Waitangi Tribunal Research Commission

L F Head

Preamble

My name is Lyndsay Head. I am a lecturer in the Maori Department of the University of Canterbury, where I teach nineteenth century race-relations history and the structure of the Maori language. I have a first class MA honours degree in history. My research combines my two fields of history and language. For my MA thesis I translated and analysed the Gospel of the Taranaki religious leader Te Ua Haumene.

I am currently completing my doctoral research in the evolution of nineteenth century Maori thought. In this research, which aims to show the impact of the west on Maori society through the eyes of Maori people, I work primarily from nineteenth century Maori language texts. I have acted as a professional translator of historical texts for some years, and have published a series of translations of Maori historical texts. My recent publications include 'The Gospel of Te Ua Haumene' in The Journal of the Polynesian Society, March 1992, and 'Pakeha: The quest for New Zealand identity', edited by Michael King, 1991.

Introductory remarks

I was commissioned by the Tribunal to comment on the linguistic evidence presented by Dr Margaret Mutu and Professor Joan Metge.

I was asked to comment on other people's work, and am not free to make my own case: this may make my remarks appear only critical, which is something I regret. The nature of my commission means that this is a report that looks at the trees and not at the forest.

I wish also to stress that because my commission was limited to matters of language, some of the more substantive matters arising from the two reports are not dealt with.

I wish also to note that this report has been completed in a matter of four weeks. It has not been possible to cover all the linguistic issues raised in the reports, nor have I had the opportunity to study all the other evidence, both nineteenth century and
modern, that I would have wished.¹

This report will end with comments indicating further study which, in my view, offer a more rewarding line of inquiry into the western Muriwhenua land claims than can be made by an analysis of the linguistic issues raised in the reports which are the subject of this study.

**Approaches to the work**

Because of particular difficulties the analysis of these reports has presented, this study begins with a brief overview of the practice of history.

Universities seek to expand knowledge through research. In this world, no knowledge is fixed by higher authority. Academic learning is more like classical Maori higher learning, which was grasped by human effort, when Tawhaki climbed to heaven.

That, at least, is an ideal. But, as has been observed:

> every age demands a history written from its own standpoint - with reference to its own social conditions, its thought, its beliefs and its acquisitions - and thus comprehensible to the men who live in it.²

A major standpoint of this age is the need to challenge the ethnocentrism of past analyses of New Zealand history. The result has been, at best, a new sensitivity to Maori by Pakeha scholars, and an expanded respect for scholarship by Maori.

The new understanding has, perhaps inevitably, developed a crusader’s morality: opposing misconceptions about Maori culture has become a cause in which one serves. But when history is made secondary to moral imperatives, the danger is that it can become nothing more than the present with a tattooed face. Argument may give way, if unconsciously, to advocacy, and analysis may be replaced by the acceptance of authority.

I find that this tendency is present in the evidence of Professor Metge, which frequently uses the values, practices and language of late twentieth century Maori culture to explain events in the early nineteenth.

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¹ I gratefully acknowledge the help given me in locating manuscripts by my colleagues M. Carver and C. Tremewan. I also wish to thank my Head of Department, R. Maaka, for re-arranging my work schedule to help me undertake this commission.

Much scholarly work has been undertaken internationally which shows that the function of oral tradition is to support the values and power relationships of the present. The standpoint that what Maori say and do now is what Maori said and did in the 1830s, is one which reduces the historicity, and consequently the explanatory power, of Professor Metge’s report.

The transcendentalist approach to culture is present to a lesser extent in the evidence of Dr Mutu. I note that Dr Mutu is a claimant researcher. It is difficult therefore not to sympathise with her stance as advocate. Nevertheless, in the preamble to her report she states that her submission is presented in a way consistent with traditional European academic method. Dr Mutu’s report, then, is in the academic domain, and will be analysed accordingly.

The Evidence of Oral Tradition

Societies are not static through time; before Pakeha came here Maori society was not the same as its Hawaikian roots: for example pa warfare, synonymous with nineteenth century tribal memory, did not develop until centuries after first settlement.

The rate of change quickened immensely after the arrival of Pakehas, and nineteenth century Maori history is contingent on change. It is also contingent on coercion, as Pakeha political power, arising from the Treaty of Waitangi, was consolidated by numerical and economic dominance, and this means that Maori cultural change was too often precipitated not by choice but by loss - for example, the confiscation of land in the 1860s.

In particular, the loss of political autonomy contracted the practical fields in which mana could be pursued and expressed. As a result, projections of Maori society have been increasingly expressed in ideal and spiritual terms. Mr Rima Edwards’ evidence is a case in point.

Mr Edwards describes a world whose authority is expressed in a closed circle of spiritual terms:

Hau mai te ihi te wehi te mana motuhake me te tapu te takoto te tino rangatiratanga;

Hau mai te tino rangatiratanga, na, takoto te ihi ko te wehi te mana motuhake

These values are profoundly religious and lie outside historical time. Mr Edwards' evidence is self-contained, self-referencing spiritual truth, and must be allowed to live in te ao wairua.

I mention this because of the use Mr Edwards' traditional understanding has been put to by the two reports. It has been taken out of its territory and called history, as we practise it in universities. It is this use, and not Mr Edwards' beliefs, which is opposed in this report.

Finally, I wish to note that my study cannot be considered a full study of the period of the pre-Treaty transactions. In particular, I have not had the time to study evidence before the Old Lands Claims Commission. As a result of the work I have done, I feel strongly that a systematic study of the whole body of Muriwhenua land deeds, placed alongside the remarkably full eye-witness sources for the period, would fully resolve the points at issue.

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4 Mr R Edwards, oral evidence before the Waitangi Tribunal 3 Dec 1990.
1. **Tuku and hoko in land transfers - the history of modern usage**

1.1 Both reports assert that land transfer was a conditional arrangement which created a relationship of perpetual obligation and did not extinguish the overarching rights of the original owners.\(^5\) Neither report offers any new historical evidence which requires a revision of the conclusions concerning traditional land tenure of my earlier report (Head 1992a) and the matter will only be revisited in response to specific points.

1.2 It is not in dispute that rights to land were sometimes transferred, both for finite periods and permanently, or that the verb used to describe such a transfer would have been tuku.\(^6\) Neither is it disputed that non-commercial transfers of land to organisations or individuals for specific purposes have continued to the present day.

1.3 Both reports record the opinions of respected Maori elders concerning the meaning of tuku.\(^7\) These opinions show that nowadays tuku expresses gifts of land for specific purposes - to build a church or school, for example. In these transactions, the gift is contingent on particular use, and the land remains under the mana of the donor group.

1.4 These opinions are presented in the reports as evidence for the parameters of land transfer to Pakeha in the Pre-Treaty period.

1.5 From her conversations with Maori elders, Professor Metge develops the hypothesis that tuku is associated with 'ceremonial rather than practical exchanges', in situations which are 'formal, ceremonial and tapu'.\(^8\)

1.6 In view of the marked lack of evidence offered by nineteenth century writing for this view, I find it difficult to support this hypothesis.

1.7 I note that modern evidence is not brought forward to illustrate the use of hoko, understood now as 'buy' and 'sell'. I conclude that tuku has been

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\(^7\) Mutu 1992:11-12 and Metge 1992:82-86.

\(^8\) Metge 1992:83-85.
removed from the world of commerce, which is expressed by hoko.

1.8 This shows the verbs tuku and hoko locked into an opposition which might suggest that in the nineteenth century land transactions divide neatly into conditional-use transfers or gifts (tuku) and sales (hoko).

1.9 My examination of nineteenth century writing in Maori shows that while the modern division between tuku and hoko has its roots in the nineteenth century, this is essentially a twentieth century understanding. I find that both tuku and hoko were used by Pakeha deed writers in the pre- and post-Treaty period to describe what they understood, and assumed Maori understood, as permanent transfers or sales.

1.10 I find, however, that as the century progressed, hoko gained the ascendancy in private and official documents written by Maori and Pakeha. There are two major and connected reasons for this.

1.11 First, land matters were, as a result of government policy, the area of Pakeha thinking with which Maori had the most, and frequently forced, contact. Maori had every incentive to use the terminology of land transactions favoured by the power group.

1.12 Second, as the most significant and accessible text in Maori available, the Bible, fully translated by 1858, had an immense, cumulative influence on written expression in Maori. The Bible exclusively uses hoko for buy and sell, while tuku is restricted to the many words which express 'send/let/convey/release'.

**Conclusion**

1.13 A historian must try to build a case from the evidence surviving from the period under examination. My study of the years immediately preceding and following the Treaty of Waitangi shows that they catch Maori society at a moment when it stood between two worlds - the hugely different worlds of its own past and future. As a result language operates in terms of both old and new ways: the period shows us the beginnings of twentieth century usage, but by no means its final form.

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9 For a discussion on the use of tuku and hoko in the Bible, see Head 1992a:28-31.
The main linguistic issues raised in the reports

1.14 The issues raised by the evidence of the reports by Dr Mutu and Professor Metge are multi-faceted, ranging over many fields of study. However the linguistic issue at the centre of both reports is the language of sale.

1.15 Both reports suggest that 'the meaning of "sell" was not possible for hoko' before 1840. Hoko traditionally meant 'barter\exchange\trade'.

1.16 Both reports suggest that the word for transfer, tuku, was not understood by Maori in the 1830s and 1840s in contexts which described 'sale' in the sense of a complete and irreversible transfer of ownership in return for payment in cash or kind. Dr Mutu says:

During the 19th c the tribes of Muriwhenua saw 75% of their lands pass to Europeans. In no case had they given up their mana whenua, and for most of the transactions the understanding of the tribes was that the land would return to them.

1.17 While an examination of early Maori writing shows that the term mana whenua was not in use at the time, I understand the reports to mean by mana whenua, rights over land: in English terms, ownership of land.


