record of any explicit discussion of its ongoing relevance or replacement by the treaty.

From the British side, this lack of discussion was probably because the confederation had not formally met as Busby had initially hoped, and was accordingly not regarded as a functioning entity. Obviously, however, Busby still thought it capable of meeting, albeit only to cede sovereignty. To that extent the confederation was merely a device to name in the treaty. We presume that Hobson took it for granted that the treaty would supersede the declaration, and felt no need to spell that out for the rangatira. Crown counsel told us that the rangatira ceded their sovereignty under the treaty, and thus relinquished any independent authority that they might have asserted under he Whakaputanga. In other words, the treaty nullified the declaration.

We doubt very much that, by February 1840, the
rangatira had relinquished their assertion of mana and independence in 1835, signatures on which had been gathered as recently as 1839. Moreover, they may well have felt that there was nothing in the treaty to challenge that position. He Whakaputanga had undoubtedly asserted the chiefs’ kingitanga and mana over the land, as well as their rangatiratanga. It had provided that no one other than the rangatira would have the power to make law within their territories, nor exercise any function of government (kāwanatanga) unless appointed by them and acting under their authority. It had also contained a request for Britain to use its power to protect Māori from threats to their rangatiratanga. On the face of it, the treaty may well have seemed like the application of these provisions. The chiefs were being assured of the retention of their ‘tino rangatiratanga.’ This was probably how Hobson’s promise to the rangatira on 5 February of their ‘perfect independence’ was translated.

In return, they were allowing the exercise of another function of government in the form of the kāwana and his authority. Claimant counsel argued strongly that te Tiriti gave effect or expression to He Whakaputanga.

Such speculation, either way, has its limits. There is no scholarly debate to refer to on the matter because of the tendency to neglect He Whakaputanga that we discussed in chapter 4. However, we are inclined to agree with the claimants that the continuities between He Whakaputanga and te Tiriti created a greater onus on Hobson to explain clearly why and how the latter would nullify the former. That clarification seems to have been altogether absent at Waitangi and Mangungu in February 1840.

10.4 The Meaning and Effect of the Treaty

Having set out how the treaty texts were formulated and how the oral debate was conducted, we now set out our conclusions on the meaning and effect of the treaty.

10.4.1 Relevance of texts to treaty meaning and effect

The first matter to address is the issue of what ‘the treaty’ actually comprised in February 1840. We have already concluded that the verbal assurances formed a crucial part of the agreement. ‘The treaty’ clearly also included the text which was read to the rangatira and which they signed: te Tiriti. But are both treaty texts relevant to the treaty’s meaning and effect?

We heard different arguments about this from the parties. Claimant counsel submitted that the English and Māori texts were two quite separate documents. The claimants saw the English text as irrelevant, in that the rangatira did not draft it, read it, or sign it. It only served as a distraction from the actual agreement: Dr Patu Hohepa went further and saw it as having an entirely negative influence, destroying the words and promises of Busby, Hobson, and Henry Williams given at Waitangi and Hokianga.

The claimants also made specific submissions on our statutory functions. Counsel for Ngāti Toerien argued that the Tribunal’s governing legislation itself needed amendment, in that it relied on the ‘erroneous’ notion that the English and Māori texts were ‘in fact two versions of the same agreement’. If Parliament had intended to ‘give weight’ to the English text, said counsel, ‘this would be in breach of the “Treaty principles” that the Act purports to uphold.’ Annette Sykes and Jason Pou submitted that the Tribunal’s statutory requirement to ‘have regard to’ both texts left it open to the Tribunal effectively to discount the English text if it so chose. And counsel for Te Rarawa contended that the Tribunal was under no obligation to ‘give effect to’ the English text or ‘reconcile’ the two texts. Rather, counsel submitted, we were bound to interpret the treaty in accordance with international law, particularly the rules of contra proferentem (that any ambiguity in treaties is construed against the drafting party) and in dubio mitius (that unclear treaty provisions are interpreted in the way that imposes minimum obligations on the parties).

The Crown, by contrast – while acknowledging there were differences between the two texts – saw the treaty as one document in two languages. The Tribunal’s duty, counsel submitted, was to have regard to both texts of the treaty as required by section 5(2) of the Treaty of Waitangi Act 1975. Crown counsel quoted approvingly the statement in the Ngai Tahu Report that ‘while there are two
texts there is only one Treaty'. The Crown also urged us not 'to apply the rules of treaty interpretation put forward by the claimants', in part because there was no enforceable body of 'international law' in 1840.124

Section 5(2) reads as follows:

In exercising any of its functions under this section the Tribunal shall have regard to the 2 texts of the Treaty set out in Schedule 1 and, for the purposes of this Act, shall have exclusive authority to determine the meaning and effect of the Treaty as embodied in the 2 texts and to decide issues raised by the differences between them.

Section 6 then sets out the Tribunal's functions. The first is to inquire into claims of prejudice caused to Māori claimants by any legislation, delegated legislation, Crown policy, act, or omission which is 'inconsistent with the principles of the Treaty'. The centrality of the treaty principles to the Tribunal's functions is emphasised in the Act's preamble, which states that the Act's purpose is to:

provide for the observance, and confirmation, of the principles of the Treaty of Waitangi by establishing a Tribunal to make recommendations on claims relating to the practical application of the Treaty and to determine whether certain matters are inconsistent with the principles of the Treaty.

From these provisions we conclude that we are bound by our legislation to regard the treaty as comprising two texts. But we consider that, once we have considered the English text with an open mind, we are under no obligation to find some sort of middle ground of meaning between the two versions.

However, we do agree with the Crown that we are under no obligation to interpret the treaty in accordance with international law. Our first reason is that our present task is to establish the meaning and effect of the treaty at the time of its signing in February 1840. We are certain that no court in 1840 with jurisdiction to interpret the treaty would have done so in the manner asserted by counsel for Te Rarawa. We further note that neither of the two international arbitral tribunals that considered the treaty in 1854 (the customs claim of American firm U L Rogers and Brothers) and 1920 (the American William Webster's claim to land purchased in New Zealand prior to 1840) gave any consideration to the Māori text. Both concluded that Britain had obtained a straightforward cession of sovereignty.125 Secondly, it is the role of courts to interpret treaties according to the law governing the interpretation of treaty texts. By contrast, as noted above, the Tribunal's jurisdiction centres not on the strict legal interpretation of the treaty but on its 'principles'.

We do, however, agree with the approach adopted by the Tribunal in previous reports, which have given special weight to the Māori text in establishing the treaty's meaning and effect. They have done so because the Māori text was the one that was signed and understood by the rangatira – and indeed signed by Hobson himself. In 1983, the Motunui Tribunal endorsed the submission of the Department of Māori Affairs that should any question arise of which text should prevail the Maori text should be treated as the prime reference. This view is based on the predominant role the Maori text played in securing the signatures of the various Chiefs.126

In 1987, the Orakei Tribunal likewise stated that, in the case of any ambiguity between the two texts, it would place 'considerable weight' on the Māori text.127 We agree, and in doing so note the similarities with the principles of international law that counsel for Te Rarawa urged us to follow.

10.4.2 Te pūtake: the status of the parties to the treaty

We have now reviewed the two texts of the treaty and discussed their key terms. We have related Hobson's and the missionaries' approach to communicating the treaty's contents to the rangatira, as well as the nature of their responses to the chiefs' questions. We have drawn conclusions on the understanding the rangatira will have taken from these discussions. We have also commented on the relationship of the two treaty texts to each other, as well
as the priority we are to accord one over the other. We must now turn to the nub of the matter – the meaning and effect of the treaty in February 1840.

The principal issue is really how kāwanatanga and rangatiratanga were to exist side by side. Could they do so in a manner that retained the substance of both? Dr (later Professor) James Belich suggested that, on the face of it, it was not easy to reconcile ‘te kawanatanga katoa, or complete government’ (or ‘governorship’), with ‘te tino rangatiratanga,’ ‘the unqualified exercise of their chieftainship.’ It has often been argued that rangatiratanga, like sovereignty, could not be limited or qualified (see section 10.3.3(3)). Mutu called it ‘unqualified,’ and Hohepa, within our inquiry, described it as ‘absolute’ and ‘unfettered.’ By contrast, the Crown submitted that rangatiratanga was retained ‘within the rubric of an overarching national Crown sovereignty’ and that Māori understood that they were to be under the authority of the kāwana.

The claimants essentially split two ways on the balance that was to exist between the Crown and Māori after te Tiriti was signed, albeit with some nuanced positions in between. Some argued that the authority granted the British Crown was of a lesser status than rangatiratanga and effectively subject to the chiefs’ discretion. If necessary, rangatiratanga would prevail. Others, however, submitted that the Crown’s authority would exist on an equal or dual basis. They spoke of ‘power sharing,’ ‘equal footing,’ and ‘dual power.’ The Crown would control Pākehā, and the two sides would exercise authority jointly ‘in respect of Maori pakeha interactions.’

Differences in opinion among the claimants are not surprising. The northern rangatira did not speak with one voice on the subject in February 1840 and we should not realistically expect hapū representatives to do otherwise today. It is clear that the rangatira considered their options at Waitangi on the basis of the experiences and priorities of their own hapū. Matthew Palmer wrote that:

Each Māori hapū, led by their rangatira, would have made judgements about whether to agree to the Treaty based on a combination of factors. These would have varied depending on the geographic circumstances of the hapū, the nature and extent of their experience of Europeans, and their strategic position in relation to other hapū.

