

An overview of The Treaty of Waitangi.



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1. Introduction: New Zealand History and the Treaty

True or False Quiz

The extraordinary amount of misinformation that is being used in the race debate sparks a lot of debate Here's a quiz which aims to test your understanding about a few events of the past that relate to the debate and to put to rest a few myths about New Zealand history and the Treaty of Waitangi.

Simply say whether the following statements about New Zealand history and the Treaty of Waitangi are **TRUE** or **FALSE**.

1. Moriori were a race of people who occupied New Zealand prior to Maori. They were partly absorbed and partly driven out by Maori when they arrived in New Zealand.
2. Only the Maori version of the Treaty of Waitangi (not the English version) promised Maori the "full, exclusive and undisturbed possession of their lands, estates, forests, fisheries and other properties".
3. The word "Pakeha" actually means "white pig" or "white flea".
4. The Maori King Movement only dates from 1858. There was no Maori King as such before Pakeha arrived in New Zealand.
5. In 1863 Governor Grey ordered the invasion of the Waikato in order to crush the King Movement (Kingitanga). 1.3 million hectares of land were confiscated from Maori as a result of losing the Waikato War.
6. From 1867, the New Zealand Government took control of Maori education. One aim of the Native Schools was to stop Maori children from speaking Maori language.
7. Despite both versions of Article Three of the Treaty promising Maori full rights as British subjects, the 1879 Maori Prisoner's Trial Act allowed Maori to be held in jail without a trial and the 1898 Old Age Pensions Act gave Maori OAPs just half of the Pakeha Old Age Pension.
8. Since 1989, the total cost of Treaty of Waitangi settlements has cost the New Zealand tax-payer over \$2 billion.
9. Last year the Court of Appeal ruled that the foreshore is legally the property of Maori iwi under Article Two of the Treaty of Waitangi.
10. Maori students can qualify as doctors with lower grades than Pakeha students.

Answers at the back of this book

2. A Treaty by Michael King

The establishment of the New South Wales penal colony in 1788 had given many Maori an opportunity to engage gradually and largely on their own terms with a minimal and, in the case of visiting traders or missionaries, sporadic European presence. As a result, prior to 1840, they were at no point overwhelmed by this presence as were, say, the Aboriginal people of Tasmania and parts of south-east Australia.

Everything that unfolded in New Zealand over the following 50 years — the trade, the sealing and whaling, the missionary activity, the number of Maori who visited Sydney and Hobart and eventually London — brought New Zealand into a progressively closer relationship with Europeans and, in particular, Europeans from Britain. And the only authorities outside New Zealand who revealed themselves to be genuinely interested in the welfare of Maori and in particular how well Maori were faring in their interaction with Europeans were successive governors of New South Wales, not to mention Colonial Office officials, leaders of the Anglican and Wesleyan mission societies and members of the Aborigines Protection Society — all the latter based in London. A consequence of all this was that, throughout the 1830s, New Zealand was pulled steadily towards a permanent and constitutional relationship with Britain.

The first formal step acknowledging that this process was in motion was the appointment in 1832 of the New South Wales viticulturist James Busby as the first British Resident in New Zealand: in effect, the representative of British law and order and diplomatic interests in the country. He arrived in the Bay of Islands to assume these responsibilities in May 1833 and was greeted by a missionary-organised Maori welcome at Paihia, a seven-gun salute and a hakari or feast. Busby himself added to the sense of occasion by distributing gifts of blankets and tobacco to the 22 chiefs in attendance. Nothing quite like this had happened in the Bay of Islands before and Busby took the opportunity to create an impression that his appointment was akin to a diplomatic posting and that he was the personal representative of the authority of 'the King'.

Several factors had led to his commission, which was initiated by the British Government but administered, parsimoniously, from New South Wales. One was the need to protect New Zealand's trade with the Australian colonies (the value of New Zealand exports to New South Wales and Tasmania was around £20,000 by the early 1830s). There was also the need to protect the lives and interests of the growing number of British subjects living in New Zealand, including the families of the CMS and Wesleyan missionaries. And there was the fact that northern Maori had twice sent letters to the King of England asking for British protection: once when an armed French vessel visited the Bay of Islands in 1831 (though it turned out to be innocent of aggressive intention), and again in response to the participation of British seamen in Ngati Toa's kidnapping of the Ngai Tahu chief Tamaiharanui the previous year (Maori in the north feared that southern tribes might use the same tactics to punish Ngapuhi for their raids in the musket wars).

Busby's instructions from Governor Richard Bourke of New South Wales specified that he was to protect 'well disposed' settlers and traders, guard against the exploitation of Maori by Europeans and outrages committed against them, and recapture escaped convicts. He was given no means of enforcing his authority, however, and eventually came to be referred to as the 'Man o' War without guns'. He was also instructed to encourage Maori towards a more settled form of government, and in this limited respect, at

least in his own mind, he did make some progress.