2. Oral tradition and the question of meaning

2.1 The reports present a statement from Mr Edwards which is attributed to Nopera Panakareao, the Te Rarawa chief who signed nearly all the deeds:

Horekau au i hoko i te whenua. I tukua e au i runga i te aroha, taku tuara ki Te Reinga.\textsuperscript{12}

I never sold the land. I gave it out of love, my back to Te Reinga.[MT]\textsuperscript{13}

2.2 This is a statement from a Maori person living today, that Panakareao used these words when talking about pre-treaty western Muriwhenua land transactions. It gives tuku and hoko clearly separate, different meanings.

2.3 I am, therefore, surprised that this statement was not used for the linguistic support it appears to give to the argument about the meaning of tuku in the reports.

\textsuperscript{12} R. Edwards, oral evidence 3.12.90. Mr Edwards expanded on this in his evidence, saying that if Panakareao had turned his face towards Te Reinga, where spirits of the dead depart from this world, this would have meant the sale was permanent. By facing away from Te Reinga, he showed the land was to return to the tribe.

In the established corpus of tradition people could return from Te Reinga, if certain conditions, usually pertaining to eating the food there, were met. Tohunga might visit Te Reinga while in a trance; certain rituals required tohunga to face the rising or setting sun. Mr Edwards’ account has traditional resonances, but the extensive literature on ritual does not include orientation to Te Reinga. I am indebted for this information to my colleague, Dr Orbell.

No contemporary account has survived of such a ritual at a land transaction. Land sales were so intimately connected with mana that proceedings were ordinarily characterised, on the Maori side, by a strong drive for proper public procedure. If the chief’s physical orientation was a significant factor in this, it seems unlikely that it would not be recorded.

\textsuperscript{13} [MT] = my translation. Original translations [OT] are used where they are extant and accurate. For this quotation, compare Mutu’s translation: ‘I never traded the land. I released or allocated it out of a sense of compassion, with my back to Te Reinga.’ An examination of Panakareao’s relationship with the missionaries does not suggest that it was based on ‘compassion’.
2.4 The failure of the reports to capitalise on the linguistic content of this saying suggests a tacit acceptance that it post-dates the period, and belongs to tradition rather than to Panakareao. In the light of this assumption, with which I agree, the linguistic significance of the use of hoko and tuku in this saying will not be further discussed, except to say that I have so far found no nineteenth century written text which opposes the concepts of tuku and hoko in this way.

The discussion of the redemption of land in Leviticus

2.5 The reports\(^{14}\) attach considerable weight to the influence on Panakareao's thinking of the biblical passage Leviticus 25:23 ff.\(^ {15}\) This will not be analysed in this study. Although believed by Te Rarawa now to be the reason Panakareao signed the Treaty of Waitangi in April 1840, the book of Leviticus was not translated into Maori until 1847-8.\(^ {16}\)

2.6 The meeting at which this discussion is said to have taken place was for the purpose of explaining the Treaty. The eye-witness accounts of this meeting by John Johnson, William Puckey, Willoughby Shortland and Richard Taylor do not mention a discussion of Leviticus.

2.7 The discussion centred on the concept of sovereignty as it affected a chief's rights over his land, and in particular, his right to sell it. In light of this, I find it unlikely that Pakeha who understood land transactions in terms of sale and who were trying to convey their understandings to Maori would specially translate for the occasion a passage on land tenure which might cloud that issue for Maori.

2.8 I conclude that it is highly unlikely that the discussion on Leviticus took place in 1840. I note that in his evidence Mr Edwards\(^ {17}\) stressed that his knowledge was not dependant on dates in the same way as is the Pakeha historical tradition.


\(^{15}\) The land must not be sold in perpetuity, it is mine, and you come into it as strangers whom I have settled there.

\(^{16}\) Williams, Herbert., A Bibliography of Printed Maori to 1900, 1975:31, item 122.

\(^{17}\) Oral submissions to Tribunal 3/4 December 1990.
The first meeting of Panakareao and Joseph Matthews

2.9 A comparison of Mr Edwards' version of the first meeting between Panakareao and the missionary Joseph Matthews in 1832 and the Matthews' family tradition of the event strongly suggest that the source of both is the biography which was written in 1940 by descendants.18

2.10 While it is a great story, (and it is significant that it is told by Mr Edwards as a story) this version is not supported by evidence of contemporary mission journals.19 These show that Panakareao was anxious to settle missionaries on his land, and went to considerable lengths to secure them.20 If Panakareao and his warriors gave a display of their fighting spirit at the encounter, this was standard practice. I conclude that the story of first encounter cannot be used to indicate Panakareao's general disposition to missionaries.

'The shadow of the land'

2.11 Panakareao’s saying of 1840, 'The shadow of the land goes to Queen Victoria, but the substance remains with us'21 has become one of the seminal images of race-relations history.22

2.12 This statement was made at the 28 April 1840 meeting mentioned previously. My examination of Richard Taylor's record shows that Panakareao’s saying was an insightful attempt to understand the nature of kawanatanga, which was used in the Treaty to express 'sovereignty'. This was a concept without


19 CMS Register quoted in Matthews 1940:23.

20 Missionary register quoted in Matthews 1940:Ch 5.


22 ‘No source has been found for Nopera’s words in Maori, as spoken by Nopera.’ Orange, C., The Treaty of Waitangi 1988:277 fn 74.
precedent in Maori thought.\textsuperscript{23}

2.13 This view receives support from Willoughby Shortland, also present at the meeting, who recorded that Panakareao was concerned that government pre-emption might restrict his right to sell his land. Panakareao explained his understanding that the exercise of kawanatanga by Pakeha would only change the party to deal with:

We shall go to the Governor, and get payment for our land, as before.\textsuperscript{24}

2.14 In light of this evidence, I conclude that Panakareao’s statement expressed an understanding of chiefly mana under the Treaty, and that it cannot be interpreted as a rejection of land sales.

The significance of names

2.15 Further argument from modern cultural understandings in the reports centres on the fact that in all but one case, the names of Pakeha signatories are rendered in Maori in the Maori versions of the deeds.

2.16 Dr Mutu, guided by her elders, believes this indicates an acceptance by the Europeans ‘of their new place within [the social structure of the tribe]’.\textsuperscript{25}

2.18 The presentation of English names in transliterated Maori form in Maori language documents began with the translations of Bible passages and public proclamations in the 1820s and continued until newspapers in Maori ceased to exist about 1930.

2.19 I conclude that the practice of writing the names of Pakeha in Maori was instituted by the missionaries and arose from their desire to communicate as fully as possible with Maori.

2.20 The report also draws a parallel between the practice discussed above and the


\textsuperscript{24} Shortland to Stanley, 6 May 1840, encl. speech of Panakareao, BPP, 1841 (311), p59. Also Rev Richard Taylor op. cit.

\textsuperscript{25} Mutu 1992:33–34.
adoption by Maori of English names. However the two cases, on examination, appear very different. Maori did not transliterate their own names into English: instead they took the Maori versions of English names.

2.21 In the early years the names of monarchs (e.g. King George: Hori Kingi) and famous men (e.g. Buonaparte: Ponipata) or local Pakeha identities (e.g. Busby: Poihipi, Broughton: Paratene, Puckey: Paki) were appropriated.

2.22 Maori who were baptised also took a new name, usually Bible or church history related, to signify their spiritual rebirth.

2.23 I conclude from this evidence that the adoption of Maori versions of English names is unlikely to show Pakeha being drawn into a Maori social system.
3. **Tuku and hoko in the Western Muriwhenua deeds**

3.1 The major part of this examination consists of comment on the analysis of the western Muriwhenua land deeds presented in the report of Dr Mutu. Where appropriate, evidence by Professor Metge will also be considered.

3.2 According to Dr Mutu's report, tuku appears in all but one of the deeds presented to describe the transaction in Maori. In thirteen out of fifteen deeds 'sale' is the original English translation for tuku.26

3.3 The report advances a translation for tuku which is not recorded in the dictionary: 'allocate'. This is chosen over the established glosses "since the potentially temporary nature of the action is allowed for in the meaning of the word 'allocate"."27

3.4 The Concise Oxford Dictionary of English does not give any meanings for allocate which indicate temporariness. I find 'allocate' is an acceptable variant translation of tuku, but that it cannot be taken as an indication that a land transaction is potentially temporary.

**The translation of tuku**

3.5 The glosses for tuku presented in Williams' Dictionary of the Maori Language are: 'let go, give up, leave, put off, allow, let, send, present, offer'.28 I note that Williams' Dictionary does not include among its glosses for tuku any examples pertaining to land. I wish to repeat that the action of transfer - of land or anything else - was indeed expressed with the verb tuku. We have an example of Panakareao using tuku in a verbal construction in a letter he wrote to the CMS in 1839:

heoi ano to [sic] ratou mahi he tuku wenua anake ano mo nga Pakeha.

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26 Mutu 1992:39. There is some confusion in the photocopied draft of Dr Mutu’s report made available to me. Some deeds are duplicated while others appear to be missing or incomplete, therefore figures given in this section may be subject to upward revision.


they do nothing but sell land to the white people [OT]  

Does the translation of tuku as sale suggest missionary duplicity or unfamiliarity with meanings?

3.6 Dr Mutu suggests that the translation of tuku as sale may represent ‘disingenuousness’, a deliberate attempt to veil the fact that the documents Maori were signing permanently alienated their land.  

3.7 My examination of the deeds shows that translators translated tuku as ‘convey’ ‘send’ ‘permit’ ‘offer’ and so on when the context required it: they did not restrict tuku to ‘sale’.

Kua riro mai i a maua 2 Paraikete...hei utu mo ta maua wahi i tukua e Maru Nehe ma i ta ratou tukunga i Parauri.  

We have received... 2 Blankets [etc] as payments for our piece (of land) made over by Maru Nehe and others to Mr Shepherd situated at Pirauri[sic] [OT]  

kua oti te tuku e matou e Panakareao ma ki a te Poari tetahi wahi wenua...  

a certain piece of land has been transferred by us Noble Panakareao and others...[OT]  

3.8 The confident and flexible use of all the meanings of tuku does not suggest a wish to deceive. It does, however, imply that the translators believed Maori understood tuku as permanent transfer or ‘sale’ when it was used in the context of land deeds.  