This raises the question as to whether the treaty had different meanings in different locations. Around Waitangi, for example, did Te Kēmara’s understanding hold sway, while Nene’s interpretation applied in Hokianga? Perhaps the more practical approach is to consider that the treaty’s effect is best understood by what all the signatory rangatira – or at least the great majority of them – would have agreed upon. As we have indicated, we believe this was that the rangatira understood kāwanatanga primarily as the power to control settlers and thereby keep the peace and protect Māori interests accordingly; that rangatirata would retain their independence and authority as rangatirata, and would be the Governor’s equal; that land transactions would be regulated in some way; that the Crown would enforce the Māori understanding of pre-treaty land transactions, and therefore return land that settlers had not properly acquired; and that it may also have involved protection of New Zealand from foreign powers. We think that few if any rangatira would have envisaged the Governor having authority to intervene in internal Māori affairs – though many would have realised that where the populations intermingled questions of relative authority would need to be negotiated on a case-by-case basis, as was typical for rangatira-to-rangatira relationships. It is significant that, while the British intended to acquire sovereignty, meaning the power to make and enforce laws over all, this was not what Hobson explicitly had sought. The debate was characterised by his emphasis on protection and a Māori concern that the Governor would not have authority over them.

We note, in this regard, the way that Tāmati Waka Nene’s kōrero at Waitangi has at times been elevated to a kind of representative voice of the chiefs in the national narrative. Certainly, Nene has often been regarded as having changed the course of the hui at Waitangi on 5 February with his speech, and it is Nene who is frequently seen as having made the definitive statement of the chiefs’
position. An example of this is Justice Bisson’s judgment in the Lands case. There the judge suggested that ‘the Maori concept is best summed up by the words of Tamati Waka Nene when Captain Hobson presented the Treaty to the Chiefs at Waitangi for signature’. These words included, of course, the plea for Hobson to remain as ‘a father, a judge, a peace-maker’. Justice Bisson also quoted Patuone asking Hobson to remain and ‘be a father for us’, as well as Hobson informing Gipps that he had assured the chiefs ‘that they might rely implicitly on the good faith of Her Majesty’s Government’. He concluded that:

The passages I have quoted from the speeches of two Maori Chiefs and from the letter of Governor Hobson enable the principles of the Treaty to be distilled from an analysis of the text of the Treaty.

Nene may well have made the key speech at Waitangi, and his views may have been shared by other rangatira. But we think it a mistake to regard his intervention as decisive simply because Hobson (and other Pākehā) described it as such. It suited Hobson and the missionaries for Nene’s voice to be considered representative. It does not necessarily follow that the position Nene articulated was the understanding of each rangatira when stepping forward to sign. Te Kēmara’s closing remark about rank and power might equally have been representative, for example: ‘Let us all be alike . . . Then, O Governor! remain.’ Or, for that matter, so could Taonui’s statement, about Hobson being ‘a Governor to the Pakehā’s’.

Our view is that, on the basis of what they were told, the signatories were led to believe that Hobson would be a rangatira for the Pākehā and they would retain authority within their own autonomous hapū. This is consistent with Phillipson’s suggestion that the rangatira were interested in a Busby-like figure, but one with enough power to control the settlers and thereby create the conditions for peace and prosperity. Indeed, they probably welcomed help in this regard. As Belich put it, ‘A governor would free the chiefs from the burden of ruling the large new Pakeha communities, and assist them in policing the Pakeha–Maori interface.’ They were prepared, as they had been in the past, to agree to an escalation of the level of official British involvement in New Zealand to respond to the complications posed by the increasing influx of settlers. The treaty, in that sense, connects to article 4 of he Whakaputanga, to the petition to King William IV, to Hongi’s overtures to King George IV, and indeed to Te Pahi’s request in Sydney in 1808 for protection for Māori from British ships’ masters.

Who, though, would hold the upper hand in any disagreement between the Crown and the rangatira over matters involving interaction between Māori and Pākehā? The relationship between kāwanatanga and rangatiratanga was not made explicit in either the text of te Tiriti or the debates. However, it is clear that the rangatira did not agree that the Governor should have ultimate authority. Rather, many explicitly sought assurances that they and the Governor would be equals, and appear to have signed te Tiriti only on that basis. As we have said, in practice this would mean that where the Māori and Pākehā populations intermingled, questions of relative authority remained to be negotiated over time on a case-by-case basis. We further consider that the Māori intention was for Crown authority in Māori–Pākehā interactions to be exercised co-operatively and in a way that protected rangatiratanga rather than impinged on it. Such was the chiefs’ understanding of the relationship between kāwanatanga and rangatiratanga, forged in translations of the Bible, in he Whakaputanga, and through the assurances of Hobson and his missionary translators.

As noted, the rangatira may well have agreed that the Crown protect them from foreign threats and represent them in international affairs, where it was necessary – this was the firm conclusion of Palmer and the tentative conclusion of Orange. Such an interpretation certainly fits with the 1831 petition and article 4 of the declaration, as well as the sentiments expressed by Nene and Patuone about the French on 5 February 1840 and Nene’s 1860 recollections at Kohimārama. No competing voice was raised on the subject at the treaty debates in February 1840. But, again, the chiefs’ emphasis was on British protection of their independence, not a relinquishment of their sovereignty.
We think it likely that the rangatira viewed their agreement with Hobson at Waitangi as a kind of strategic alliance. It followed on from and extended the alliance that they saw as dating back at least to 1820, and which had been advanced since then by important developments in the 1830s. These included King William’s responses to the 1831 petition and the appointment of Busby, and subsequent steps, such as Busby’s assistance in the adoption of a ‘national’ flag and the formulation of he Whakaputanga. Implicitly, the treaty also represented a selection by the rangatira of Britain over France. They had chosen a powerful ally, with what they considered good reason. At the same time, they would have regarded the relationship as subject to further and ongoing negotiation as the two peoples came increasingly into everyday contact.

10.4.3 The British view of the treaty’s effect in the process of acquiring sovereignty

The British, by contrast, saw the treaty as having established a markedly different arrangement. They saw its primary purpose as being to acquire Māori consent to a cession of sovereignty. Crucially, they saw such a cession as permanent, so that Māori could never legitimately seek to renegotiate the agreement made, still less reclaim the political authority which, according to the British, they had surrendered.

We explained in chapter 6 how the British saw Māori consent as only one step in the process of the acquisition and assertion of sovereignty. The process was essentially concluded in October 1840 when the May proclamations were gazetted. The British sovereignty was asserted over all of New Zealand. Annexation was backdated to 6 February with respect to the North Island. Later, there were other backdatings of acts of state as well, including indemnifying officials for their activities since their arrival in New Zealand. The date of the proclamations in New South Wales, 14 January, held a particular significance. From it, for example, the establishment of a British system of land tenure in New Zealand was to be dated, and it would also be selected as the date from which English laws operated throughout the new colony.

English law, in essence, meant that Britain acquired sovereignty when it said it had. But the steps required to reach the state where this could be confidently stated, Professor Paul McHugh argued, meant that it was difficult to identify an exact ‘moment’ when Britain asserted sovereignty.

In McHugh’s view, then:

British sovereignty, though it was declared by Proclamation, was regarded as having been acquired by a combination of jurisdictional steps extending to British subjects and in respect of Māori. Those steps baked into the sovereignty of the whole.

If he had to state an exact ‘moment’ when sovereignty passed, he considered it was 21 May 1840, the date of Hobson’s proclamations:

Technically, in terms of British constitutional law, the issue of the Proclamations amounted to the ‘moment’ of British sovereignty, at least for the purposes of British and colonial courts. Strictly, it amounted to the formal and authoritative announcement by the Crown that the prerequisite it had set itself before such annexation could occur – Māori consent – had in its estimation been satisfied and that the Crown could now exert sovereign authority over all the inhabitants of the New Zealand islands.

For our purposes, what is significant is that after February 1840 Hobson continued to act in accordance with his instructions; he continued to gather signatures on the treaty sheets, and issued proclamations that were later returned for publication in London. These actions in turn reflected the British legal requirements for acquiring sovereignty in territories where the current inhabitants possessed some form of sovereign capacity.

The British authorities regarded the actions Hobson had taken as merely fulfilment of Normanby’s instructions. There was no questioning of Hobson’s judgment when his correspondence was received in London – that was, simply put, the way empires worked. Further, the English text confirmed that they had achieved what they had set out to obtain: Māori consent.
It is clear, however, that the rangatira did not see the treaty in this light. They did not see it as merely a prerequisite to the British Crown assuming supreme authority in their territories. Nor did they anticipate that the effect of the treaty would be permanent: a bargain that, once struck, could never be undone. But Hobson's response to the attempted withdrawal of signatures at Mangungu gave an early indication that the British regarded their consent as irrevocable. Because Hobson dismissed their objections so peremptorily, it is impossible to know quite what these Hokianga rangatira meant when they were recorded as wishing to reject the Queen. Hobson, however, had made it clear that, from the British perspective, the time for further discussion had already passed: 'the sovereignty of Her Majesty over the northern districts' was now 'beyond dispute'.