In March 1834 Busby organised a meeting of northern chiefs outside his house in Waitangi to choose a national flag, so that New Zealand-built and -owned ships could be properly registered and freely enter other ports. If his own despatches are to be believed, this task was carried out in a dignified and constitutional manner. An independent eyewitness account, however, by the visiting Austrian naturalist Baron von Hugel — sent abroad to recover from the defection of his fiancée to Prince Clemens von Metternich — made it clear that the ceremony was little short of a farce,

The assembled chiefs were not given a comprehensible account of why they were there and expressed much puzzlement that King William of England, who was kind enough to invite them to select a flag for New Zealand ships, was sufficiently unkind as to threaten to punish mariners who did not display such a flag. Then, asked to choose from one of three flags on offer, the chiefs politely proceeded to vote for all three. It took the intervention of one of the Williams family's Maori servants to compel each chief to opt for only one flag, write down the - preferences as votes, then announce a result. One flag, an ensign that became known as the 'Flag of the Independent Tribes of New Zealand', was left flying and the alternatives hauled down. A naval officer called for a 'triple hurrah' while the frigate - *Alligator* fired off a 21-gun salute. Europeans present were invited to sit down for an elegant lunch, while the assembled chiefs were given a cauldron of cold porridge, which they obliged to eat with their fingers.

A second and equally contrived ceremony took place at Waitangi in October 1835. This time, in exchange for a second cauldron of porridge, Busby persuaded the same chiefs and some additional ones to sign 'A Declaration of the Independence of New Zealand' by a 'Confederation of United Tribes'. This document, into which Maori had had no input, was designed specifically to thwart the French adventurer Charles de Thierry who planned to establish an independent state in the Hokianga.

It proclaimed, in English and Maori:

We, the hereditary chiefs and heads of the tribes of the Northern parts of New Zealand declare the Independence of our country, which is hereby constituted ... an Independent State under the designation of The United Tribes of New Zealand

All sovereign power and authority within the territories of the United Tribes of New Zealand is hereby declared to reside entirely and exclusively in the hereditary chiefs and heads of tribes who also declare that they will not permit any legislative authority separate from themselves nor any function of government to be exercised within the said territories, unless by persons appointed by them, and acting under the authority of laws regularly enacted by them in Congress assembled.

The document also thanked King William for acknowledging the Maori flag, and asked him to continue to act as the 'Matua' or parent of their infant state. It was signed initially by 34 chiefs, and subsequently by a further 18.

The Governor of New South Wales, who was by this time growing tired of what he regarded as James Busby's whining requests for naval ships, policemen and other resources he was unable or unwilling to supply, called the declaration 'a paper pellet fired off at Baron de Thierry', who had already declared himself 'king' of Nuku Hiva Island in the Marquesas group. When de Thierry eventually arrived in New Zealand in 1837, it was to discover that his previous purchase of land in the Hokianga from Thomas

Kendall was not recognised and that local Maori had no enthusiasm for accepting him as their monarch. Instead, he ended his days as a music teacher in Auckland.

The declaration of independence had no constitutional status and an official in the Foreign Office in London referred to it as 'silly and unauthorised'. It also had no reality, since there was in fact no national indigenous power structure within New Zealand at that time, tribal authority — or rangatiratanga, as it would come to be called after Henry Williams invented the word in February 1840 — being far more akin to a collection of 'nations'. Indeed, some of the United Tribes' were at war with one another within a year of signing the document. Nevertheless, the declaration became a foundation for the assertion of indigenous rights, and it was another step in the direction of a formal constitutional relationship with Great Britain.

In the years that followed, alarmist reports from Busby alleging the 'accumulating evils of permanent anarchy' and 'depopulation' as a result of tribal wars arrived at the Colonial Office in London at the same time as petitions from Sydney and New Zealand traders — all asking the British Government to intervene more strongly in New Zealand affairs to ensure safety and stability in the interests of British subjects and of Maori. There was also at this time in London disquiet that a private firm, the New Zealand Company — brainchild of the heiress-abductor and former convict Edward Gibbon Wakefield — was about to implement a plan for the formal colonisation of the country and set up some form of government of its own.

As a consequence of these concurrent concerns, the British Government, on the advice of its officials in the Colonial Office, decided to act. A naval officer in fragile health who had previously been to New Zealand, William Hobson, was despatched from London in August 1839 with instructions to take the constitutional steps necessary to establish a British colony. He was told to negotiate a voluntary transfer of sovereignty from Maori to the British Crown, so that there might be no doubt under international law about the validity of the annexation that would follow. In Sydney, Hobson was sworn in as Lieutenant Governor of New South Wales, because the new colony would initially be a dependency of the Australian one. Hobson also recruited a handful of men to make up the nucleus of a civil service, almost all of whom would turn out to be ill-equipped for and ill-suited to the tasks allotted to them. He then sailed on to New Zealand, arriving in the Bay of Islands on 29 January, 1840 to initiate what would come to be seen as the most important chapter in the country's history.