3.9 This conclusion is reinforced by a study of early texts not connected with land sales, which show a similar confidence and flexibility. As an example, I

29 Panakareao to the CMS, 5 March 1839. Quoted in Metge 1992, Appendix 3.  
30 Mutu 1992:44  
31 Turton Deeds – Encl 2 in no.13, Private Land Purchases p19-20, Otengi Block 27 Jan 1840.  
present a proclamation by the Governor in April 1840:

Na, e mea ana taua ture ra, e kore rawa nga hoia e tukua kia hoko atu i nga mea a te Kuini kua oti nei te tuku ki a ratou, ara, ko nga kakahu hoia, ko nga pu, ko nga paura...ko nga kakahu moenga, ko nga kai ma nga hoiho, aha ranei; e kore hoki ratou e tukua kia hokohoko atu i au a mea ki nga kakahu o tetahi atu tangata; e kore hoki tetahi tangata e tukua kia tango mai ki nga mea a te Kuini kua oti nei hoki au a mea te tuku ki ana hoia hei wakahoia i a ratou.

Now, that law states, soldiers are never permitted to sell the gear that the Queen has supplied them with - that is, military dress, guns, powder...nightshirts, horse feed or whatever; neither are they permitted to trade off those things for the garments of some other person; neither also may any man take away the Queen’s possessions which have been given to her soldiers to turn them into soldiers.[OT][33]

3.10 I conclude that it is difficult to see the translation of tuku as ‘sell’ as an indication of the disingenuousness of the European translators.

Is the idea of return or temporariness implicit in the word tuku?

3.11 In the evidence presented in both reports, it is said that tuku describes a gift exchange or a temporary, conditional transfer and that therefore the idea of return is implicit in its meaning. According to Professor Metge:

...tuku means not only giving but also giving back. It implies reciprocity.[34]

3.12 In my study of Maori texts, I have found no text in which tuku carries within itself an implication of reciprocity.

3.13 For this meaning to be present, a context with supporting vocabulary is required. We see this in a letter from a man wanting to subscribe to a newspaper. In this quotation, the directional particles mai and atu provide an orientation towards and away from the speaker:

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34 Metge 1992:83.
He kupu atu naku ki a koutou, tukua mai he Pepa ki a au, he tauhou ahau, tukua mai nga whakamarama mo te moni hei tukunga atu.35

This is a word of mine to you: send me a paper. I am a newcomer. Send me the instructions for sending off the [subscription] money.[MT]

3.14 I conclude that the idea of 'return' is not implicit in the word tuku, but is contextual.

Was the lack of a pre-contact concept of sale necessarily a bar to understanding in the 1830s?

3.15 The reports of Dr Mutu and Professor Metge suggest that land 'had only use rights to it allocated [to Pakeha] and had not in fact been sold'.36

3.16 According to the reports, the reason that land had not been sold was that there was no word (and underlying concept) for sale:

[the] task [of conveying English legal terms into Maori] would have been virtually impossible before 1840, no matter how good the translator, since there were no words in Maori to convey the essence of such a transfer.37

3.17 I agree that there was no concept of sale in the sense of exchange for money in classical Maori society, and therefore no word to express it.

3.18 In my reading of early texts in Maori written by Pakeha, however, I find that the writers grappled with the problem of conveying English concepts in Maori. The 'Declaration of Independence' of 1835, for example, introduced the terms Kawanatanga for 'government' and Kingitanga for 'sovereign power'.

3.19 I conclude that the reason translators devoted effort to finding words to express unfamiliar concepts is that they wished to convey the new meanings as precisely as possible. It is reasonable to think that ways to express 'sale' would have received similar attention, and that the understanding they would


36 Mutu 1992:7; Metge agrees; see e.g. 1992:96.

37 Mutu 1992:27
have sought to express in terms explicable to Maori was the Pakeha one: permanent transfer of an agreed area of land for an agreed payment. The careful, pedantic wording which evolved for land deeds supports this conclusion.

3.20 There is a large body of evidence that Maori both invented new vocabulary and applied existing words to new ideas and objects (moa for 'hen', pu for 'gun' are early examples). Tuku falls into this category. Already the word to describe any kind of transfer, sending or releasing, it was therefore available to describe the transfer of land, when placed in that particular context. I would stress the words ‘when placed in that context’, because the verb tuku has no intrinsic attachment to land, but only describes the action of transfer.

3.21 I conclude that there is no reason why tuku could not be used to describe the transfer implicit in sale, when that context was present.

The nexus of terms supplying the context for the idea of permanent exchange or ‘sale’ in the Kerekere Deed

3.22 In the western Muriwhenua deeds tuku does not appear in isolation, but in a nexus of words which describe all of the actions which together constitute a permanent transfer, which Pakeha translated as ‘sale’. As I have pointed out in my earlier report, the standard components of a land deed are:

(1) detail of parties to the sale and expressions of its permanence
(2) recording of boundaries of sale
(3) detail of payment received
(4) recording of signatures or marks of sellers, buyers and witnesses


39 I find there is no significance in the fact that ‘sell’ is not presented in any edition of Williams’ dictionary as a meaning for tuku, as its aim was to present traditional meanings.

40 Head 1992a:22
Dr Mutu has stated that the Kerekere Block No. 1 deed, 17 March 1834, was the model for the other thirteen western deeds. I suggest it would be better to say that it provided a base for the subsequent thirteen deeds, as I find that the deed writers added a number of phrases which significantly reinforce the permanence and relinquishment of rights of the sellers.

Nevertheless, the Kerekere deed can be used to show the basic nexus of phrases which express the transaction as a permanent transfer. The phrases are:

1. kua oti nei te tuhituhi
   written[OT]
   This is also translated by Dr Mutu as 'written'.

   The Maori is stronger. Oti signifies something completed or accomplished. It implies that the written deed is the result of an accomplished agreement or understanding between the parties who are jointly said in the document to have written it. This phrase is repeated elsewhere in the deed.

2. hei tino tohu
   shewing truly[OT]
   The document is described as the symbol, or as Dr Mutu expressed it, the 'special sign' of the transaction. Again, this throws the weight back on the prior, oral agreement between the parties which is the real authority for the transaction.

3. kua oti nei te tuku e matou
   sold by us [OT]
   Lit: 'that the transfer has been accomplished by us'.

   This phrase is later repeated in two different parts of the document.

4. tetahi wahi wenua oti tonu atu...[ko te nuinga.../ko te ingoa.../ ko te kaha...]
   an area of land unreservedly...[the size...the name...the boundary]

   Oti tonu atu here indicates that the land is transferred in every particular, and the document goes on to include everything on or under the land.

   The naming of the land and its boundaries is the essential acknowledgment of the chief's rights to the land. This in turn expresses his ability to sell it
without opposition.\(^{42}\)

The fact that in this deed the size of the block is estimated rather than precisely surveyed is not significant at this early date. Maori did not think in terms of acreage but of boundaries, and these are named.

(5) Ka hoatu nei e te Paki...nga mea hei utu

Mr Puckey has given out as payment...these things[OT]

Hoatu indicates that the payment was handed over in a face to face situation, the immediate transfer reinforcing the idea of a trading transaction. This is further reinforced when the document repeats that the named articles of payment are in return for the land, the trees, and everything else whatsoever as well.

The document ends the list of payments with another reminder that they are ‘for the land, the trees and everything whatsoever as well’ and that [the payments] are hereby conveyed by Panakareao to Mr Puckey. In this last statement, tuku is translated in the original as ‘given to Mr Puckey’. This shows the translator correctly using tuku in its meaning of ‘handing over’.

(6) The names of all parties to the transaction are appended to the deed, the Maori ones being represented by marks.

**Conclusion**

3.25 My analysis of the Kerekere deed shows that tuku does not carry the burden of proof of the nature of the transaction. Tuku is placed in a context which builds up an understanding of permanent transfer of land. I conclude that Maori would understand the words in this way.

3.26 I further conclude that tuku was chosen by the deed writers to mean sale, and that this represents an early nineteenth century extension of its meanings, which are also exemplified in the deed.

**Maori Literacy**

\(^{42}\) Head 1992a:21-22
3.27 I note that while Panakareao signed the Kerekere deed in March 1834 with a mark, by July 1835 he was able to sign his name. This pattern is repeated with other signatories. I see this as a strand of evidence that Muriwhenua Maori grew extremely rapidly in their grasp of new technology and ideas. This suggests that an understanding of land transactions in Pakeha terms was by no means beyond Maori.

3.28 Joseph Matthews' journal records in 1836 Panakareao reading the Gospel of St John.\(^{43}\) I am therefore unable to support the view presented by Professor Metge that 'none' of the Maori people could read or write in the pre-Treaty period.\(^{44}\) There is a great deal of evidence of substantial Maori literacy in the later 1830s, and this evidence withstands the criticisms of recent revisionary opinion by D F McKenzie.\(^{45}\)

3.29 My study suggests that such a generalisation about literacy is particularly mistaken in reference to Muriwhenua Maori.

**The compound noun tuku whenua**

3.30 Both reports use the compound noun phrase tuku whenua to mean a land transfer conducted within the parameters of Maori custom.

3.31 We are dealing with a concept - something which the reports call 'a tuku whenua', or the 'custom of tuku whenua'.

3.32 I note that the compound noun tuku whenua does not appear in Williams' Dictionary.

3.33 My study of early manuscripts has failed to reveal any occurrence of the term tuku whenua in the pre-Treaty period.

3.34 Nineteenth century commentators do not mention the term tuku whenua as a general term for land transfer or gift. Instead they described a variety of individual circumstances under which, traditionally, land might be temporarily or permanently transferred.

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\(^{43}\) Journal of Joseph Matthews, quoted in Matthews & Matthews 1940:94.

\(^{44}\) Metge 1992:103.

Written opinions on land tenure by Alexander Mackay, Donald McLean, Sir William Martin, Archdeacon Maunsell, Rev J. Hamlin, George Clarke, Archdeacon Hadfield, Rev Mr Buddle, Willoughby Shortland and Frederick Maning all use Maori language terms for Maori custom. I note that none offers the term tuku whenua to describe traditional land transfer.  