**10.4.4 The treaty agreement**

Given the divergence of this British understanding from that of the rangatira, was there really an agreement to be found in the treaty? The claimants stressed the impossibility of reconciling the meaning of the two texts. Moreover, their tūpuna did not understand the words of the English text, just as Hobson had no understanding of the words of te Tiriti. But Hobson signed te Tiriti, not the Treaty. The irony of this has not gone unnoticed. Ruth Ross inverted a Member of Parliament's question in 1865 as to whether the rangatira were 'bound by what they signed or by what Captain Hobson meant them to sign' by asking 'Was the Crown bound by what Hobson signed, or by what he assumed its meaning to be?'

The Muriwhenua Land Tribunal thought there were good intentions on both sides but that the parties were each 'locked into their own world-view' and 'talking past each other'. As the Tribunal put it,

Maori expected the relationship to be defined by their rules. It was natural to think so and, far from disabusing them of that view, the Treaty and the debate reinforced it. By the same token, the British, true to what was natural to them, assumed that sovereignty had been obtained by the Treaty and therefore matters would be determined by British legal precepts.

The Muriwhenua Land Tribunal nonetheless concluded that an understanding was reached:

Whatever the mismatches of Maori and Pakeha aspirations, none gainsay the Treaty's honest intention that Maori and Pakeha relationships would be based on mutual respect and the protection of each other.

We also think that there was an agreement reached in the treaty, albeit for a different reason. In our view, the meaning and effect came from the Māori text, on the one hand, and the verbal explanations and assurances given by Hobson and the missionaries, on the other; the similarity of the written text and the oral agreement undermines the very notion that the two sides talked past each other. As noted, for example, 'tino rangatiratanga' was likely the way Williams translated Hobson's assurance to the rangatira of 'perfect independence'. Hobson was instructed to place particular emphasis on the dangers the rangatira would face if Britain was not given authority to control its subjects. This received similar emphasis in the Māori text of the treaty and was also stressed verbally by both Hobson and his missionary translators.

Although Hobson and his agents concealed the full British intentions the fact remains that there was still an agreement made in February 1840. As we have said, Hobson laid no emphasis on law-making and law enforcement, which – after all – was the overriding intention of the British, concentrating instead on acquiring control over British settlers. What he appeared to be asking for was agreement to what had been the Colonial Office's plan as recently as December 1838: the exercise of authority over British subjects only. As such, he omitted to mention the very powers Britain then claimed it had obtained: the authority to make and enforce law for all people and over all places in New Zealand.

Our essential conclusion, therefore, is that the rangatira did not cede their sovereignty in February 1840; that is,
they did not cede their authority to make and enforce law over their people and within their territories. Rather, they agreed to share power and authority with the Governor. They and Hobson were to be equal, although of course they had different roles and different spheres of influence. The detail of how this relationship would work in practice, especially where the Māori and European populations intermingled, remained to be negotiated over time on a case-by-case basis. But the rangatira did not surrender to the British the sole right to make and enforce law over Māori. It was up to the British, as the party drafting and explaining the treaty, to make absolutely clear that this was their intention. Hobson’s silence on this crucial matter means that the Crown’s own self-imposed condition of obtaining full and free Māori consent was not met.

This conclusion may seem radical. It is not. A number of New Zealand’s leading scholars who have studied the treaty – Māori and Pākehā – have been expressing similar views for a generation. In that sense, our report represents continuity rather than change. Moreover, the conclusion that Māori did not cede sovereignty in February 1840 is nothing new to the claimants. Indeed, there is a long history of their tūpuna protesting about the Crown’s interpretation of the treaty. We will examine the history of that protest, and its significance for the treaty claims of northern Māori, in stage 2 of our inquiry.

We have considered the full range of evidence on Crown–Māori relations from 1769 until February 1840 – an opportunity that we alone among Tribunal panels have had – and our principal conclusion is inescapable: Bay of Islands and Hokianga rangatira did not cede their sovereignty when they signed te Tiriti at Waitangi, Waimate, and Mangungu. Those who have made the assumption that the rangatira ceded sovereignty in February 1840 have largely ignored the Māori understanding. Erima Henare put it that the enduring notion of Māori ceding their sovereignty ‘is a manipulation of the past’. He added:

There is an inherent institutional bias against our case. The bias comes with the myths that explain and justify the New Zealand State and the idea of undivided parliamentary sovereignty. The history invoked is not the Māori history. The Treaty invoked is the English version, not the Māori version.¹⁴³

In this inquiry, we have been able to give thorough consideration to all the perspectives presented to us. We have reached the conclusion that Bay of Islands and Hokianga Māori did not cede sovereignty in February 1840. In drawing this conclusion, we say nothing about how and when the Crown acquired the sovereignty that it exercises today. Our point is simply that the Crown did not acquire that sovereignty through an informed cession by the rangatira who signed te Tiriti at Waitangi, Waimate, and Mangungu.

What does this mean for treaty principles? Given we conclude that Māori did not cede their sovereignty through te Tiriti, what implications arise for the principles of the treaty identified over the years by both this Tribunal and the courts? That is a matter on which counsel will no doubt make submissions in stage 2 of our inquiry, where we will make findings and, if appropriate, recommendations about claims concerning alleged breaches of the treaty’s principles. It suffices to reiterate here that, in February 1840, an agreement was made between Māori and the Crown, and we have set out its meaning and effect. It is from that agreement that the treaty principles must inevitably flow.

¹⁰.⁵ Kōrero Whakakapi

In summary, an agreement was reached at Waitangi, Waimate, and Mangungu in February 1840. That agreement can be found in what signatory rangatira (or at least the great majority of them) were prepared to assent to, based on the proposals that Hobson and his agents made to them by reading te Tiriti and explaining the proposed agreement verbally, and on the assurances the rangatira sought and received. Under that agreement, the rangatira welcomed Hobson and agreed to recognise the Queen’s kāwanatanga. They regarded the Governor’s presence as a further, significant step in their developing relationship with the Crown. In recognition of the changed
circumstances since He Whakaputanga had been signed in 1835, they accepted an increased British authority in New Zealand. The authority that Britain explicitly asked for, and they accepted, allowed the Governor to control settlers and thereby keep the peace and protect Māori interests. It also appears to have made Britain responsible for protecting New Zealand from foreign powers.

The rangatira who signed te Tiriti were aware that Britain was a powerful nation. They recognised that they were consenting to the establishment of a significant new authority in their lands, where previously all authority had rested with them on behalf of their hapū. They must also have recognised that, where the Māori and European populations intermingled, questions of relative authority would inevitably have to be negotiated over time on a case-by-case basis – as, of course, was typical for rangatira-to-rangatira relationships. Having sought and received assurances that they would retain their independence and chiefly authority, and that they and the Governor would be equals, many rangatira were prepared to welcome this new British authority. They did not regard kawanatanga as undermining their own status or authority. Rather, the treaty was a means of protecting, or even enhancing, their rangatiratanga as contact with Europeans increased.

The British viewed the arrangement differently. Britain’s intention, plainly set out in Normanby’s instructions to Hobson, was that Māori would cede sovereignty to the Crown and so become subject to British law and government. Article 1 of the English text reflected that intention. But it was never conveyed to rangatira. Hobson had been instructed, among other things, to emphasise the protective aspects of the treaty, and that is what he did. Neither he nor his agents explained Britain’s understanding of what Crown acquisition of sovereignty would mean for Māori. Rather, their emphasis was on the Governor acquiring sufficient authority to control British subjects and to protect Māori and their rangatiratanga.

This is the arrangement that was presented to rangatira. It was an arrangement that explicitly guaranteed rangatira their ‘tino rangatiratanga’, their independence and full chiefly authority, while seeking for the Crown the power of ‘kawanatanga’, which was essentially explained as the authority to control settlers. This was an arrangement that the rangatira were prepared to accept, and indeed welcome. The treaty’s meaning and effect can only be found in what Britain’s representatives clearly explained to the rangatira, and the rangatira then assented to. It is not to be found in Britain’s unexpressed intention to acquire overarching sovereign power for itself, and for its own purposes. On that, the rangatira did not give full and free consent, because it was not the proposal that Hobson put to them in February 1840.

In making the decision to sign, the rangatira placed their trust in the missionaries, and in missionary translations of Hobson’s words. Before signing, they had feared that the Governor would be above them, that British soldiers would come, that they would be swamped by settlers, and that they would lose their land. But on the basis of the clear and consistent assurances they received, te Tiriti seemed to offer them peace and prosperity, protection of their lands and other taonga, the return of lands they believed Europeans had wrongly claimed, security from mass immigration and settler aggression, protection from the French, and a guarantee of their ongoing independence and rangatiratanga – all in return for allowing the Governor a limited authority. In the end, the rangatira who signed took a calculated risk. While they knew the British were powerful, they chose to trust that this power would indeed be used to the advantage of both parties.