Waitangi, the name of the estuarine river that emerges below the site of James Busby's house into the western side of the Bay of Islands, means 'waters of lamentation'. It would turn out to be an appropriate label to attach to the Treaty signed in its vicinity in February 1840. While that Treaty was in part a product of the most benevolent instincts of British humanitarianism and those who signed it on 6 February had the highest possible hopes for benign outcomes, the document would turn out to be the most contentious and problematic ingredient in New Zealand's national life.

The decision to annex New Zealand, and the instructions drawn up for the man who would become its first Governor were deeply influenced by the evangelical religious beliefs of Colonial Office officials such as James Stephen (Colonial Under-Secretary) and Lord Glenelg (Colonial Secretary). These men were part of the same movement which had agitated for and brought about an end to slavery in the British Empire. Their concern for the welfare of Maori was genuine and profound. As time passed, however, and those same officials learned of the New Zealand Company's private-enterprise plan to colonise parts of New Zealand, the emphasis changed. By

1839, as Claudia Orange has noted, the Colonial Office was no longer contemplating its original plan, a Maori New Zealand in which European settlers had somehow to be accommodated, but instead 'a settler New Zealand in which a place had to be kept for Maori'. Inevitably, Maori interests would suffer as a consequence of being moved down the priority list.

While Lord Normanby, Secretary of State for the Colonies, insisted that Hobson was to negotiate a willing transfer of sovereignty from Maori to the Crown, problems would arise from the manner and speed with which the would-be Governor drafted the Treaty to accomplish this transfer. Hobson was given no draft document prepared by lawyers or Colonial Office functionaries. Instead, he had to cobble together his own treaty, with the help of his secretary, James Freeman, and British Resident James Busby, neither of whom was a lawyer. That done, Hobson recognised that a treaty in English alone could scarcely be understood, agreed to or even debated by Maori, so he had the missionary Henry Williams and his son Edward hastily translate the English version into Maori. All this occurred over four days, with the Maori version being prepared overnight on 4 February.

On 5 February copies of the Treaty in both languages were put before a gathering of northern chiefs inside an enormous marquee on the lawn in front of Busby's house. Present were hundreds of Maori, Hobson's entourage of officials and English and French missionaries, along with a solid phalanx of local Pakeha residents who were not allowed either to debate the text or to sign the document, except as witnesses, because it concerned only Maori relations with the British Crown. Hobson read the Treaty aloud in English, Henry Williams in Maori, and discussion between the proposers and the intended signatories followed. Because of his facility in Maori and because the other CMS missionaries Supported both the Treaty and its constitutional consequences, it was inevitable that Williams spoke most often in defence of the document when asked by Maori about the meanings and implications of its clauses.

In English, the preamble announced that Queen Victoria regarded the 'Native Chiefs and Tribes of New Zealand' with favour and was 'anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order ...' Because of this, and because of the continuing influx of British immigrants into the country, the Queen wished to 'appoint a functionary properly authorized to treat with the Aborigines of New Zealand {rendered in Maori as 'nga Tangata maori o Nu Tirani'} for the recognition of Her Majesty's Sovereign authority over. . . those islands . . .' The establishment of such authority would lead to 'a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects ...' To bring all this about, the 'confederated and independent Chiefs of New Zealand' — a deliberate echo of Busby's earlier declaration of independence — were invited to 'concur with three Articles and Conditions'.

The first article, and the key one for securing what was to follow, declared that the 'Chiefs of the Confederation of the United Tribes of New Zealand and those who had not become members of the confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty .. over their respective Territories ...'

Under the second article in English which in time would become the most contentious, the Queen guaranteed to the chiefs and tribes and their families 'the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties ... so long as it is their wish

and desire to retain the same in their possession. At the same time the chiefs would give exclusive rights to the sale of land to the Queen and her representatives.

In the third article, the Queen extended to the 'Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects'. A final clause noted that the chiefs, 'having been made fully to understand the Provisions of the foregoing Treaty', accepted the spirit and the meaning of the document and would attach their signatures or marks to it.

There was much in this document alone that would have been difficult to convey to members of a culture which did not share the same concepts, vocabulary and political and legal structures especially the notion of sovereignty. These difficulties were compounded by the fact that the Maori translation of the Treaty the one most Maori would be addressing and debating and (if they thought they were in accord with it) signing did not correspond to the English version in several key respects

In the first place, the word used for sovereignty— that which the chiefs were asked to give away to the Queen of England — was rendered as 'kawanatanga'. Kawanatanga was an abstraction from the word kawana, itself a transliteration of 'governor', and hence meant literally 'governorship'. In the Declaration of the Independence of New Zealand, however, the word used for sovereignty had been 'mana', in the sense of 'authority over'. Future critics of the Treaty would thus be able to argue that the chiefs believed that they were retaining sovereignty, 'mana', and giving away only the right to 'governorship' of the country as a whole.