I note that a book on Maori land law by Norman Smith is said in the report by Dr Mutu to use the words 'gift or tuku whenua'. I find that his actual words are gift or 'take tuku'.

I note that lists of traditional take, bases, for land rights include take tuku, 'right of gift'. I further note that take tuku was presented in the Land Court by persons seeking Crown titles to land. Take tuku was, therefore, used as evidence of permanent right to land.

My examination of the western Muriwhenua land deeds presented by Dr Mutu shows that the compound phrase tuku whenua does not appear in any of them.

I note that in all the examples in the northern deeds available to me, tuku appears as an adjectival phrase attached to the noun pukapuka.

Pukapuka was used at least from the 1820s to describe any written document.

The term pukapuka tuku whenua, lit: 'land transfer document' occurs in one northern deed of the 1850s and is translated as 'deed':

Na ko tenei pukapuka tuku whenua i tuhia i tenei ra...

...this Deed written on this...day[OT]

The more common term for deed in the documents studied is the shortened form pukapuka tuku, which is also translated as 'deed':

Ko te utu tenei kua whakahuatia ki te Pukapuka tuku e mau i runga

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46 Appendices to the Journals of the House of Representatives 1890, G-1, pp 1-23.


50 Turton Deeds No. 3 Private Land Purchases: p3 Oruru Valley 17 Sept 1856.
ake nei kia utua mai ki a matou Te Henare Kepa mo te Kuini.

...being the consideration money expressed in the above - written Deed to be paid by H T Kemp, Commissioner, on behalf of Her Majesty the Queen to us...[OT].51

3.43 Outside the deeds, the compound noun tuku whenua gained an important life from the 1850s to describe land sellers and land selling, particularly in King Movement writings.52 In the King Movement, tuku whenua, land selling, is the diametrical opposite of pupuri whenua, land holding.

3.44 This use of tuku whenua grew out of the history of land sales, and in particular of the words for a deed of sale, pukapuka tuku [whenua].

Conclusion

3.45 I conclude that the compound noun tuku whenua as a general term for describing land transactions may have grown out of an origin in the land deeds themselves. I further conclude, from the lack of nineteenth century references to a custom called tuku whenua, that this term is of modern origin.

Hoko, or trade, in the pre-Treaty period

3.46 Both reports take the view that the verb hoko could not mean 'sale' before 1840, on the grounds that its pre-contact meanings were 'barter/exchange/trade'. These meanings appear in the earliest, 1844, edition of Williams' dictionary.

3.47 I find that the omission of the gloss 'buy'/‘sell’ from this edition of the dictionary is not significant, as the work was an attempt to establish pre-contact meanings.

3.48 It is difficult to entertain the tentative suggestion put forward by Professor

51 Turton Deeds - No. 5 Private Land Purchases: p6 Waiake block, 30 August 1859.

52 Head 1992a:17.
Metge that hoko may have been a word introduced by Pakeha.\textsuperscript{53} As I have shown in my earlier report, hoko appears in the earliest collections of Maori texts as the word for barter or trade.

3.49

It can be observed that an immediate exchange of goods and/or money for land is antithetical to the Maori idea of gift, but was the mark of a trading exchange between Maori.\textsuperscript{54} The following extract from Nicholas' observations of 1814-5 pictures a trade exchange between 'Gunnah' and women who wanted to procure gannet feathers for adorning the hair.

He then counted out twelve of the feathers...and laid them down...at the feet of the young damsel who had the mat, giving her at the same time a large bunch of the down of the gannet....upon receiving these she immediately gave him the mat in exchange, and Gunnah carefully tying up his box again, walked off to supply more customers.\textsuperscript{55}

3.50

A further passage describes a trade encounter between Waimate and Kawakawa Maori in their canoes and Nicholas' ship, which also had the Rev Samuel Marsden aboard:

[A Maori wishing to trade] was standing up in one of the canoes, displaying for sale a very handsome war-mat; I called out to him that I would give him a tokee [toki] for it, to which he assented; but not having one upon deck at the time, I went into the cabin to get one out of my closet. While I was...searching for it, one of our party in the meantime, not aware of the bargain I had concluded, shewed the man a large tokee, and wish him to hand up the mat; but he remained true to his engagement, and gave him to understand that it was already sold.\textsuperscript{56}

3.51

This passage shows:

(1) Trade was negotiated or bargained for. This marks it off from gifting customs

(2) The exchange was immediate. This also was not gifting practice.

(3) To the Maori trader, his word was his bond: having agreed

\textsuperscript{53} Metge 1992:76-7.

\textsuperscript{54} Head 1992a:12-13.

\textsuperscript{55} Nicholas, J.L., Narrative of a Voyage to New Zealand, 1817.

\textsuperscript{56} op.cit 303-304.
with one trading partner, he did not cancel the contract when he was made a better offer.

3.52 I note that these three characteristics of early trade were also the characteristics of trade in land.

3.53 I further note that it was the regulation of this trading economy that led to Aotearoa becoming a British colony. According to Dr Orange, 'protection of British trade was the decisive factor' in the decision to send a Resident in 1833. 57

3.54 Professor Binney points out that:

'Maori were involved in almost all commercial enterprises which dotted the New Zealand coasts and rivers'. 38

3.55 The missionary William Yate observed that 'the natives would....resist any attempt to take possession of their country,' but were very keen to trade.

3.56 The account by Nicholas shows that Maori traders operated under a clear set of rules. This has implications for the land trading situation which developed in the 1830s.

3.57 In light of the established protocols for trading operations, I find it difficult to accept the suggestion by Dr Mutu that the land transactions were in the nature of 'gift exchange', and that unrecorded continuing formal payments would have been part of the arrangements. 60

3.58 I further find unlikely the suggestion by Professor Metge that full prior discussion of the payment for land transactions was a 'procedural concession' which did not indicate that Maori knew what was going on. 61

Conclusions


59 ibid p32.

60 Mutu 1992:34-35.

I find that trading transactions were permanent exchanges of goods. I conclude that it is likely that land sales evolved out of a well established trading economy, and that the word hoko was logically extended to encompass permanent transfer of land.

I find untenable in the light of the abundant evidence for Maori, Professor Metge’s view that the Pakeha conception of payment would be ‘entirely obscured’ for Maori by their understanding of utu as ‘returned gift’.

It was the tensions between trade and sovereignty which led Maori to support a treaty. In light of the evidence that Maori thought deeply about the changes which were taking place in their society, I find it difficult to accept that western Muriwhenua Maori did not understand the nature of land transactions with Pakeha.

There are many similarities between the northern situation and that of Ngai Tahu. Both communities, though wracked by war, had long-established trading relationships with foreigners. I note that Ngai Tahu argued strongly that their ancestors, as a result of their trading history, sold land as a fully thought out economic strategy. In this light, it is curious that the bulk of argument in the present case has been directed to showing that Te Rarawa were entirely enclosed in pre-contact understandings of both land and the relationship with Pakeha traders.

Hoko in early Maori writing

Missionary accounts of Maori conversion reflected the fact that after years of hopelessness Maori enthusiasm seemed to suddenly vindicate their sacrifice. Reliance on these accounts led to a long-standing belief that the 1830s were the age of Maori literacy. In fact there was a great age of Maori literacy, but it was in the second half of the nineteenth century.

Any Maori writing before 1850 is a rare treasure; surviving writing by Maori before 1840, is almost non-existent. For this period we are largely reliant on text dictated to Pakeha - such as the 1835 letters by the Ngati Haua chief Te Waharoa - and text which was written by Pakeha and approved by Maori such as land deeds.

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A study of 1840s manuscripts has, however, revealed significant texts by Maori which show the use of hoko in the context of land sale.

An 1847 letter from the Nga Puhi chief, Tamati Waka Nene, offers further support. While Waka Nene cannot be made to speak directly for Panakareao and western Muriwhenua, the letter offers insights to land trading in the pre-treaty period.

Hoko ana ano a Hikitene i tona kainga i Waikare.
Hoko ana ano a Tohitapu i tona kainga i Whangai.
Hoko ana ano a Heke i tona kainga i Puketona.
Hoko ana a Kaiteke i tona kainga i Pouerua.
Hoko ana ano a Manu, a Te Wharerahi i Te Waimate.
Hoko ana ano ahau i toku kainga i Otutae.

Kahore he kainga i tangohia noatia, waihoki kahore he rangatira o Ngapuhi kahore i hoko.64

Hikitene sold his place, Waikare.
Tohitapu sold his place, Whangai.
Heke sold his place, Puketona.
Kaiteke sold his place, Pouerua.
Manu and Te Wharerahi sold Waimate.65
I myself sold my place, Otutae.

There is no place which was simply taken, just as there is no Nga Puhi chief who did not sell.[MT]

Further passages in this letter show that in Waka Nene’s mind, justice and injustice concerning land sales concerns not sale but payment. My study of land claims suggests to me that this is in line with Maori thinking on land sales everywhere.

Hoko in the western Muriwhenua deeds

The report of Dr Mutu states that prior to 1840 ‗the meaning of sell was not


65 These statements are stronger in Maori, through the reinforcement offered by ano.
possible for hoko'. 66

3.69 I note that hokohoko was used in the Declaration of the Independence of New Zealand for 'trade' and that the Treaty of Waitangi used the noun derived from hoko, hokonga, for 'pre-emption' and kai hoko as the equivalent of land agent. This suggests that hoko and its derivatives were understood by Maori in the 1830s in the context of trade in land.