This report completes stage 1 of our inquiry. In stage 2, it remains for us to apply the insights we have gained from this preliminary inquiry, and to report on claims that Crown actions since those original February 1840 signings have been inconsistent with the principles of the treaty. Our stage 2 hearings are well advanced, but the parties will have the benefit of access to this report in filing their closing submissions. Was the agreement that was reached in February 1840 honoured in subsequent interactions between the Crown and Māori within our inquiry district? That, now, becomes the question.
Summary of Conclusions

At various points in this chapter we have arrived at conclusions about the treaty’s meaning and effect in February 1840. As we have said, the agreement can be found in what signatory rangatira (or at least the great majority of them) were prepared to assent to, based on the proposals that Hobson and his agents put to them, and on the assurances that the rangatira sought and received. Here, we summarise our conclusions.

› The rangatira who signed te Tiriti o Waitangi in February 1840 did not cede their sovereignty to Britain. That is, they did not cede authority to make and enforce law over their people or their territories.
› The rangatira agreed to share power and authority with Britain. They agreed to the Governor having authority to control British subjects in New Zealand, and thereby keep the peace and protect Māori interests.
› The rangatira consented to the treaty on the basis that they and the Governor were to be equals, though they were to have different roles and different spheres of influence. The detail of how this relationship would work in practice, especially where the Māori and European populations intermingled, remained to be negotiated over time on a case-by-case basis.
› The rangatira agreed to enter land transactions with the Crown, and the Crown promised to investigate pre-treaty land transactions and to return any land that had not been properly acquired from Māori.
› The rangatira appear to have agreed that the Crown would protect them from foreign threats and represent them in international affairs, where that was necessary.

Though Britain went into the treaty negotiation intending to acquire sovereignty, and therefore the power to make and enforce law over both Māori and Pākehā, it did not explain this to the rangatira. Rather, in the explanations of the texts and in the verbal assurances given by Hobson and his agents, it sought the power to control British subjects and thereby to protect Māori. That is the essence of what the rangatira agreed to.
Notes
1. Document A16, app 6; doc A16, p 175; doc B10, p 64
3. Document A18(e), pp 623–625
4. Document A17, pp 16–17; doc A18, p 54; doc A11(c), pp 3–4; doc A21, pp 34–36
5. For example, see submission 3.3.2, pp 99, 105–106; submission 3.3.30, pp 50, 61; submission 3.3.14, pp 18–21; submission 3.3.21, p 19; submission 3.3.23, pp 24–25; submission 3.3.6, p 26; see also doc A4, pp 34–35; doc B26(a), pp 26–27
6. Submission 3.3.33, pp 5, 10, 45
7. Ibid, p 45
8. Ibid, pp 12, 40–41, also see pp 11, 13, 38–39, 45
9. Ibid, pp 5, 12–13, 45
10. Ibid, pp 38–39
11. For example, see transcript 4.1.2, pp 49–50; doc B26(a), pp 3, 22–23; C9(b), p 3; submission 3.3.30, pp 62, 71–72; submission 3.3.23, pp 30–31
12. Document B10, pp 46–52; doc B4(a), pp 6–8; doc B37, pp 3–4; doc C22, pp 7, 10; doc C34, pp 4–5; doc C7, p 21; doc C14, pp 3–5; doc C33, part 1, pp 6–8, 13; doc D5, p 24; doc B26(a), p 27; doc C2, p 19; doc C32, p 12; doc D11, p 5; doc C24, pp 8–10, 13
13. Document B4(a), p 6; doc A34(a), p 7; doc B10, pp 65, 77; transcript 4.1.1, p 294
14. For the Crown’s views, see submission 3.3.33, pp 5, 10, 45.
15. Submission 3.3.23, pp 21, 23–25; submission 3.3.2, pp 100, 102, 105–106, 111; submission 3.3.30, pp 6–7, 50–52, 72, 76; submission 3.3.21, pp 3–4, 19; submission 3.3.14, pp 21–24, 33, 92; submission 3.3.49, p 2; doc B26(a), pp 23–24; doc C23, pp 10–11; doc C24, p 12; doc B8(a), p 3
16. Submission 3.3.30, pp 52–53
17. Submission 3.3.33, pp 5, 11
19. Transcript 4.1.4, pp 36, 42–43, 310; A34(a), p 6; B18, p 14; submission 3.3.2, pp 99; doc B26(a), p 21; doc C7, p 11; doc B12, p 3; doc D7, p 10; doc C2, p 11; doc C9(b), p 3; doc C34, p 4; doc B18(a), pp 14–15, 23–24, 30–31, 35–39; doc A28, pp 7–8
20. Transcript 4.1.1, p 310
21. Document A18(f), pp 853–862; Busby to Bourke, 30 November 1835, QMS 0345, ATL, Wellington
22. For Busby’s intentions, see doc A11(a), vol 4, pp 1356–1362; Busby to Bourke, 26 January 1836, QMS 0345, ATL, Wellington; doc A19, pp 45–46; doc A17, pp 60–61.
23. Submission 3.3.33, p 88
24. Ibid, pp 5–6, 18–19
27. Sydney Gazette and New South Wales Advertiser, 26 May 1805, p 1
28. Ibid, 11 December 1813, p 1
29. Ward, British Policy in the South Pacific (1786–1893), p 40
31. Submission 3.3.33, pp 46–47, 73
32. Submission 3.3.15, p 44
33. Submission 3.3.28(a), p 101; transcript 4.1.4, p 174
34. As Normanby instructed Hobson in August 1839 (The Marquis of Normanby to Captain Hobson, 14 August 1839, BPP, 1840, vol 33 [238], p 14 (IUP, vol 3, p 88)): “It is impossible to confide to an indiscriminate body of persons, who have voluntarily settled themselves in the immediate vicinity of the numerous population of New Zealand, those large and irresponsible powers which belong to the representative system of Colonial Government. Nor is that system adapted to a colony struggling with the first difficulties of their new situation. Whatever may be the ultimate form of government to which the British settlers in New Zealand are to be subject, it is essential to their own welfare, not less than that of the aborigines, that they should at first be placed under a rule, which is at once effective, and to a considerable degree external.”
35. Document A18, pp 148–149
36. Document A21, pp 44–45
37. Transcript 4.1.1, pp 245, 249
38. Document B14, p 5
39. Document A20, p 102
41. Document A25, pp 60–63
42. Transcript 4.1.1, pp 48–49. While Edwards did not make it clear, this may have been a reference to Maning’s ‘History of the War in the North, Against the Chief Heke’, in which an old chief relates that the treaty with all its signatures was either buried with Hobson or kept by his relations as a ‘remembrance of him’. Frederick Maning, Old New Zealand and A History of the War in the North against the Chief Heke (London: Richard Bentley and Son, 1876), p 190
43. Document D1, p 9; doc A19(a), p 81
44. Submission 3.3.33, pp 164–168
45. Memoranda 2.5.42 and 2.5.46
46. Submission 3.1.295, pp 3–4
47. Document A1(a), pp 2, 5–8
48. Document A22(d), pp 19–20
49. Submission 3.3.2, pp 84–88, 143, 157–158
50. Ibid, pp 168–169
51. Submission 3.3.14, p 45
52. Document A22, p 25. Salmond later conceded the possibility that Henry Williams consulted rangatira he trusted on the appropriate words to use in te Tiriti: doc A22(d), pp 19–20. From her clear statement about mana, however, we do not believe she accepted a core aspect of the tiriti tuatahi story.
53. Document A30(a), pp 4–5
54. Transcript 4.1.1, pp 254, 263
55. Document A25, p 93
56. 'Auckland', New Zealand Colonist and Port Nicholson Advertiser, 30 September 1842, p 2; 'Death of Governor Hobson', Sydney Morning Herald, 26 October 1842, p 4
57. Document A1(a), pp 8–10
58. Ibid, p 6
60. Ibid
61. Ramsden, Busby of Waitangi, p 257
62. As we noted in chapter 8, Gipps was familiar with North American precedents and may have influenced Hobson’s use of the term. That does not explain why Gipps did not then use it himself.
63. On this, see Ruth M Ross, ‘Te Tiriti o Waitangi: Texts and Translations’, NZJH, vol 6, no 2 (1972), p 152; J M R Owens, ‘New Zealand before Annexation’, in The Oxford History of New Zealand, ed William H Oliver with Bridget R Williams (Wellington: Oxford University Press, 1981), p 52. Ross wrote that ‘the government’s interpretation of the second article . . . made a nullity of the third article’, while Owens wrote that article 3 ignored the fact that British subjects were not normally subject to a pre-emption clause.
64. Document A18(e), p 755; Governor Gipps to Hobson, dispatch, 24 December 1839, G36/1 (a), Archives New Zealand, Wellington
65. The Marquis of Normanby to Captain Hobson, 14 August 1839, BPP, 1840, vol 33 [238], p 40 (IUP, vol 3, p 88)
66. Document D4, p 14
69. Document B21, pp 5, 8; doc A22, p 18
70. Ross, ‘Te Tiriti o Waitangi’, p 151
72. For an overview of these arguments, see doc A17, pp 159–163.
73. Ibid, p 162
74. Binney, 'The Maori and the Signing', pp 27
76. Document A25, p 92; doc A24, p 33. As Mutu put it, ‘If the missionaries did truly intend to convey accurately the meaning and intent of what was in this document drafted in English when they drew up Te Tiriti, they would not have hesitated to use the words mana and rangatiratanga in Te Tiriti in place of the word kāwanatanga.’
77. Document A1, p 273
79. Document A18, p 238
81. Normanby wrote: ‘You will therefore frankly and unreservedly explain to the natives or their chiefs the reasons which should urge them to acquiesce in the proposals you will make to them. Especially you will point out to them the dangers to which they may be exposed by the residence amongst them of settlers amenable to no laws or tribunals of their own and the impossibility of Her Majesty extending to them any effectual protection unless the Queen be acknowledged as the Sovereign of their country, or at least of those districts within or adjacent to which Her Majesty’s subjects lands or habitations.’ (Emphasis added.)
82. Carleton, The Life of Henry Williams, vol 2, p 12
84. Binney wrote that Servant’s ‘spoken Maori was possibly better than his English’: Binney, ‘The Maori and the Signing’, p 28.
86. Richard Taylor to William Jowett, 20 October 1840, MS Papers 0254–01 (or MS 197, reel 1), ATL, Wellington
87. Orange, The Treaty of Waitangi, pp 64–65
88. Ibid
89. Document A18, p 239
90. Document A19, p 112
91. Submission 3.3.33, p 146
92. Orange, The Treaty of Waitangi, p 51
93. Submission 3.3.33, p 146
94. Document A19(a), p 62
95. Orange, The Treaty of Waitangi, p 51
97. Document A18, p 238
98. Submission 3.3.33, p 150. As counsel put it, ‘If this explanation had been given to rangatira, it is impossible to conceive how the rangatira could have understood’ the treaty otherwise.
99. Colenso, The Authentic and Genuine History of the Signing of the Treaty of Waitangi, p 26. In a similar vein, Hobbs claimed that missionary influence was also ultimately decisive at Mangungu.
100. Document A1, p 283
101. Low, 'French Bishop, Maori Chiefs, British Treaty', p 103
102. For example, when we asked Crown counsel to clarify where exactly the text of Te Tiriti made it clear that the Governor was to have a higher authority than the rangatira, Crown counsel pointed to the chiefs’ speeches as evidence of this understanding: transcript 4.1.5, pp 321–322.
103. Submission 3.3.33, p 157
104. Ibid, p 161
106. Document A1, p 283
107. Taylor to Jowett, 20 October 1840, ms papers 0254–01, ATL, Wellington
111. Ross, ‘Te Tiriti o Waitangi’, pp 151–152
112. Document A1, p 300
115. Document A1, p 298
116. Submission 3.3.3, p 189
117. See, for example, submission 3.3.2, para 3; submission 3.3.5, pp 3–4
118. See, for example, submission 3.3.2, p 16
119. See, for example, doc A30(a), p 6
120. Document D4, p 63
121. Submission 3.3.15, p 34
122. Submission 3.3.30, p 9
123. Submission 3.3.11(c), pp 6–7, 28; submission 3.3.51, p 23
124. Submission 3.3.33, pp 8–9, 183, 187
129. Submission 3.3.33, pp 99–101
130. Submission 3.3.28(a), p 18; submission 3.3.24, p 29
132. New Zealand schoolchildren used to be taught that Nene was ‘a firm friend of the English’. *Our Nation’s Story: A Course in British History: Standard III* (Auckland: Whitcombe and Tombs, [1929]), p 27
137. Submission 3.3.33, p 171
138. Document A21, pp 90, 96
139. Document A21(a), pp 1, 13; doc A21, p 71
142. Ibid, p 117
143. Document A30(a), pp 3, 5
Dated at Wellington this 14th day of October 2014