This impression would have been reinforced by the Maori wording of article two, which assured them that they retained 'te tino rangatiratanga o ratou wenua kainga me o ratou taonga katoa' — meaning 'the unqualified exercise of their chieftainship over their lands, villages and all their treasures'. This was rather more than the same article offered in English: 'full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties.. .' Indeed, in future years, Maori debate would focus on the implications of the words 'tino rangatiratanga', which some would claim was an even more accurate rendition of 'sovereignty' than mana; they would further argue that, in guaranteeing Maori 'tino rangatiratanga', the Treaty was in fact guaranteeing Maori the right to continue to manage and govern their own affairs without interference by a civil or military authority.

Further confusion would arise over the term in article two 'ratou taonga katoa'. In the English version this supposedly corresponded to 'other properties' which Maori would be allowed to retain but in fact the expression came to have far wider meaning: 'all their treasures'. It would be used in the future to argue Maori rights to material and cultural resources that were in no way envisaged by the English version or by those who proposed it.

None of these confusions was adequately identified or addressed in the discussion that took place in the marquee on 5 February. On the contrary, missionary explanations of the terms and concepts particularly those given by Henry Williams fudged precise meanings and potential contradictions and emphasised instead the protective and benevolent intentions of the document as it would affect Maori. 'I told them ... it was an act of love towards them on the part of [Queen Victoria] Williams recalled. Clearly Hobson and his party, and apparently all the missionaries apart from the CMS printer William Colenso and the French Catholic Bishop Jean-Baptiste Pompallier, wanted the chiefs to sign as soon as possible and with a minimum of fuss. Most of the missionaries clearly believed that the Treaty

was in *their* interests, and they almost certainly believed that it was also in the best interests of Maori possibly the only way that the Maori could be saved from physical or spiritual extinction at the hands of the agents of vice as one historian put it.

As might have been expected, different chiefs put forward a variety of reasons for supporting or Opposing the signing of the document. At first the voices of opposition predominated. 'What do we want of a governor?' asked Rewa of the Ngai Tawake hapu of Ngapuhi. 'We are not whites nor foreigners. We are the governor — we the chiefs of this land of our ancestors . . . Return! Governor, I, Rewa, say to you, go back.' Rewa was supported by Kawiti of Ngati Hine. 'What do you want here? ... We do not want to be tied up and trodden down. We are free. Let the missionaries remain, but as for you, return to your own country.'

If Hobson was becoming increasingly concerned about the tenor of the debate, he need not have been. It was a convention of whaikorero (Maori discussion) that all arguments, positive and negative, should be put. And about the real weaknesses in the Treaty, its ambiguities and contradictions, nothing was said. Many of them would become apparent only from a comparison of the Maori and English versions, and Maori were examining and discussing the Maori text only.

Eventually Tamati Waka Nene of Ngati Hao, a Wesley convert who had been protecting European traders in the Hokianga, began to steer discussion in another direction. '[Y]ou say [that] the Governor should return home?' he asked rhetorically. 'Had you spoken like that when the traders and grog-sellers came - had you turned them away - then you could well say to the Governor, "Go back" and it would have been right ... but now, as things are, no ... Governor! Do not go away from us; remain for us - a father, a judge, a peacemaker. You must not allow us to become slaves. You must preserve our customs and never permit land to be taken from us.' There has been some discussion among Maori and Pakeha scholars about whether Waka Nene had reached these conclusions of his own volition or whether he was parroting the views of his Wesleyan mentors. But such considerations have no relevance. Those were his views on the day. And he carried sufficient mana among his own people as a former fighting chief and more recently as a peace-maker for his arguments to be taken seriously.

As it happened, however, no clear consensus was reached among the chiefs in the course of a five hour discussion on 5 February. And Maori preferred a consensus if at all possible. They therefore continued their deliberations late into the night on the river flat below Busby's house and lawn. The following morning 45 of them were ready to sign either with their names or as had become customary in such circumstances for those who were not literate, with part of their facial moko patterns. Hobson and his officials were summoned hurriedly to allow this to happen lest official dilatoriness provoke a change of Maori mind (the many paintings and tableaux which show Hobson in full naval uniform serenely accepting Maori signatures is inaccurate, on the morning of 6 February he was wearing civilian clothes)

Shortly before the signing took place, however, Hobson was intercepted by Bishop Pompallier, who was worried that the embryonic state of New Zealand might adopt and entrench the British tradition of an established church and that that church would be the Church of England. He asked Hobson that Maori be told that all who should join the Catholic religion should have the protection of the British government'. Hobson agreed to this proposal with what Henry Williams called 'much blandness of expression'. To Williams's further annoyance the Lieutenant Governor (as he was until New Zealand became a full Crown Colony in 1841) asked Williams

himself to convey this assurance in Maori to the reassembled chiefs.