3.70 The report notes that in Bay of Islands deeds, hoko was commonly used for sell, in conjunction with tuku. The report suggests that in these cases:

it is always used in conjunction with tuku, with the implication that [hoko] refers to the exchange of items part of the transaction.67

3.71 From my examination of the western Muriwhenua deeds I find that tuku and hoko are used in conjunction, as part of the reinforcement of the transaction. I note that this wording was to become in the 1850s the standard phraseology of deeds for government purchases.68 The conjunction appears designed to create a legalistic precision of language;

Kia rongo e nga tangata katoa ki nga mea kua hoatu kua tukua kua hokoa atu e matou e nga Rangatira o Tokerau, o Raramata..ki a Wiremu Mawi..te wahi wenua.69

Know all men by these presents that we the undersigned Native Chiefs of Rallamatta Doubtless Bay...do sell let and make over unto William Murphy...all rights titles and interests to all the land...[OT]70

3.72 Dr Mutu found that hoko appears twice only in the western Muriwhenua deeds. However I have found that hoko occurs in ten deeds or supplementary deeds - about one third - of the deeds presented in the report.71

66 Mutu 1992:40


68 Head 1992a:41-43.


70 'Make over, let and sell' would be a more precise order for the translation of kua hoatu, kua tukua, kua hokoa.

71 The count is taken from the deeds whose Maori version has survived. Typical wording of the deeds for which only the English translation survives is: do sell, let, and make over [the
I further find that hoko is used alone and in circumstances which are difficult to understand in terms other than permanent transfer. This remains true even if we substitute for the translation ‘sale’, the pre-contact meaning ‘trade’:

Kua oti te tuku e Paora te Oka e Aperahama Mataua ki a Hemi Hepara...to raua kainga i karangatia nei ko te Wanga...he hoko mana he hoatu ranei ki ana tamariki he aha noa mana

Paul te Oka and Abraham Mataua have made over to James Shepherd...their piece called Te Wanga...for him to sell or give to his children, or to do with whatever he may please[OT]72

Kua oti te tuku...ena kainga...he kainga mo taua Hemi Hepara hei hoko mana hei hoatu ranei mana ki nga tamariki he aha noa mana he aha noa mana.

The transfer of those places has been completed as places for the aforesaid James Shepherd, for him to sell or give to the children or whatever else he wishes.[MT]73

Conclusions

3.74 I find that as trading transactions were permanent exchanges of goods, the word hoko was logically extended to encompass permanent transfer of land.

3.75 I draw a conclusion that in the context of land deeds hoko meant ‘sale’. I further conclude the combination of tuku and hoko was designed to reinforce the transaction and represented the development of legalalese in Maori.

Contextual evidence for Maori acceptance of the language of the deeds as describing sale.

72 Turton Deeds Encl 1 in No 13, Private Land Purchases: p19, Te Whanga Block, 30 Nov 1839.

73 Turton Deed-No. 32 Private Land Purchases: p 32, Waiongangi etc. Block, 6 June 1838.
Claudia Orange has shown that in the Bay of Islands trade between Maori and Pakeha had been going on there for an astonishing seventy years by 1840. There were sometimes thirty trade vessels in the bay in the 1830s, and New Zealand's export trade never fell below twenty thousand pounds in value per annum in that decade. The missionary William Yate said that there were at times one thousand Englishmen and Americans in Kororareka in the 1830s. This suggests an answer to the question raised by Dr Mutu as to why hoko is commonly used to express land transactions in the Bay of Islands: the word hoko was probably chosen by the translator because it was well known to Maori in that area as the expression of a trading transaction.

Language exists in a context of interaction between people, and therefore a study of linguistic issues inevitably involves consideration of the time and culture the language belongs to. The suggestion that after seventy years of trade in goods Maori did not understand trade when it was applied to land seems at variance with the acuity with which Maori picked up so many other new ideas. In particular, I note that land sales took place in the same years, the mid and late 1830s, when Maori converted to Christianity. While the two may not seem to have a direct connection, I find it hard to believe that Maori could have the courage and confidence to commit themselves, as so many did, to a belief in God and not have the least idea that to Pakeha, land transactions were an extension of trade.

The idea that missionaries used a word or words to describe their understanding of sale which was at great variance from Maori understanding does not fit the facts of a relationship in which missionaries' sole protection lay in their ability to get on with Maori. Matthews and Puckey had every reason to ensure that land transactions were understood by both parties, as the consequences of upsetting Te Rarawa could threaten the lives of their families and jeopardise the vocation which had brought them half way round the world.

The missionaries felt confident that Te Rarawa understood that they were permanently parting with their land:

We took full possession of the settlement on the 18th March 1834...On Monday the 18th the land was paid for...The chiefs of whom we purchased the land manifested great satisfaction on seeing payment, one of whom made an excellent speech to the assembled multitude...in which he showed the nature of European bargains, telling them that the land which they had sold was a weighty article, and that right of

3.80 Panakareao was the leading chief and signatory to all but one of the western Muriwhenua deeds. He was accustomed to thinking that people followed his lead, as his observation before he signed the Treaty shows:

I am at your head. I wish you to have the Governor.76

3.81 A study of land selling Maori in general gives a common profile of a seller:

(1) Involvement with missions, leading to conversion to Christianity
(2) Relative youth
(3) Marked interest in conforming to observable European customs
(4) Mana to make decisions that will be accepted by his people

3.82 An examination of missionary accounts of Panakareao's life and his own statements show that he has the marks of this profile. As noted by Professor Metge ‘he adopted many features of a European life style’.77 I further note that he signed the ‘Declaration of Independence’ in 1835, and subsequently the Treaty. This strongly suggests that Panakareao had thought about the Pakeha presence in New Zealand more than most, and adds to the contextual evidence for the view he was likely to understand land transactions as permanent transfer.

3.83 I conclude that it is only when deeds are seen as an abstraction, and not as part of a relationship between people, that ideas that Maori did not understand the language of sale can be seriously entertained. Of course, whether they understood the long term implications of sale, that is permanent landlessness, is very much open to doubt.

3.84 Finally, I am not aware that Maori sought to overturn a land transaction on the grounds that the words tuku or hoko were not understood at the time of sale.

75 Report to the CMS by Davis, March 1834, quoted in Matthews and Matthews 1940:62-3. The speaker was probably Panakareao.

76 Taylor op. cit.

Conclusions

3.85 I draw the conclusion from the evidence which arises out of a study of western Muriwhenua land deeds that in the pre-treaty period there was no overarching concept called ‘sale’ which included in it all the actions necessary to completion. Instead there was a series of actions, all separately described, which together constitute and symbolise permanent transfer of land.

3.86 The words used to describe the English idea of ‘sale’ were either tuku, hoko or both. If the Pakeha deed writer saw the transaction in terms of the transfer, he tended to use tuku; if he saw it in terms of trade, he tended to use hoko; in both cases, the writer signified permanent transfer.

3.87 In no case did the words tuku and hoko stand alone to express permanent land transfer. They appear in a context and in a nexus of words and phrases which underline the permanence of the transaction and the rights of the new owner.

3.88 From this point on, my report deals with matters of detail in the two reports.
4. The pattern deed: the Kerekere or Kaitaia Block.

4.1 The Kerekere block, was Panakareao's first land transaction with the CMS missionaries. This deed was probably written by the missionary William Gilbert Puckey. Puckey was an expert in Maori, and a future member of the committee who translated the Bible into Maori.

4.2 Professor Metge offers commentary on the deeds, and concludes that:

Given ... the elementary level of Maori language used in the deeds, Panakareao and the other chiefs could not have taken them seriously as records of so important a transaction.

4.2 Dr Mutu lists five objections to the Maori versions of the pattern deed. I shall list them, and follow them with comment:

(1) Lack of 'formal Maori speech' such as 'tribal and ancestral references, whakatauki or proverbial sayings and the use of metaphor and allusion'.

4.3 As Dr Mutu herself subsequently notes, the reason is that the translators were trying to devise a Maori legalese. The plainness of the language would not render it incomprehensible to Maori. If anything, it would reinforce the
newness and foreignness of the idea of selling land.\(^84\)

4.4 The lack of formal Maori speech characteristics also throws doubt on the view advanced in the report that the deeds offer evidence that Maori were drawing Pakeha into the life of the tribe.

(2) **Use of transliterations 'unknown to Te Rarawa speakers today'**.

4.5 The transliterations in question are nota (north), hauta (south), ita (east), weta (west). Their use is suggested by the reports to offer evidence that the Pakeha translators of the deeds were inexpert in Maori.\(^85\)

4.6 A study of early documents in Maori suggests a different view. The transliterations nota hauta ita weta were first recorded in 1827 in New Zealand, and persisted into the second half of the century. While they dropped out of writing in Maori by Pakeha, they remained in use by Maori, in particular in the writings of leaders of nineteenth century mana motuhake movements such as the Pai Marire faith and the King Movement.

4.7 These transliterations were almost certainly Maori sourced and missionary repeated, rather than the other way round. They reflect early Maori experience on ships, and their Pacific parallels show them to be part of a lingua franca which expressed the new experience of the eighteenth and nineteenth centuries. Many parallels for the practice of imitating Pakeha words survive in waiata and letters, and their use cannot be regarded as evidence of a failure of communication between Maori and Pakeha.

(3) **Lack of presentation of ancestral associations with the land, as is done in 1990**

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\(^84\) Metge 1992: 104. The idea that Maori listening to their own language clung to familiar phrases as to rocks in a flood is untenable.

4.8 Current practice cannot be upheld as the standard the past must conform to. A study of early northern land deeds shows that there is no record of transaction which presents this kind of korero. I find, however, that ancestral association is implicit in the naming of boundaries. Such naming was normally an essential feature of a sale regarded as tika, proper and just.

(4) The use of 'very long' sentences.

4.9 Short sentences are typical of classical narrative, but less so of other genres of Maori writing. In private letters between Maori, for example, complex sentences seem quite usual.

4.10 I note that long, complex sentences are typical of the Bible, but that this apparently did not pose any bar to Maori understanding.

4.11 I find that the point is not a strong one. Maori mastery of the language makes it highly unlikely that long sentences rendered deeds incomprehensible to Maori; neither is there any record of this.

(5) Confusion of o/a categories of possession in 7 of the 14 documents following the Kaitaia model.

4.12 Dr Mutu suggests that the mixture of possessive categories indicates a lack of expertise in Maori by the deed writer; alternatively the view is advanced that the use of a-category possessives show that the deeds transfer use-rights only.

4.13 Briefly, in regard to land, an o-category possessive would denote ownership, while an a-category possessive would denote use.