Judge Craig Coxhead, presiding officer

Kihi Ngatai

Kihi Ngatai QSM, member

Professor Richard Hill, member

Joanne Morris OBE, member

Emeritus Professor Ranginui Walker DCNZM, member
APPENDIX

SELECT RECORD OF INQUIRY

RECORD OF HEARINGS

The Tribunal

The Te Paparahi o Te Raki Tribunal consisted of Judge Craig Coxhead (presiding), Kihi Ngatai, Professor Richard Hill, Joanne Morris, and Emeritus Professor Ranginui Walker.

Crown counsel

Andrew Irwin, Helen Carrad, and Rachel Hogg represented the Crown.

Claimant counsel

Claimant counsel were as follows:

- Aidan Warren and Season-Mary Downs represented claims Wai 1464 and Wai 1546.
- Bryan Gilling and Katherine Porter represented claims Wai 58, Wai 249, Wai 605, Wai 1312, Wai 1333, Wai 1940, Wai 2022, and Wai 2124.
- Bryan Gilling and Rebecca Sandri represented claim Wai 1333.
- Campbell Duncan and Hanna Stephen represented claim Wai 1940.
- Daniel Watkins represented claims Wai 1259 and Wai 1538.
- David Stone and Shane Hutton represented claim Wai 1400.
- David Stone, Shane Hutton, and Augencio Bagsic represented claim Wai 1477.
- David Stone, Shane Hutton, Augencio Bagsic, and Eru Lyndon represented claim Wai 1850.
- Donna Hall, Angela Brown, and A Taylor represented claims Wai 568 and Wai 861.
- Hemi Te Nahu and Eve Rongo represented claim Wai 1857.
- Janet Mason and Priscilla Agius represented claims Wai 1699 and Wai 1701.
- John Kahukiwa and Georgia Bates represented claims Wai 620, Wai 1508, and Wai 1757.
- Te Kani Williams and Erin Thompson represented claims Wai 16, Wai 17, Wai 45, Wai 117, Wai 284, Wai 295, Wai 320, Wai 544, Wai 548, Wai 590, Wai 736, Wai 913, Wai 1140, and Wai 1307.
- Katharine Taurau represented claim Wai 2003.
Kelly Dixon, Prue Kapua, and Tajim Mohammed-Kapa represented claims Wai 492 and Wai 1341.


Maryann Mere Mangu represented claim Wai 2220.

Matanuku Mahuika and Paranihia Walker represented claim Wai 1665.

Michael Doogan and Season-Mary Downs represented claims Wai 49 and Wai 682.

Mihaaro Armstrong represented claim Wai 1354.

Moana Tuwhare and Katharine Taurau represented claims Wai 421, Wai 466, Wai 869, Wai 1131, Wai 1247, Wai 1383, Wai 1062, Wai 1134, and Wai 1384.

Spencer Webster represented claim Wai 303.


Tavake Afeaki and Mireama Houra represented claims Wai 619, Wai 774, Wai 1536, and Wai 1673.

Tony Shepherd and Alana Thomas represented claim Wai 700.

The hearings
The first hearing, for claimant witnesses, was held from 10 to 14 May 2010 at Te Tii Marae, Waitangi.
The second hearing, for claimant witnesses, was held from 14 to 18 June 2010 at Te Tii Marae, Waitangi.
The third hearing, for claimant and Tribunal witnesses, was held from 9 to 13 August 2010 at Waipuna Marae, Panguru.
The fourth hearing, for claimant and Crown witnesses, was held from 11 to 15 October 2010 at Whitiora Marae, Te Tii, Mangonui.
The fifth hearing, for closings submissions, was held from 22 to 24 February 2011 at Ōtiria Marae, Moerewa.

Record of Proceedings

Statements of claim
1.1.1 Tiata Witehira, K Witehira, T Tohu, statement of claim (Wai 24), 3 September 1985

1.1.2 Sir James Clendon Henare, statement of claim (Wai 49), 10 October 1988
(a) Sir James Clendon Henare, amended statement of claim, 13 March 2003

1.1.3 Wiremu Tairua, statement of claim (Wai 53), 5 February 1989

1.1.4 Terry Smith, statement of claim (Wai 45), 1 October 1987
(a) Terry Smith, first amended statement of claim, 1 October 1987
(b) Hiwi Tauroa, second amended statement of claim, 3 March 1992
(c) Patricia Tauroa and Ihapera Mei Baker, third amended statement of claim, 23 June 1992
(d) Matilda Jane Saies, fourth amended statement of claim, 9 October 1992
(e) Hiwi Tauroa and Pauline Henare, fifth amended statement of claim, 7 June 1995
(f) Hiwi Tauroa, sixth amended statement of claim, 20 August 1997
(g) Hiwi Tauroa and Pauline Henare, seventh amended statement of claim, 10 December 1997
(h) Bryan Gilling, Katherine Porter, and Hannah Stephen to Tribunal, memorandum changing names of claimants, 20 May 2011
(i) Nuki Aldridge and Patricia Tauroa, eigth amended statement of claim, 30 September 2011

1.1.5 Jean Appelhof and Leah Walthers, statement of claim (Wai 67), 9 September 1987
(a) Jean Appelhof and Leah Walthers, first amended statement of claim, 11 September 1987
(b) Jean Appelhof and Leah Walthers, second amended statement of claim, 12 October 1987

1.1.6 Betty Parani Hunapo (Kopa) and Hira Hunapo, statement of claim (Wai 68), 27 April 1987
(a) Betty Parani Hunapo, amended statement of claim, 27 November 1987
(b) Aidan Warren and Season-Mary Downs, memorandum giving notice of additional claimant, 20 May 2011