To take the emphasis off protection for Catholics, Williams drafted a statement which said: 'The Governor wishes you to understand that all the Maories (sic) who shall join the Church of England, who shall join the Wesleyans, who shall join the Pikopo or Church of Rome, and those who retain their Maori practices shall have the protection of the British Government. Over 130 years later some analysts would claim that this promise represented a fourth article of the Treaty and that it carried the same constitutional force as the first three. This, of course, is not correct. It was a promise that carried moral weight, and indeed it was carried out. But it had no legal or constitutional significance. The assumption that it might be used to enforce state protection and encouragement of Maori religious practices — 'ritenga maori', in Williams's translation — is misplaced.

The first Maori to sign the Treaty, with his own name, was Hone Heke Pokai, a Bay of Islands CMS convert who was a protégé, although not always a compliant one, of Henry Williams. Among those who followed were, as might have been expected, Tamati Waka Nene and his older brother and tuakana, Patuone. What might have been more of a surprise to Hobson was that the document was also signed by those who had spoken against it — although in the case of Kawiti, the traditional belief is that he did so because his people pressed him to sign (while his mark is with the 6 February signatures, it was added in the second week of May 1840). Subsequent signings with local chiefs took place at Waimate North and the Hokianga in February, and later in nearly 50 other locations in the North and South Islands. Hobson proclaimed British sovereignty over the whole country on 21 May 1840, before the signings were complete, making New Zealand a dependency of New South Wales, and a year later New Zealand's own charter came into effect, making the country a separate colony of Great Britain.

While all these steps met internationally recognised constitutional procedures, there were loose ends that would constitute grounds for debate over the following 160 years: the fact that Hobson's proclamation of sovereignty preceded the collection of Treaty signatures; the fact that some chiefs of large tribes declined to sign the document or were not asked to; the fact that more than one version of the Treaty was in circulation and subsequently signed; the fact that there were inherent contradictions between even the 'official' English and Maori versions; the fact that some Maori, with missionary encouragement, regarded the Treaty as being in the nature of a 'sacred covenant', in the Biblical sense, between themselves and Queen Victoria.

Almost 150 years later, when New Zealand governments tried to give judicial and moral effect to the document, they would seek to do so by defining yet another version the spirit or 'intent' of the Treaty. This was a clear admission that the document itself, in all its manifestations and *because* of all its manifestations, was neither a firm foundation for the construction of a state nor a blueprint for relations between governments and an indigenous people.

In 1840, however, the document served its original purpose. It enabled William Hobson, as the representative of the British Crown, to proclaim British sovereignty over the country and bring it into that family of nations known as the British Empire. Whether the Treaty meant *more* than this at the time is debatable. Hobson would have been utterly unable to govern the country, with a mere £4000, 39 officials and eleven 'alcoholic' New South Wales police troopers had Maori not given their consent. At any time Maori could withdraw their consent as they did on various occasions in the 1840s

and in the 1860s and the civil and military authorities were unable to establish or fully regain control of those parts of the country where 'rebellions' had occurred.

In 1840 however the Treaty appeared to offer Maori certain guarantees and many Maori had formed their own view of what those guarantees were and pronounced them acceptable. This degree of assent enabled Hobson to declare British sovereignty over the country and to set about the business of 'governing, at first from Kororareka in the Bay of Islands and subsequently, from February 1841, from Auckland, which Hobson named after Lord Auckland, one of his patrons in the Royal Navy. Now a full governor, appointed by the Crown in Britain and taking instructions from the British Secretary of State for the Colonies, he operated with the local assistance of two councils.

The Executive Council was made up of his three senior officials: Colonial Secretary Willoughby Shortland, Colonial Treasurer George Cooper and Attorney-General Francis Fisher. The first two of these men were notable for their incompetence and cupidity, and the third for his ill-health. Hobson had no substantial assistance from his officials until William Swainson replaced Fisher and William Martin became the country's first Chief Justice late in 1841. The second governing body, the Legislative Council, was composed of members of the Executive Council with the addition of three justices of the peace (one of whom was replaced by Martin after his arrival).