4.14 At first glance the appearance of both o- and a- categories where the consistency of usage might be expected seems explicable as mis-transcription of a handwritten text. This view receives support from the fact that half the deeds are insistent in their use of categories and the other half not.


However the appearance of pattern in the mixture of possessive categories may suggest that rather than ignorance, a subtlety is being expressed.

In the Matako deed,\textsuperscript{88} the possessive phrase quoted by Dr Mutu is in fact the first half of a longer statement:

\begin{quote}
A, ma Reihana Matiu te wenua ake tonu atu, mo ana tamariki ano hoki.
\end{quote}

And, the land is forever for Richard Matthews [to use], and for his children [to own] also.[MT]\textsuperscript{89}

The passage implies use (ma) to Matthews and ownership (mo) to his children.

In the Oruru deed\textsuperscript{90} the mixture of possessive categories is more striking:

\begin{quote}
A ma te Poari te wenua kua oti te wakarite i tenei pukapuka, mona mo ona tamariki ake ake ake.
\end{quote}

And this land which is described in this document is for Mr Ford [to use], for him [to own] and for his children [to own] forever.

The use of both possessive categories may convey an understanding that in Maori terms ownership was only consolidated by establishment of homes: in other words, the children gain ownership through the parent's use. This is, however, speculative.

A more likely explanation may be that the use of both a- and o-categories for Ford senior strengthens his gain of both use (ma Te Poari) and ownership (mona), and that the o-category designation of his children marks a sense of the generations to come.

My impression is that tamariki, 'children', was often used in nineteenth century Maori where now we would find uri, 'descendants', which was almost

\textsuperscript{88} Turton Deeds-No. 38 II, Private Land Purchases: p 36 18 Dec 1839.

\textsuperscript{89} This sentence does not appear in the English translation. The omission is not unusual: translators sometimes left out of either the Maori or English versions, points which would have been taken for granted by one side or the other. The inclusion of this sentence in the Maori text underlies the message of finality the proceedings hoped to convey.

\textsuperscript{90} Turton Deeds-No. 52, Private Land Purchases: pp44–45, 12 Nov 1839.
invariably expressed with o-category possessives.

4.21 What may look like a grammatical question to us would in the 1830s have been a matter of social relationships. Social relationships expressed status, and getting these wrong could have threatened Puckey’s future. Context, therefore, reinforces the suggestion that the choice of categories in these deeds was made advisedly.

Conclusions

4.22 I conclude that the evidence of the deeds does not offer strong support for the view that use-rights only were transferred to Pakeha.

4.23 My analysis of the criticisms of the Kaitaia deed presented in the reports leads me to conclude that there is no strong case to show that Maori would understand it in ways that differed significantly from Pakeha understanding.

4.24 I further conclude that the close agreement between Dr Mutu’s translation of the Kaitaia deed and the original translation (leaving aside the question of tuku) offers strong support for the linguistic competence of the nineteenth century translator.

4.25 I find no evidence whatsoever to support the view that the language of the deeds was ‘elementary’. I conclude that there is no reason to believe that they would not have been taken seriously by the Maori involved in the transaction.

5. Further Linguistic Issues raised by Professor Metge

5.1 This report examines the cultural and linguistic competence of the missionaries Matthews and Puckey with a view to establishing the level of communication and mutual understanding which would exist between them and Kaitaia Maori in the 1830s.

5.2 The report concludes, broadly, that Puckey, Matthews and others did not have the cultural competence to realise that their land transactions were not understood by Maori as sales.

5.3 The report builds up a case that Matthews’ and Puckeys’ cultural competence ‘had not deepened over the years’ through the analysis of the language in which they communicated to other Pakeha and to their CMS masters, and by an analysis of their translations into English of Maori texts.
5.5 I wish to point out that because the strategy of the report is to present a myriad of small points, this analysis must do likewise. I note that time constraints mean that my analysis can deal with a selection only of propositions advanced in the report.

(1) Failure to call Panakareao by the term 'ariki'

5.6 As chiefly power declined, words became more rigidly defined, and it is these evolved definitions which we are familiar with today. In the nineteenth century, cultural tino rangatiratanga meant that everything was much more relaxed.

5.7 Ariki was used to describe both the first born of a senior line, but it was also used for ordinary expressions of authority, like being boss of your pet. A well-known story about a stolen bird says:

Ka karanga noa ki tona ariki... karanga noa te manu ra, 'E Iwi! Ka riro au!'

He kept calling to his owner... that bird kept on calling, 'Hey Iwi! I'm being taken!'[MT]91

5.8 I conclude that the suggestion that missionary failure to call Panakareao 'ariki' implies ignorance is unfounded.92

(2) Failure to recognise the customs of a powhiri

5.9 Joseph Matthews reported that:

I have many times seen one party of Natives come to see another and having arrived within a few yards they would sit down for an hour

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91 Hori Ropiha manuscript in the possession of my colleague, Roger Maaka.

92 Metge herself later asserts, presumably from missionary sources, that in Muriwhenua the term 'rangatira' predominated and 'ariki', commonly associated with leadership of the iwi, was little heard.
before they made know their business for an hour or even saluted each other. 93

5.10 Professor Metge comments that ‘it is hard to tell...whether he meant that they sat in silence ...or spent an hour exchanging welcome speeches, waiata and hongi’, but favours the latter view. Cultural incompetence is then deduced from his failure to have recognised ‘the welcome ceremony as such’.

5.11 In the nineteenth century not every meeting required a powhiri; very long silences as a ritual of greeting were commonly noted, and this has not entirely disappeared today. 94

5.12 I conclude that Matthews’ journal entry on silent greetings offers a first hand account of a Maori cultural practice.

(3) Failure to distinguish between hapu and iwi

5.13 The report criticises Matthews and Puckey for failing to distinguish between hapu (sub-tribe) and iwi (tribe). 95

5.14 It is, however, later observed in the report that scholars now agree that a neat three-tiered tribal hierarchy is a retrospective projection onto the nineteenth

93 Metge 1992:34.

94 See for example Rogers, L.M. (ed.) 'The Early Journals of Henry Williams' New Zealand 1826-40, Christchurch, 1961, in which several examples are given:

(1) p412 19 Feb 1835...we were conducted into the Pa to receive the welcome of the grandees, we sat in silence for some time in the presence of a great throng...This lasted about 20 minutes when Warekaua arose and gave us welcome...

(2) p420 10 Mar 1835... we found the old man Waharoa sitting in state to receive us. As is the custom no one spoke for some time but all sat in silence to be gazed upon..

(3) p434 24 Dec 1835...We arrived about one o’clock and received the usual welcome. After sitting in profound silence for a while, the old man, Horeta made a long speech...

95 Metge 1992:4-5.
century, and that in fact ‘the two terms [hapu and iwi] were often used interchangeably’. 96

In this light, I find the criticism to be unjustified.

(3) Matthews’ English shows failure to grasp the idioms of Maori speech

5.15 The report analyses Matthews’ English as evidence for an uncertain grasp of Maori. For example, Matthews translated pouri as ‘dark’ when, according to the report, ‘sad would be more appropriate’. 97

5.16 My study of traditional imagery tells me that ‘dark’ is the standard and accurate early translation of the multi-layered state of mind which pouri describes; it describes someone who has been insulted, humiliated or suffered any adversity at the point before they decide on action. Nga Mahi a Nga Tupuna offers many examples, such as the story of the abuse of a new wife by two existing wives, at which:

...katahi ka pouri te ngakau o Hinauri, na, katahi ka tahuri atu ki te makutu i a raua... 98

[then] the heart of Hinauri became gloomy with grief and mortification, so she began to utter incantations against them.[OT] 99

5.17 A youth who had the worst of it in a wrestling match:

ka noho ia ki raro, ka pouri hoki ia ki a ia e kataina ana e te tini o te Ati-Hapai... 100

sat down upon the ground... feeling exceedingly sulky and provoked at being laughed at by everybody..[OT] 101

96 Metge 1992:91.
97 Metge 1992:22. As the letter is not presented I am unable to comment on the specific case.
100 Grey 1956:32.
101 Grey 1956:78.
5.18 I find that Matthews' translation of pouri as 'dark' reflected its nineteenth century meaning. I accept that as Maori thinking converged with that of Pakeha, pouri became increasingly limited to the meaning of 'sad' with which we now associate it.

5.19 Matthews uses the image 'I am like a thing cooked'.\textsuperscript{102} The report states that 'the original image can only be guessed at,' but in fact the original image would probably have been exactly that.

5.20 A study of traditional waiata shows that the idea that women are food for their lovers and husbands - kai ka whakarato ki taua marea (food served up to the multitude)\textsuperscript{103} - were among the commonest metaphors employed to express a state of subjection or humiliation.

5.21 I find that in Maori this image is neither 'naive' nor 'quaint' as the report suggests.

5.22 I conclude that Matthews' English demonstrates a clear grasp of Maori idiom.

(5) Puckey's English fails to reveal a grasp of concepts important to Maori

5.23 The report quotes a letter Puckey wrote, in English, to London in which he speaks of Panakareao's wife

...without naming [her father] or mentioning that the brother's mother was sister to Panakareao's mother's mother.\textsuperscript{104}

5.24 An authority on missionaries, J E Murray, notes that while matters of kinship were of first importance to Maori society, the names of individual Maori would have been of no significance to the masters of the CMS's global strategy for conversion. In the 1830s the CMS was fighting the slave trade in West Africa, and manoeuvring for access to the '300 million souls' in China. The humanitarians were concerned to prevent the pattern of extermination of aboriginal peoples in the wake of British settlement, but their

\textsuperscript{102} Metge 1992:22.


\textsuperscript{104} Metge 1992:38.
interest in Maori beyond this was confined to converting and civilising them.\textsuperscript{105}

5.25 I accept Ms Murray’s view as further exonerating Matthews’ and Puckey’s failure to expand on whakapapa and concepts such as mana, utu and muru in their letters to the CMS in London.\textsuperscript{106}

5.26 I conclude that letters written in English to Englishmen are not a fruitful source of evidence for the missionaries’ cultural competence.