1.1.7 Hariata Gordon, statement of claim (Wai 72), 20 October 1987
(a) Hariata Gordon, first amended statement of claim, 24 April 1989
(b) Hariata Gordon, second amended statement of claim, not dated
(c) Hariata Gordon, third amended statement of claim, 26 June 1990
(d) Hariata Gordon, fourth amended statement of claim, 27 June 1990
(e) Hariata Gordon, fifth amended statement of claim, 27 February 1990
(f) Hariata Gordon, sixth amended statement of claim, 10 April 1992
(g) Hariata Gordon, seventh amended statement of claim, 15 October 1993

1.1.8 John Iririana, Marea Timoko, Monday Mane Tahere, and Titau Eruera Rakete, statement of claim (Wai 76), 17 December 1987

1.1.9 John Nathan Pickering, statement of claim (Wai 82), 9 March 2011
(a) John Nathan Pickering, amended statement of claim, 15 January 2003

1.1.10 Vacant

1.1.11 Nita Louisa Brougham, Matilda Shotter, and Harriett Alice Wilson, statement of claim (Wai 109), 8 December 1989

1.1.12 Jane Llenaghan and Maria Wakelin, statement of claim (Wai 111), 20 November 1989

1.1.13 Raumoa Kawiti and others, statement of claim (Wai 120), 13 February 1993

1.1.14 Tamihana Akitai Paki and Eru Manukau, statement of claim (Wai 121), 28 March 1988
(a) William Mohi Te Maati Manukau and Eru Manukau, first amended statement of claim, 28 December 1989
(b) Eru Manukau, second amended statement of claim, 5 March 1990
(c) William Mohi Te Maati Manukau and Eru Manukau, third amended statement of claim, 5 December 1990
(d) William Mohi Te Maati Manukau and Eru Manukau, fourth amended statement of claim, 24 December 1990
(e) Eru Manukau, fifth amended statement of claim, 28 November 1990
(f) Eru Manukau, sixth amended statement of claim, 18 September 1991
(g) Eru Manukau, seventh amended statement of claim, 10 January 1992
(h) William Mohi Te Maati Manukau, eighth amended statement of claim, 27 April 1992

1.1.15 Raniera Dan Davis, ninth amended statement of claim, 14 July 1992
(i) Raniera Dan Davis, tenth amended statement of claim, 29 June 1992
(j) Eru Manukau, eleventh amended statement of claim, 29 June 1992
(k) Eru Manukau, twelfth amended statement of claim, 29 June 1992
(l) Mohi Wiremu Manukau, Te Pana Paikea Manukau, and Eru Manukau, thirteenth amended statement of claim, 8 March 1999

1.1.16 Mohi Wiremu Manukau, fourteenth amended statement of claim, not dated

1.1.17 Laly Haddon and Jack Brown, statement of claim (Wai 122), 16 October 1989

1.1.18 Charles Stanley Brown and Susanne Robertson, statement of claim (Wai 123), 12 December 1989

1.1.19 Marie Tautari, statement of claim (Wai 156), July 1990
(a) Marie Tautari, amended statement of claim, 5 August 2009

1.1.20 Colin Malcolm, statement of claim (Wai 179), 26 October 1990
(a) David Stone, memorandum giving notice of additional claimants 25 November 2010

1.1.21 Takutai Moana Wikiriwhi, statement of claim (Wai 186), 27 February 1991

1.1.22 Ropata Parore, statement of claim (Wai 188), 21 March 1991
1.1.22—continued
(a) Ropata Parore, amended statement of claim, 21 March 1991
(b) Dover Samuels, statement of claim (Wai 230), 9 July 1991
(c) Hemi-Rua Rapata, statement of claim (Wai 234), 18 September 1991
1.1.25 Vacated
1.1.26 Lucy Palmer and Patuone Hoskins, statement of claim (Wai 244), 27 March 1987
(a) Stuart McDonald Henderson, first amended statement of claim, 30 July 2000
(b) Addie Smith, second amended statement of claim, 29 August 2008
(c) Addie Smith, third amended statement of claim, 19 October 2009
(d) Jim Smillie, fourth amended statement of claim, 30 March 2012
1.1.27 Hoori George Te Moanaroa Munro Parata, statement of claim (Wai 245), 27 March 1987
(a) Hori Te Moanaroa Munroe Parata, amended statement of claim, 29 February 2012
1.1.28 Mark Rererangi Tribole, statement of claim (Wai 246), 12 October 1987
(a) Te Raa Nehua, Te Raa Nehua (senior), Michael Kake, Sam Kake, Allan Halliday, and Wi Waiomio, first amended statement of claim, 2 May 1996
(b) Not named, second amended statement of claim, 5 July 2003
(c) Te Raa Nehua (senior), Te Raa Nehua, Michael Kake, Sam Kake, Wi Waiomio, and Allan Halliday, third amended statement of claim, 30 September 2011
1.1.29 Rima Eruera, statement of claim (Wai 249), 4 September 1987
(a) James Christopher Eruera, first amended statement of claim, 30 November 2001
(b) second amended statement of claim, 21 January 2004
(c) James Christopher Eruera, third amended statement of claim, 6 May 2010
(d) James Christopher Eruera, fourth amended statement of claim, 30 September 2011

1.1.30 Brian Wikaira and John Klaricich, statement of claim (Wai 250), 6 November 1987
1.1.31 Peti Pupepeke Ahitapu, statement of claim (Wai 251), 8 October 1987
1.1.32 Michael Sheehan, statement of claim (Wai 258), 20 July 1989
1.1.33 Laly Paraone Haddon, Hōne Ringi Brown, Gavin Brown, and Tamihana Akitai Paki, statement of claim (Wai 280), 9 March 1992
1.1.34 Druis Barrett, Kimiora Tito, and Marie Oldridge, statement of claim (Wai 291), 24 April 1992
1.1.35 R Te Ripi Wihongi, statement of claim (Wai 302), not dated
1.1.36 Haahi Walker and Thompson Parore, statement of claim (Wai 303), 22 July 1992
(a) Tom Parore, Haahi Walker and Russell Kemp, first amended statement of claim, 7 December 2006
(b) J Patuawa, memorandum giving notice of additional claimant, 9 February 2007
1.1.37 Tamehana Tamehana, Ellen Reihana, Rewa Marsh, Bob Cassidy, Ron Wihongi, Tu Kemp, Kataraina Sarich, and others, statement of claim (Wai 304), 8 September 1992
(a) first amended statement of claim, received 16 January 2004
1.1.38 Muriwai Tukariri Popata, statement of claim (Wai 320), 28 August 1992
(a) Te Kani Williams and Robyn Gray, memorandum giving notice of change of named claimant, 27 February 2012
(b) Muriwai Tukariri Popata, amended statement of claim, 13 October 2011
1.1.39 Ngaro Hemi Baker, statement of claim (Wai 327), 7 January 1993
1.1.40 W W Peters, statement of claim (Wai 343), 23 February 1993
1.1.41 Titau Rakete, statement of claim (Wai 352), 17 March 1993
1.1.42 Arapeta Witika Pomare Hamilton, statement of claim (Wai 354), 17 March 1993
(a) Arapeta Wikito Pomare Hamilton, amended statement of claim, 19 October 2011

1.1.43 Hori Hemara Niha, statement of claim (Wai 371), not dated
(a) Michael J Doogan and Season-Mary Downs, memorandum giving notice of change of named claimant, 1 March 2011

1.1.44 Anaru Kira, statement of claim (Wai 375), 1 July 1993
(a) Annette Sykes and Jason Pou, memorandum giving notice of additional claimant, 26 July 2007

1.1.45 JG Alexander, statement of claim (Wai 421), 23 January 1994
(a) Graham Alexander, first amended statement of claim, 24 April 1995
(b) John Rameka Alexander, second amended statement of claim, 16 September 1998
(c) J R Alexander, third amended statement of claim, 7 March 2007

1.1.46 Sharon Bedggood, statement of claim (Wai 435), 30 May 1994
(a) Sharon Bedggood, amended statement of claim, 1 September 2008

1.1.47 Walter Taipari and Adrian Taipari, statement of claim (Wai 454), 17 April 1994
(a) Walter Taipari and Adrian Taipari, amended statement of claim, 5 March 2001

1.1.48 Riwi Höne Niha, statement of claim (455), not dated
(a) Riwi Höne Niha, amended statement of claim, 19 October 2011

1.1.49 Kerei Anderson, statement of claim (Wai 466), 6 July 1994
(a) Kerei Anderson, first amended statement of claim, 27 August 1995
(b) Kerei Anderson, second amended statement of claim, 29 July 2002

1.1.50 Morley Paikea Powell, statement of claim (Wai 468), 11 February 1995

1.1.51 Te Warena Taua and Harieta Ewe, statement of claim (Wai 470), 30 June 1994
(a) Te Warena Taua and Harieta Ewe, first amended statement of claim, not dated
(b) Te Warena Taua and Harieta Ewe, second amended statement of claim, not dated

1.1.52 Charles Anthony Lawrence, statement of claim (Wai 479), 28 November 1994
(a) Charles Anthony Lawrence, amended statement of claim, 19 April 1995

1.1.53 Kay Tandy, statement of claim (Wai 487), 12 September 1994
(a) Moana Tuwhare, memorandum giving notice of change of named claimant, 28 April 2003