Hobson had also to appoint a Land Claims Commissioner to confirm or invalidate all land sales made before the assumption of British sovereignty, and a Protector of Aborigines, a position given to the respected former missionary George Clarke. The latter role prefigured the later Department of Native Affairs, but its integrity was compromised by the fact that Clarke was also to act as government land purchase officer. As a consequence, he came to be regarded with equal suspicion by European settlers and by Maori. Funds for government were initially to be raised by way of the Crown pre-emption clause in the Treaty of Waitangi: Maori could sell only to the agent of the Crown, and the Crown would on-sell to European settlers at a profit. It was an arrangement that suited only the Crown, and was abolished in 1844 by Hobson's successor.

Despite immediate difficulties, some of them caused by the intractability and ineptitude of Hobson's first officials, and some of them by the Governor's continuing ill-health after a stroke in March 1840, the British colonisation of New Zealand was able to proceed without any major initial breakdowns in administration or law and order. And it proceeded with all of the accoutrements implied by the term colonisation: transfer of people from one side of the globe to the other, exploitation of the country's material resources for the benefit of both settlers and distant investors. In the words of a later Maori High Court Judge, Eddie Durie, *tangata whenua*, the people of the land, would now be joined by '*tāngata tiriti*', the people whose presence was authorised by the Treaty of Waitangi. And the face of New Zealand life would from that time on be a Janus one, representing at least two cultures and two heritages, very often looking in two different directions.

3. The Pre-Treaty Debate by Maori: Weds. 5 Feb. 1840.

From Claudia Orange, *'An Illustrated History of the Treaty of Waitangi'*, 1990

Hobson words were translated to the assembled Maori.

He spoke of Britain's inability to protect Maori from British misbehaviour because Britain had no authority in New Zealand. *"Her Majesty the Queen asks you to sign this Treaty, and so give Her that power which shall enable Her to restrain them."*

Comment: Hobson suggests that Maori can empower, can withhold future civil(ised) authority. The solution to the problem (of bad pakeha) lies with the Maori.

"I'll give you time to consider the proposal I'll now offer you. What I wish you to do is expressly for your own good as you will soon see by the Treaty. You yourselves have often asked the King to extend his protection (to you). Her Majesty now offers that protection in this Treaty."

Comment: Hobson is referring to the previous requests (1831, 1835) for British protection. He is implying that the Treaty is delivering what they had asked previously – so it would be impolite to turn it down now.

Henry Williams, the translator, added that the missionaries *"fully approved of the treaty, that it was an act of love towards them on the part of the Queen, who desired to secure to them their property, rights, and privileges."* The Treaty was like *"a fortress for them against any foreign power which might desire to take possession of their country."*

Comment: The missionary is stressing the personal nature of the proposed Maori relationship with the Queen... that it was with her, not just her government. Maori would later cite this unique personal relationship which they felt existed with Victoria. Since she rules for another 60 years, it is a lengthy personal relationship. Missionary approval suggests that the Treaty can be trusted... just as the missionaries have won the trust of the Maori. Williams suggests that the Treaty will protect the Maori from foreign control, and this can be taken to imply a form of continuing independence, secured in their rights.

According to Orange (P 16), the chiefs' main concerns about the proposed Treaty centred upon their authority, their land and trade dealings...

"The Maori people don't want a governor! We aren't European. It's true that we've sold some of our lands. But this country is still ours! We chiefs govern this land of our ancestors." Rewa

"Governor, some might tell you to stay here, but I say this is not the place for you. We are not your people> We are free. We don't need you and we don't want you." Hakiro

"We chiefs are the rulers and we won't be ruled over. If we were all to have a rank equal to you that might be acceptable. But if we are going to be subordinate to you, then I say get back to your ship and go away." Tareha

Maori concerns focussed on European land purchases, especially those made by the missionaries. Hobson promised that unjust purchases would be returned to their former Maori owners.

"That's good. That's as it should be. But we will see what happens. Who will really listen to you? Who's going to obey you? The lands won't be returned." Moka

Williams, vexed by this attack on the missionaries, mentioned to the Europeans present that Hobson had already stated at a meeting (Kororareka) on Jan. 30 that all pre-1840 land sales would be investigated.

"What will you do about trade dealings, and the cheating, lying and stealing of the whites? Yesterday I was cursed by a white man. Is this the way things are going to be?" Whai

Hobson had few supporters...

"It's a good thing that you have come to be a governor for us. If you stay we will have peace." Rawiri Taiwhanga

"Governor, you should stay with us and be like a father. If you go away then the French or the rum sellers will take us Maori over. How can we know what the future will bring? If you stay we can be 'all as one' with you and the missionaries."
Hone Heke

"I'm going to speak first to you. (the chiefs) Some of you tell Hobson to go. But that's not going to solve our difficulties. We have already sold so much of our land here in the north. We have no way of controlling the Europeans who have settled on it. I'm amazed to hear you telling him to go! Why didn't you tell the traders and grog-sellers to go years ago? There are too many Europeans here now and there are children who unite both our races." (To Hobson...) "Don't be too concerned with what these others are saying. We need you as a friend, a judge, a peacemaker and as a governor. You must preserve our customs, and never permit our lands to be taken from us."
Tamati Waka Nene

"No! Go back to your own land. It would be all right if we were going to be equal in rank and power, but if you are going to be above us, I say no. Will we end up like this?" and he crossed his hands as if handcuffed. (The discussions adjourned until the Friday, Feb. 7.)
Te Kemara

If we do some digging on whai-korero we see that there is a convention that all arguments need to be put Before decisions are taken. This was demonstrated here.