(6) Panakareao suffered from whakama

5.27 Panakareao’s displeasure with the mission when Charles Baker failed to occupy the new post resulted in a standard expression of displeasure and independence: withdrawal.\textsuperscript{107} Panakareao felt insulted by Baker’s action, and threatened violence.

5.28 It is difficult to see a powerful chief like Panakareao as whakama in the face of missionaries who, as Professor Metge stresses, were vulnerable to Maori power in this period.

5.29 A search of traditional writing reveals no case where a chief in similar circumstances is described as whakama.

5.30 I find that Panakareao’s behaviour cannot be understood in terms of the feelings of inadequacy and frustration felt by Maori in culturally alien situations today.

\textsuperscript{105} Personal communication 6 Nov 1992: I am grateful to Ms Murray for comments on this report.

\textsuperscript{106} Metge 1992:37.

\textsuperscript{107} See, for example, the pattern of attendance at meetings between Pakeha officials and chiefs throughout the 1830s and including the Treaty negotiations.
(7) Puckey’s translations into English offers ‘objective evidence’ of understanding of Maori

5.31 As an experienced translator, I find this to be an untenable proposition in general terms.

5.32 Professor Metge submitted the text and translation, by Puckey, of a letter by Panakareao to Dr Winifred Bauer for linguistic analysis. Dr Bauer attested to the accuracy and competence of the language. Professor Metge, however, offers a number of further criticisms. A study of the typescript of the letter presented in the report suggests that these criticisms do not tend to strengthen the case for Matthew’s and Puckey’s linguistic, and therefore cultural, incompetence. Judgement is, however, withheld, as I am still waiting to receive from the Tribunal a copy of the original letter.

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6. Further linguistic issues pertaining to Muriwhenua deeds\textsuperscript{110}

6.1 The report posits the 'basic requirements of a tuku whenua' as the yardstick by which the deeds are judged. I note that no historical evidence for what these requirements might have been is offered; they are, instead, inferred from the language of the deeds.

(1) Is there a significant gap between the Maori and English versions of the deeds?

6.2 The report found that the translations were full of significant inaccuracies and omissions.\textsuperscript{111}

6.3 The omission of the words 'For Matthews and his children forever' from the English translations of the Otararau, Waiokai and Parapara deeds 'omits one of the basic requirements of a tuku whenua',\textsuperscript{112} that is, to make Pakeha conform to Maori social norms by binding them and their descendants into the tribe.\textsuperscript{113}

6.4 The line in question is not in the deed, but an addition under the signatures of the Maori text. It appears designed to reinforce to Maori the permanence of the deal. I conclude that the translator did not translate it into English because he saw no need to reinforce to a Pakeha audience the permanence of the transaction.

6.5 In comment on the Waikikia deed 3 May 1850, the report glosses the original translation of the words Panakareao, Rangatira o Wikitoria, Panakareao, Chief Of Victoria, with the words 'Queen of England'. I find that Wikitoria refers

\textsuperscript{110} Limitations of time mean that representative examples only of Dr Mutu's argument are considered. I shall follow Dr Mutu in not considering deeds for which an English text only has survived. However, a comparison of the language of the English-only documents with those for which the Maori is extant suggests that the lost deeds would offer no evidence to alter the general picture.

\textsuperscript{111} Mutu 1992:42.

\textsuperscript{112} Mutu 1992:41.

\textsuperscript{113} Mutu 1992:40.
in this case to the Victoria valley where both Panakareao and his wife were originally buried.\textsuperscript{114}

6.6 The report suggests that the translation of Oparera as Pa Corrafew in the Supplement to the Oparera Block may mean a different block is being talked about, and may be a deliberate attempt by the translator to deceive.\textsuperscript{115} Corrafew was a Pakeha corruption of a Maori place name. The difference in wording reflects the different audiences the Maori and English versions are directed at. Dr Mutu later concludes that no different block is implied.\textsuperscript{116} I agree with this conclusion.

6.7 I conclude that the inaccuracies and omissions in the deeds are minor and explicable.

(2) Clauses including children and descendants

6.8 The reports attach significance to clauses saying that the land described in the deed will belong to signatories' children or descendants after them.\textsuperscript{117}

6.9 These clauses proliferate after 1838. Dr Mutu's report views this development as evidence that Pakeha were learning how to function in Maori society. Pakeha occupancy of land relies on the second party:

occupying the land, becoming part of the tribal structure and, as a result, abiding by tribal law. Should these basic conditions not be fulfilled...the arrangement would lapse.\textsuperscript{118}

6.10 In 1839 it was clear that formal government by the British would be offered to Maori, and this caused speculation about existing and contemplated land transactions.

6.11 I conclude that the inclusion of 'tamariki' in deeds by 1839 reflects the changing political atmosphere, and were designed to strengthen claims in anticipation of the arrival of formal government. The use of tamariki also

\textsuperscript{114} Mutu 1992:46-7.
\textsuperscript{115} Mutu 1992:41.
\textsuperscript{116} ibid.
\textsuperscript{118} Mutu 1992:35.
supports missionary claims that they bought land to secure the economic future of their children.\footnote{Mutu 1992;31, footnote 47.}

6.12 I further conclude from an examination of the deeds that the inaccuracies and omissions of the translations are minor and explicable.

(3) **Do the use of intensifiers mean that land was transferred to signatories and their families only?**

6.13 Dr Mutu argues that land was gifted on a permanent arrangement as long as the original recipients and their descendants remained on the land, but that sale to a third party would render the arrangement void:

\[
\text{`Any violation of this very clear provision implies immediate return to the allocating tribe'.} \footnote{Mutu 1992:32}
\]

6.14 It is difficult to see such an implication in the language of the deeds, and this position is contradicted by the fact that land was indeed sold on, or otherwise disposed of, in the pre-treaty and immediately post-Treaty period. Henry Southee sold on a block of land to Powditch.\footnote{Turton Deeds-No. 12, Enclosure in No. 12, Transfer from Henry Southee to Wm Powditch, Private Land Purchas$\text{es}$: p 18, 10 May 1838.} Charles Baker leased out his house at Paihia in 1840 and, in 1843, his farm at Waikare inlet when he was transferred to the East Coast.\footnote{Mary Baker, Waikanae 1986, Never The Faint Hearted; Charles Baker Pioneer missionary 1803-75: 195-198.}

6.15 Both reports suggest that the intensifiers oti tonu atu, ake tonu atu and ake ake ake, all of which indicate 'forever', attach specifically to the signatories to the deed.\footnote{Mutu 1992:39; Metge 1992:114.}

6.16 This view seems misplaced. These phrases are not attached to words for people, but are used either after verbs or absolutely. Usage can be seen more clearly if the text is punctuated:

\[\text{\ldots}\]
A, mo Henere Hauri, mo ana tamariki te wenua, ake tonu atu.¹²⁴
And, the land will belong to Henry Southee, and to his children, forever.[MT]

Mo Hoani Raira te kainga, ake ake ake.¹²⁵
and the place is for John Ryder forever.[OT]

...kua oti nei te tuku...tetahi wahi wenua, oti tonu atu¹²⁶
...have completed the transfer [of] a certain area of land; [the matter is] entirely finalised[MT]

(4) Did sale transfer absolute rights of proprietorship?

Dr Mutu’s view on the significance of the use of intensifiers is further
questioned by the evidence of deeds which have clauses conferring absolute
rights of proprietorship on the new owners:

Oparera Block I

Kei pohehe te nuinga a mua atu kua oti te hoatu e matou taua wahi, a,
e kore matou me o matou uri e pa atu ki taua wahi a mua atu...¹²⁷

Be it further understood and to prevent all disputes an
misunderstandings hereafter that we for ourselves heirs and successors
do let sell and make over unto William Murphy his heirs and
successors for ever all rights titles and interest..[OT]

Let no-one mistake that we have given over that place, and, we will

¹²⁴ Turton Deeds-No. 64, Private Land Purchases: p 54, Otaki Block, 17 December 1839.

¹²⁵ Turton Deeds-No. 70, Private Land Purchases: p59, Maheatai Block, 8 January 1840.

¹²⁶ Kerekere Block no.1, 17 March 1834. In the original
translation, oti tonu atu, a phrase which strengthens the
finality of the transaction, does not appear. This adds further
weight to the view that strong phrases were used in the Maori
deed to impress on Maori the permanence of the transaction.

¹²⁷ Oparera Block No. 1, 21 Dec 1837. The supplementary deed
for Oparara Block 2, (page 32) has similar wording.
never henceforth be connected with that place...[MT].

kia puritia e Wiremu Mawi e ona uri o muri atu i a ia, kei rawenatia e te tangata kei ahatia ranei, he mea hoki mo matou ko o matou uri mo o muri atu i a matou ake ake ake.

[the land] to be held by William Murphy his heirs and successors for ever without let or hindrance from us our Heirs and Successors for ever. [OT]

Te Whanga Block

Kua oti te tuku e Paora te Oka e Aperahama Mataua ki a Hemi Hepara...to raua kainga i karangatia nei ko te Wanga...he hoko mana he hoatu ranei ki ana tamariki he aha noa mana

Paul te Oka and Abraham Mataua have made over to James Shepherd...their piece called Te Wanga...for him to sell or give to his children, or to do with whatever he may please

Ta te mea kia oti tonu atu te kainga kua tuhituhia nei ki tenei Pukapuka ki a Hemi Hepara he kainga mona he aha noa mana he aha noa mana....

And because the land herein written shall be for ever James Shepherd’s, a place for him or for whatever purpose he may please....[OT]

Waiongangi Block

Kua oti te tuku...ena kainga...he kainga mo taua Hemi Hepara hei hoko mana hei hoatu ranei mana ki nga tamariki he aha noa mana he aha noa mana.

The transfer of those places has been completed as places for the aforesaid James Shepherd, for him to sell or give to the children or
whatever else he wishes.[MT]\textsuperscript{131}

Oparera Block II

A, e puritia e Wiremu Mawi e ona uri e ona tamariki i muri atu ano i a ia ake ake ake

And [the land] will be held by William Murphy his heirs and successors for ever without let or hindrance from us.\textsuperscript{132}

\textsuperscript{131} Turton Deed-No. 32 Private Land Purchases: p 32, Waiongangi etc. Block, 6 June 1838.