1.1.54 Tuau Ahiroa Kemp, statement of claim (Wai 492), 21 November 1994
(a) PJ Kapu, memorandum giving notice of change of named claimant, 12 December 2005
(b) K I Taurau, memorandum giving notice of additional claimant, 7 August 2006
(c) Bryan Gilling, Katherine Porter, and Hanna Stephen, memorandum giving notice of change of named claimant, 24 May 2011
(d) Remarie Kapa and Wiremu Heihei, amended statement of claim, 30 September 2011
(e) Bryan Gilling and Hanna Stephen, memorandum notifying change of named claimant, 6 May 2013

1.1.55 Mahuta Pitau Williams, statement of claim (Wai 495), 15 March 1993
(a) Mahuta Pitau Williams, amended statement of claim, not dated

1.1.56 Tamihana Akitai Paki and Pauline Ramari Smith, statement of claim (Wai 504), 8 March 1995
(a) Tamihana Akitai Paki and Pauline Ramari Smith, amended statement of claim, 3 November 1999
(b) Missing
(c) Bryan Gilling and Hanna Stephen, memorandum notifying change of named claimant, 6 May 2013

1.1.57 Anaru Kira, statement of claim (Wai 510), 28 April 1995
(a) Anaru Kira, amended statement of claim and request for urgency, 18 May 1995
1.1.58  Chris Koroheke, statement of claim (Wai 511), 18 May 1995

1.1.59  Anaru Kira, statement of claim (Wai 513), 28 April 1995

1.1.60  Wilfred Peterson, statement of claim (Wai 515), 24 May 1995
(a)  Elizabeth Peterson, amended statement of claim, 7 September 2011

1.1.61  Wilfred Peterson, statement of claim (Wai 517), 23 May 1995
(a)  Elizabeth Peterson, memorandum giving notice of change of named claimant, 7 September 2011

1.1.62  Anaru Kira, statement of claim (Wai 520), 7 June 1995
(a)  Annette Sykes and Jason Pou, memorandum giving notice of additional claimant, 26 July 2007

1.1.63  Anaru Kira, statement of claim (Wai 523), 19 June 1995
(a)  Anaru Kira, statement of claim, 12 February 1996
(b)  Annette Sykes and Jason Pou, memorandum giving notice of additional claimant, 26 July 2007

1.1.64  John Klaricich, statement of claim (Wai 528), 11 July 1995

1.1.65  Gregory Sarron Paraone McDonald, Christine Sandra Baines, Rona Marie Peri, Sharon Amelia Williams, Agnes Amelia McCarthy, and Angela Sady Nathan, statement of claim (Wai 532), 30 July 1995
(a)  Greg McDonald, first amended statement of claim, 3 March 1996
(b)  Greg McDonald, second amended statement of claim, 30 July 1996
(c)  Greg McDonald, third amended statement of claim, 13 February 1997
(d)  Greg McDonald, fourth amended statement of claim, 23 May 1997
(e)  Gregory Sarron Parone McDonald, Christine Baines, Rona Peri, Sharon Williams, Agnes McCarthy, and Angela Nathan, fifth amended statement of claim, not dated
(f)  Gregory Sarron Parone McDonald, Christine Baines, Rona Peri, Sharon Williams, Agnes McCarthy, and Angela Nathan, sixth amended statement of claim, not dated
(g)  Gregory Sarron Parone McDonald, Christine Baines, Rona Peri, Sharon Williams, Agnes McCarthy, and Angela Nathan, seventh amended statement of claim, 22 April 2010
(h)  Gregory Sarron Paraone McDonald, Christine Sandra Baines, Rona Marie Peri, Sharon Amelia Williams, Agnes Amelia McCarthy, and Angela Sady Nathan, eighth amended statement of claim, 30 May 2011
(i)  Janet Mason and Christa Robinson, ninth amended statement of claim, 13 October 2011

1.1.66  Rudy Taylor and Haakopa Tangihaere Te Whata, statement of claim (Wai 549), 2 October 1995
(a)  Rudolph Taylor and Hakopa Te Whata, amended statement of claim, 1 November 2011

1.1.67  Pari Peihopa, statement of claim (Wai 565), 31 August 1995
(a)  Pari Peihopa, amended statement of claim, 30 December 1995

1.1.68  Roi Anthony McCabe, statement of claim (Wai 567), 21 December 1995

1.1.69  Jane Helen Hotere, statement of claim (Wai 568), 20 November 1995
(a)  Jane Helen Hotere, first amended statement of claim, 23 November 1995
(b)  Jane Helen Hotere, second amended statement of claim, 4 December 1995
(c)  Jane Helen Hotere, third amended statement of claim, not dated
(d)  Jane Hotere, fourth amended statement of claim, 8 February 2012

1.1.70  Mere Apiata and Kevin Samuels, statement of claim (Wai 573), 21 February 1996

1.1.71  Tamihana Werehiko Rewi, statement of claim (Wai 591), 15 February 1996

1.1.72  Jimmy Ruawhare, statement of claim (Wai 593), 19 March 1996

1.1.73  Terence D Lomax, statement of claim (Wai 605), 21 June 1996
(a)  B D Gilling and K M Porter, memorandum giving notice of change of named claimant, 17 November 2010
(b)  Terri Lomax, amended statement of claim, 30 September 2011
1.1.74 Philma Anne Phillips, statement of claim (Wai 606), 18 March 1996

1.1.75 Hare Pepene, Haane Kingi, Wiremu Pohe, Louisa Collier, Sandra Rihari, Waimarie Bruce, and Takiri Puriri, statement of claim (Wai 619), 18 August 1996
(a) Waimarie Bruce, first amended statement of claim, 31 July 2000
(b) Waimarie Bruce and others, second amended statement of claim, 3 October 2000
(c) Waimarie Bruce, third amended statement of claim, 16 January 2003
(d) Charl Hirschfeld, Tavake Barron Afeaki, and Tony Shepherd, fourth amended statement of claim, 28 September 2007
(e) Tavake Barron Afeaki, fifth amended statement of claim, 31 September 2011

(a) Romer Mahanga and Shayne Mahanga, first amended statement of claim removing claimants, 31 October 1996
(e) Mitai Paraone-Kawiti, fifth amended statement of claim, 21 February 2011

1.1.77 Elizabeth Mataroria-Legg, Ken Mataroria and Pania Chapman, statement of claim (Wai 642), 5 October 1996
(a) Elizabeth Mataroria-Legg, amended statement of claim, 29 April 2004

1.1.78 Te Raa Nehua, Donna Baker and Iri Matenga Armstrong, statement of claim (Wai 654), 4 November 1996
(a) Gerald Sharrock, memorandum giving notice of change of named claimant and addition of claimant, 10 March 2010
(b) Edrys Matenga Armstrong, first amended statement of claim, 13 March 2010

1.1.79 Michael John Beazley, statement of claim (Wai 678), 13 June 1997

1.1.80 Johnson Erima Henare, Samuel Kevin Prime, and Reweti Pomare Kingi Paraone, statement of claim (Wai 682), 1 July 1997

1.1.81 Weretapou Tito, statement of claim (Wai 683), 15 June 1997

1.1.82 Mate-Paihana Puriri, Richard Nathan, Hirini Heta, and Te Raa Nehua, statement of claim (Wai 688), 23 October 1997
(a) Richard Keith McLeod Hawk, amended statement of claim, not dated

1.1.83 Maryanne Marino, statement of claim (Wai 700), 28 August 1997
(a) Tony Shepherd, memorandum giving notice of addition of claimants, 3 February 2012

1.1.84 Kahi Takimoana Harawira, statement of claim (Wai 712), 23 July 1997
(a) Kahi Takimoana Harawira and Nuki Aldridge, amended statement of claim, 3 November 2009

1.1.85 Tamatehura Nicholls, statement of claim (Wai 720), not dated
(a) Tamatehura Nicholls, first amended statement of claim, 19 November 1998
(b) Tewi Mataia (Nicholls), second amended statement of claim, 11 April 2001
(c) Te Wiremu Mataia Nicholls, Wharenui Piahana and Tamatehura Nicholls, third amended statement of claim, 23 July 2002

1.1.86 Te Uira Mahuta Hōne Eruria (John Edwards), statement of claim (Wai 721), 20 January 1998
(a) John Edwards, Thomas de Thierry and Benjamin de Thierry, first amended statement of claim, 21 May 1999
(b) John Edwards, Thomas de Thierry and Benjamin de Thierry, second amended statement of claim, 24 October 2000
(c) John Edwards, Thomas de Thierry and Benjamin de Thierry, third amended statement of claim, 12 December 2000

1.1.87 Riana Pai, statement of claim (Wai 736), 22 May 1998
(a) Te Kani Wililiams and Robyn Gray, memorandum giving notice of change of named claimant, 23 February 2012
1.1.87—continued
(b) Riana Pai and Kararaina Maheno, amended statement of claim, 13 October 2011

1.1.88 Kahuitara Constance Pitman, Wi Te Teira Pirihi, Luana Pirihi, Tangiwhai Mere Kepa, January Dobson, and Joanne Midwood, statement of claim (Wai 745), 22 May 1998
(a) PJ Kapua and A Chesnutt, memorandum giving notice of change of named claimant, 24 July 2007
(a) PJ Kapua, memorandum giving notice of change of named claimant, 23 August 2007