A



B



C



D



E



F

HOBSON
BUSBY
HONE HEKE
TAMATI WAKA NENE
WILLIAMS
BISHOP POMAPLIER

4. The Treaty of Waitangi English and Literal translation of Maori version

English Text	Modern English translation of Maori version	Footnotes of the Maori text by Prof. Hugh Kawharu (used with permission)
Preamble	Preamble	
<p>HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands - Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.</p>	<p>Victoria, the Queen of England, in her concern to protect the chiefs and the subtribes of New Zealand and in her desire to preserve their chieftainship (1) and their lands to them and to maintain peace (2) and good order considers it just to appoint an administrator (3) one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queen's Government being established over all parts of this land and (adjoining) islands (4) and also because there are many of her subjects already living on this land and others yet to come. So the Queen desires to establish a government so that no evil will come to Maori and European living in a state of lawlessness. So the Queen has appointed "me, William Hobson a Captain" in the Royal Navy to be Governor for all parts of New Zealand (both those) shortly to be received by the Queen and (those) to be received hereafter and presents (5) to the chiefs of the Confederation chiefs of the subtribes of New Zealand and other chiefs these laws set out here.</p>	<p>(1) "Chieftainship": this concept has to be understood in the context of Maori social and political organization as at 1840. The accepted approximation today is "trusteeship".</p> <p>(2) "Peace": Maori "Rongo", seemingly a missionary usage (rongo - to hear i.e. hear the "Word" - the "message" of peace and goodwill, etc).</p> <p>(3) Literally "Chief" ("Rangatira") here is of course ambiguous. Clearly a European could not be a Maori, but the word could well have implied a trustee-like role rather than that of a mere "functionary". Maori speeches at Waitangi in 1840 refer to Hobson being or becoming a "father" for the Maori people. Certainly this attitude has been held towards the person of the Crown down to the present day - hence the continued expectations and commitments entailed in the Treaty.</p> <p>(4) "Islands" i.e. coastal, not of the Pacific.</p> <p>(5) Literally "making" i.e. "offering" or "saying" - but not "inviting to concur".</p>

Notes

English Text	Modern English translation of Maori version	Footnotes of the Maori text by Prof. High Kawharu (used with permission)
Article the First	The First	
<p>The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.</p>	<p>The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government (6) over their land.</p>	<p>(6) "Government": "kawanatanga". There could be no possibility of the Maori signatories having any understanding of government in the sense of "sovereignty" i.e. any understanding on the basis of experience or cultural precedent.</p>
Article the Second	The Second	
<p>Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.</p>	<p>The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise (7) of their chieftainship over their lands, villages and all their treasures (8). But on the other hand the Chiefs of the Confederation and all the Chiefs will sell (9) land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.</p>	<p>(7) "Unqualified exercise" of the chieftainship - would emphasise to a chief the Queen's intention to give them complete control according to their customs. "Tino" has the connotation of "quintessential".</p> <p>(8) "Treasures": "taonga". As submissions to the Waitangi Tribunal concerning the Maori language have made clear, "taonga" refers to all dimensions of a tribal group's estate, material and non-material heirlooms and wahi tapu (sacred places), ancestral lore and whakapapa (genealogies), etc.</p> <p>(9) Maori "hokonga", literally "sale and purchase". Hoko means to buy or sell.</p>

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English Text	Modern English translation of Maori version	Footnotes of the Maori text by Prof. High Kawharu (used with permission)
Article the Third	The Thrid	
In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.	For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties (10) of citizenship as the people of England (11).	<p>(10) "Rights and duties": Maori " at Waitangi in 1840 refer to Hobson being or becoming a "father" for the Maori people. Certainly this attitude has been held towards the person of the Crown down to the present day - hence the continued expectations and commitments entailed in the Treaty.</p> <p>(11) There is, however, a more profound problem about "tikanga". There is a real sense here of the Queen "protecting" (i.e. allowing the preservation of) the Maori people's tikanga (i.e. customs) since no Maori could have had any understanding whatever of British tikanga (i.e. rights and duties of British subjects.) This, then, reinforces the guarantees in Article 2.</p>

Notes

5. Three Historical Interpretations of the Treaty of Waitangi (1840)

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From http://www.jcu.edu.au/aff/history/article/moon_frame.htm

The Treaty of Waitangi was signed between February and May 1840 between the Crown, represented by Governor William Hobson, and around five hundred Maori chiefs, mainly from the North Island of New Zealand. This paper examines the standing and purpose of the Treaty from three historical perspectives: those of the Crown, the Governor, and the Maori signatories to the Treaty.