\textsuperscript{132} Turton Deeds-No. 32, Private Land Purchases: p 32, Oparera Block 2, 22 Nov 1839.
The significance of the deeds which transfer mana and rangatiratanga

7.1 The reports discuss the two deeds in which this occurs in understandable perplexity, as it is almost inconceivable in terms of current beliefs that these intrinsic qualities might be traded.\(^{133}\)

7.2 In the 1830s, mana did not inhere in land, which was passive, but in the chief who had the strength to hold the mana over the land, on behalf of his people.\(^{134}\) This is clearly expressed in the Kerekere 2 deed:

... kua oti te tuku e matou e Panakareao ma ki te Hahi Mihanare tetahi wahi wenua oti tonu atu me nga rakau katoa me nga aha noa me nga aha noa katoa e tupu ana i tua wenua me nga mea katoa o raro i tua wenua, me te rangatiratanga me te mana i runga i tua wenua.\(^{135}\)

... I Noble Panakareao and tribe have sold to the Church Missionary Society a piece of land forever, trees and everything else that grows on it and all things below it.[OT]

Panakareao and the others have entirely transferred forever to the Church Missionary Society a piece of land with all the trees and everything else whatsoever growing on that land and all the things below that land, and the chiefly authority and power over that land.[MT]

7.3 The phrase outlining the transfer of mana and rangatiratanga is missing from the original English translation. The omission may have been simple error, or another case of a translator thinking that the phrase was significant only to the Maori side. The case for deliberate omission does not seem strong, in that the words were present in the version that mattered, and were apparently not objected to by Panakareao and the rest of the signatories.


\(^{134}\) Mr Edwards expressed the modern view in his translation into Maori of Panakareao’s saying about the shadow of the land, when he places mana inside the land: Ko te atakau o te whenua ki te kuini, ki a Wikiotaria o Ingarangi; ko te tinana, ko te ihi ko te mana i roto i te whenua ki a taua ki te Maori. For the 19th century view see AJHR 1890 G-1 ‘Opinion of various authorities on native tenure.’

\(^{135}\) Turton Deeds-No. 4, Private Land Purchases: Supplementary Deed, p 3, 3 January 1840.
Rangatiratanga was recorded in the ‘Declaration of Independence’ of 1835. It was an attempt to separate the quality of chiefliness from the person and turn it into an abstraction: ‘independence’.\textsuperscript{136}

In the same document, te mana i te wenua was used to express ‘power within the territories’. Both terms, when used in lands deeds, were an attempt to express the rights of proprietorship.

My study of the use of these words leads me to the conclusion that the use of mana and rangatiratanga was an experiment in seeking a meaningful vocabulary to express sale.\textsuperscript{137}

\textsuperscript{136} The term whakarangatiratanga was used in the translation of the ‘King’s letter’ to northern Maori in 1831.

\textsuperscript{137} Professor Metge frequently uses the phrase ‘mana and rangatiratanga’ to describe Te Rarawa’s ‘power and control’ in 1832–4. The words would not have been used together in this way by Maori before 1840, as one implied the other.
8. The significance of joint-occupancy agreements

8.1 Dr Mutu notes that several of the western Muriwhenua deeds allow for Maori to remain on the land. This is said to be 'completely consistent with tuku whenua’ and is argued as evidence that the transactions were not sales.

8.2 The use of the a-category future possessive particle ma in the Ohotu document implies that both parties may use the land:

Ma te Paki ake tonu atu te wenua, ma te tangata maori ano. The land for Mr Puckey forever, and for the natives[OT]

8.3 The Pukepoto deed states:

A ma te Paki te wenua me ona uri o muri iho i a ia; noho ana ano te hunga o taua wahi mate noa me o ratou tamariki.

And the land is for Mr Puckey and his descendants after him; the people of that area may continue to live there until they all die, together with their children.[MT]

8.4 The Waioioi/Oruru/Parawai deed presents the case for continued Maori occupation in detail, although it makes clear that such occupation is under the authority of the new owners:

Na, me noho nga tangata o Kohumaru ratou katoa ano ko o ratou tamariki i taua wenua i tetahi wakatupuranga a taea noatia tera atu wakatupuranga. Aua ia nga tangata o hea noa atu: heoi ano ko o reira

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139 Turton, Deeds—No 7, Private Land Purchases: p 12, 20 July 1835. Text has been re-punctuated.


141 Original translation of the second half of this deed is missing from Mutu. This statement may support the idea current among missionaries even in the 1830s that the Maori people were on the path to extinction. The o-category possessive used with 'children' in this line suggests it is to be understood in the wider meaning of descendants.

tangata ake. Waihoki ko nga tangata o Oruru pu ano te noho i o ratou wahi i runga i taua wenua, i roto ano i nga kaha. Ko te mea maku e tohutohu te wahi e noho ai te tangata maori.

Now, all of the people of Kohumaru together with their children may live on that land from one generation to another; but not the people of anywhere else, only the actual people of that place. Furthermore, the people of Oruru exclusively are to live on their places on that land, within the boundaries. However it is for me to mark out the place the Maori people are to live.[MT]\textsuperscript{143}

The Otaki deed\textsuperscript{144} however, like the Waioioi deed, suggests that clauses allowing for continued Maori occupation may be seen as the beginnings of the development of the idea of reserves:

A mo Heneri Hauri mo ana tamariki te wenua ake tonu atu. Ora kia rongo te tangata Maori e noho ana i runga i taua wahi, mo ratou tonu ano mo o ratou tamariki ano hoki nga wahi i te tahataha awa hei mahinga mo ratou kia tapu tpuu ano aua wahi mo ratou ake ano kei tutu ratou kei pokanoa te mea e tetahi mana e tuku,\textsuperscript{145} hei wenua mahinga hoki mo raotu i tetahi wakaputaranga ki tetahi.

The land is for Henry Southee and his children for ever. But let the Natives hear who are living on this place that they are to have the banks of the river to cultivate for themselves. The places are to remain sacred for them for ever. They are not to be troublesome nor let anyone venture to offer for sale any part on which they are living because those places are for the cultivation of the Natives from one generation to the other.

Commentary

8.6 I feel that the exclusive interpretation of land transactions in terms of conditional gift in the two reports obscures their significance as a basis for continuing Maori claim to certain western Muriwhenua lands.

\textsuperscript{143} The original translation is missing from the photy-copy of the deed supplied to me.

\textsuperscript{144} Turton Deeds-No. 64, Private Land Purchases: p54, 17 Dec 1839.

\textsuperscript{145} Text has taku.
8.7 The joint occupancy clauses in a number of western Muriwhenua deeds, as elsewhere, are probably to be understood in terms of the missionaries' vocation. Missionaries did not want the people to depart, else their mission would collapse.

8.8 Allowing people to remain on land obscured the underlying power transfer inherent in sale. Missionaries set up a situation which may have delayed development of a full understanding of the implications of sale.

8.9 I note that while missionary and Maori continued to jointly occupy land, the new government newspaper, *Te Karere* was proclaiming fines for Maori who trespassed on land owned by Pakeha.

Kia rongo mai e nga tangata maori katoa. E mea ana a Meiha Pumapere kia wakamutua ta koutou haere ki runga ki tona oneone wakangau poaka ai ma koutou, ki te mea hoki ka hopukia tetahi e wakangau ana i te poaka mana, ka wakawakia ia ki te ritenga o te ture.\(^{147}\)

Listen all Maori people. Major Bunbury[?] says that your going on his land to hunt pigs for yourselves must stop, and if he catches anyone hunting a pig for himself he will be prosecuted in accordance with the law.[MT]

8.10 The ambivalent position of the missionaries as both ministers to Maori and fathers of families of settlers resulted in a conflict of interest that was often resolved in favour of the children and a Pakeha- dominated future. The tensions inherent in being both missionary and settler are clear in Joseph Matthews' observation in 1839:

The tide of emigration is undoubtedly (although we as missionaries are opposed to it) fulfilling the decree of the Almighty! The earth shall be filled with knowledge of the Lord as the waters cover the sea. But it first must be filled with men which it never would be without emigration.\(^{148}\)

8.11 I note that this passage puts the missionary in the unhappy position of disagreeing with God; this underlines the depth of the conflict which was unavoidable in the mission life. Missionaries knew that land sales were

\(^{146}\) This study is limited to material presented in Dr Mutu’s report. A systematic study of the entire body of Muriwhenua deeds would, I am sure, be of immense value.

\(^{147}\) Proclamation by Governor Hobson, April 1840. Photocopy of ms held in Mitchell Library, Sydney.

inevitable to fulfill the Lord’s purpose, and this partly explains why they bought land, both for themselves and the children who represented the future.

8.12 It is not possible to read nineteenth century Maori writing without concluding that missionaries had a special place as shapers of Maori opinion in the 1830s. Their numerous purchases of land in the per-Treaty period suggest that they provided the role models and created the needs which resulted in the rapid commoditisation of Maori land. I conclude that the missionaries had a primary responsibility for creating the market in western Muriwhenua land.

8.13 If the Old Lands Claims Commission was, at bottom, an enquiry into the morality of sale, it seems that the issue of missionary responsibility was never resolved by an enquiry that was limited to an examination of deeds and Maori opinion: that opinion had already been manipulated in ways that contravened the Treaty of Waitangi.

Conclusions

8.14 It seems, then, that while the joint-occupancy clauses in the deeds represent first attempts at creating reserves, their language is frequently very imprecise in that regard. It is, on the other hand, very precise in stating that Maori may continue to live on the land, forever.

8.15 I conclude therefore, that the language of the joint occupancy agreements could be used to argue a continuing claim to this land.

8.16 I further conclude that a wider investigation of the morality of sales in the pre- and immediately post-Treaty period centering on the relationship between missionary and Maori may add immeasurable authority to the claimants case.
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