1.1.89 Charles Tong, statement of claim (Wai 752), 28 April 1998
(a) Charles Tong and Curtis Tong, amended statement of claim, 22 September 2002

1.1.90 Kingi Taurua, statement of claim (Wai 774), 29 October 1998
(a) Kingi Taurua, amended statement of claim, 30 September 2011

1.1.91 Donna Washbrook, statement of claim (Wai 779), 8 December 1998
(a) Donna Washbrook, first amended statement of claim, 14 July 2008
(b) Hemi Te Nahu and Eve Rongo, memorandum giving notice of change of named claimants, 28 February 2011
(c) Warren Jeremiah Moetara and Donna Washbrook, amended statement of claim, 13 October 2011

1.1.92 Pamera Te Ruih Timoti-Warner, statement of claim (Wai 798), 1 June 1999

1.1.93 David James Peka, statement of claim (Wai 808), 15 January 2000
(a) David James Peka, first amended statement of claim, 5 November 2001
(b) Raumiria Te Mihiao Katipa, second amended statement of claim, 30 April 2002

1.1.94 Ronald TeRipi Wihongi, statement of claim (Wai 820), 25 September 1999

1.1.95 Marama Netana, statement of claim (Wai 824), 20 March 1999
(a) Marama Waddell, amended statement of claim, 30 September 2011

1.1.96 Barrie R Green, statement of claim (Wai 861), 23 June 1999
(a) Barrie R Green, first amended statement of claim, 16 January 2004
(b) Donna Hall, Martin Taylor, and Angela Brown, memorandum giving notice of additional claimants, 8 February 2012
(c) Jane Hotere, Graham Latimer, Titewhai Harawira, Denis Hansen, Tom Kahiti-Murray, Hector Busby, Richard Nathan, and Taipari Munro, second amended statement of claim, 8 February 2012

1.1.97 Kiharoa Parker, John Rameka Alexander, and Terrence Douglas Lomax, statement of claim (Wai 862), 2 August 1999
(a) Kiharoa Parker, amended statement of claim, 22 September 2009
(b) Tess Lomax and Kiharoa Menehira Retireti Parker, memorandum giving notice of additional claimant, 4 November 2010

1.1.98 John Rameka Alexander, Rangimarie Thompson, and Bonnie Craven, statement of claim (Wai 869), 10 February 2000

1.1.99 Marshall Thomas Tawhai, statement of claim (Wai 880), 5 May 2000

1.1.100 Hori Kupenga Manukau Konore, and Robyn Ollivier Hera Konore, statement of claim (Wai 881), 27 July 2000
(a) Hori Kupenga Manukau Konore, and Robyn Ollivier Here Konore, amended statement of claim, 20 September 2001

1.1.101 Kingi Hori Mita Hamiora, and Joseph Kingi, statement of claim (Wai 884), 27 August 2000
(a) Joseph Kingi, first amended statement of claim, 18 August 2009
(b) Joseph Kingi, second amended statement of claim, 12 October 2011

1.1.102 Timi Tahana Watene, George Dean Arepa Watene, Maurice William Omeka Watene, and Norman Winiata Morehu Watene, statement of claim (Wai 887), 18 October 2000

1.1.103 Eru Garland and Douglas Taurua, statement of claim (Wai 902), 25 June 2000

1.1.104 Kiharoa Parker and Haare Rapata Tukariri, statement of claim (Wai 914), 4 November 2000
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1.1.105 Heremoananuiakiwa Kingi, Poihakina Kira, Iwa Alker, Leo Mita Bowman, Ivy Williams, Marie Williams, and Tangihiaere Kingi, statement of claim (Wai 919), 13 January 2001
(a) Iwa Alker, Leo Mita Bowman, Heremoananuiakiwa Kingi, Tangihiaere Kingi, Poihakina Kira, Ivy Williams and Marie Williams, amended statement of claim, 31 October 2011

1.1.106 Denis Fabian, statement of claim (Wai 932), 14 March 2001
(a) Denis Fabian, first amended statement of claim, 1 September 2008
(b) Denis Fabian, second amended statement of claim, 27 August 2010
(c) Denis Fabian, third amended statement of claim, 27 June 2010

1.1.107 Gray Theodore and Pereme Porter, statement of claim (Wai 966), not dated
(a) Gray Theodore and Pereme Porter, memorandum giving notice of additional claimant, not dated
(b) second amended statement of claim, 16 January 2004

1.1.108 Rosaria Hotere, statement of claim (Wai 974), 17 January 2002
(a) Rosaria Hotere, amended statement of claim, 25 September 2002

1.1.109 Simon Teuoro, statement of claim (Wai 985), 3 March 2002
(a) Simon Teuoro, first amended statement of claim, not dated
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   (a) Mike Kake, first amended statement of claim, not dated
   (b) Mike Kake, second amended statement of claim, 13 October 2011

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   (b) Nonnie Puru, amended statement of claim, 13 October 2011

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   (a) Pua Howearth, amended statement of claim, 14 November 2011

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   (b) David Martin Stone and Brooke Loader, memorandum giving notice of additional claimant, 14 January 2014

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(a) Te Enga Harris, first amended statement of claim, not dated
(b) Te Enga Harris, second amended statement of claim, 30 September 2011
(c) Darrell Naden and Siaosi Loa, memorandum giving notice of additional claimant, 31 January 2014

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1.1.215 Joyce Baker, statement of claim (Wai 1535), 31 August 2008
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(b) Arapeta Wikito Pomare Hamilton, Joyce Baker and Deon Baker, amended statement of claim, 19 October 2011

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1.1.222 Wirene Tairua, statement of claim (Wai 1542), 25 August 2008

1.1.223 William Peter Clark, statement of claim (Wai 1543), 26 August 2008

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(a) George Davies, first amended statement of claim, 13 October 2011
(b) George Davies, second amended statement of claim, 8 May 2012

1.1.225 Bruce Davies and Rawiri Wharemate, statement of claim (Wai 1545), 31 August 2008

1.1.226 Edward Henry Cook, statement of claim (Wai 1546), 26 August 2008
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1.1.229  Marsh Kanapu, statement of claim (Wai 1549), 25 August 2008

1.1.230  Lee Cooper and Shayne Wihongi, statement of claim (Wai 1550), 26 August 2008

1.1.231  Elizabeth Waiwhakaata Boutet, statement of claim (Wai 1551), 28 August 2008
(a) Elizabeth Waiwhakaata Boutet, amended statement of claim, 14 October 2011

1.1.232  Eru Lyndon, statement of claim (Wai 1582), 18 August 2008
(a) Eru Lyndon, amended statement of claim, 13 October 2011

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(a) Ani Taniwha, amended statement of claim, 30 September 2011

1.1.237  Thomas de Thierry, statement of claim (Wai 1667), 28 August 2008

1.1.238  Joseph Ratana Hapakuku, statement of claim (Wai 1669), 18 August 2008
(a) Joseph Ratana Hapakuku, amended statement of claim, 2 December 2011

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(b) Tavake Barron Afeaki and Mireama Houra, memorandum giving notice of removal of claimant, 16 August 2012

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(a) Caley Strongman, amended statement of claim, 13 October 2011

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(b) Popi Tahere, second amended statement of claim, 10 November 2011

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Robin Paratene, statement of claim (Wai 1726), 1 September 2008

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   (b) Deana Simon, memorandum giving notice of change of named claimant, 30 June 2010
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1.1.279 Tutu Pou, statement of claim (Wai 1752), 25 August 2008

1.1.280 Mylene Rakena and John Davis, statement of claim (Wai 1753), 31 August 2008
   (a) Mylene Rakena and John Davis, amended statement of claim, 25 October 2011

1.1.281 Ngawiki Reihana and Elva Rewa Hepi, statement of claim (Wai 1754), 24 August 2008

1.1.282 Julian Reweti, statement of claim (Wai 1755), 15 August 2008

1.1.283 Leilani Rorani, statement of claim (Wai 1756), 28 August 2008

1.1.284 Hugh Te Kiri Rihari, Whakaaropai Hoori Rihari, Piri Ripeka Rihari, Hare Himi Paerata Rihari, Mamateao Himi Rihari Hill, David Grant Rihari, Te Hurihanga Rihari, and Herbert Vincent Rihari, statement of claim (Wai 1757), 1 September 2008
   (a) James Fong, memorandum giving notice of additional claimant, 5 March 2009

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1.1.289 Denny Ututaonga, statement of claim (Wai 1839), 12 May 2008

1.1.290 Pereniki Tauhara, statement of claim (Wai 1842), 16 July 2008
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   (a) Shane Hutton, memorandum giving notice of additional claimants, 19 April 2011

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   (a) Shane Hutton, amended statement of claim and memorandum removing named claimant, 20 February 2009

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   (b) Wiremu Hamiora, second amended statement of claim, 13 October 2011

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   (a) Hera Epiha, first amended statement of claim, 29 September 2009
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Page 436: Mark Metekingi delivering a challenge outside the Court of Appeal, Wellington
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Page 439: Tainui Māori opposing the sale of Coalcorp, Court of Appeal, Wellington
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