Assembling the straying strands of surviving evidence on the Treaty of Waitangi in order to constitute some sort of historically valid meaning from the standpoint of the groups involved is a problematic task. While there is a hefty collection of records from the Colonial Office relating to the Treaty, there is a corresponding sparsity of documentation from Maori sources in this period. In addition, numerous subsequent analyses and interpretations of the Treaty have partially obscured the original intentions of the parties, and so some re-evaluation and clarification is required.

British Government Policy on the Treaty

His Excellency the Lieutenant-Governor was instructed to acquire the sovereignty of the native chiefs by means of treaty....This was a mere formal step to prevent other nations, or individuals, or bodies, from acquiring in any way sovereign rights. It could not imply any duties to be performed by the natives, or any sacrifices to be made by them....

Ernst Dieffenbach, 1843.

A synthesis of the instructions and internal communications of the Colonial Office and other branches of the British Government indicate that full British rule over New Zealand through the Treaty of Waitangi was not the intention of the Colonial Office. After all, it did not provide Hobson with the means for such rule, and couched its documents relating to New Zealand in language that suggests that at first, it sought a more limited intervention of British government, probably limited to the administration and maintenance of law and order among the settler population.

The 1837 House of Commons Committee of Aborigines in British Settlements was frank enough to acknowledge that further British settlement was likely, but recommended that the requirement to extend British sovereignty was necessary only to enable British law to be applied to British settlers, who at the time '...were amenable to no laws or tribunals of their own...' The Committee then assessed the impossibility of indigenous peoples being able to be protected from settler populations who were unrestrained by any laws unless the sovereign authority of the Crown was accepted by the indigenous people over the country, for the purpose of regulating the behaviour of settlers.

In August 1839, a letter from Palmerston, the British Foreign Secretary, revealed that the basis of Britain's intervention in New Zealand lay in the fact that specifically British settlement in the colony '...indispensably requires the check of some contending authority'. No mention was made of such authority extending its jurisdiction to Maori. That no reference was made to the rule of Maori was not the result of any vagary however. Colonial Office officials were explicit about what a cession of sovereignty would entail. Henry Labouchere, replying to a letter written by a New Zealand Company spokesman in May 1839, threatened that if the Company went ahead with its just-announced plan to ship a large number of settlers to New Zealand, then:

...Her Majesty's Government cannot recognise the authority of the agents whom the Company may employ; and that if, as is probable, the Queen should be advised to take measures, without delay, to obtain cession in sovereignty to the British Crown of any parts of New Zealand, which are now, or shall be occupied by Her Majesty's subjects [author's italics], officers, selected by the Queen, will be appointed to administer the executive government within any such territory.

Sir James Stephen, whose influence in Colonial Office policy was arguably singularly more pervasive than that of any other person during the late 1830s, also favoured the establishment of a ruling body to in New Zealand which would govern '...the Anglo Saxon Race...' in order to prevent conflict between Europeans and Maori. In his minute dated 15 March 1839, Stephen emphasised that one of the cardinal points in the establishment of New Zealand as a fully-fledged colony was '...the introduction among the colonists [author's italics] of the principle of self Government.' Again, on 13 June 1839, Stephen wrote in a letter about the establishment of some suitable British authority in New Zealand, and observed that since the previous year:

...circumstances have transpired which have further tended to force upon Her Majesty's Government the adoption of measures for providing for the government of the Queen's subjects resident in or resorting to New Zealand [author's italics].

The British Treasury was apparently in a similar mind as Stephen. A Treasury official wrote to Stephen on 22 June, requesting that Stephen convey to his political chief, Lord Normanby, that the treasury concurred in the opinion that a consul be appointed to New Zealand so as to establish '...some competent control over British subjects [author's italics] in the New Zealand Islands...'. The reference to the British Government adopting specific measures solely for the government of British subjects living in New Zealand, and of those who would arrive in the future, was reported in the Treasury Minute of 19 July 1839, which officially sanctioned an advance from the revenues of the New South Wales administration to provide for the installation of a consul in New Zealand.

Most important in the catalogue of official British designs for New Zealand was the development of policy by Normanby in 1839. In May 1839, Normanby wrote to the British Attorney General, recommending a cession of sovereignty, but also, outlining the fact that the practice and jurisdiction of British government in New Zealand would be limited to the rule over British settlers. Normanby wrote of the need to establish '...some system for governing the numerous body of British subjects [author's italics] who have taken up their abode in the New Zealand Islands...'. The British annexation and acquisition of sovereignty over New Zealand therefore has to be considered in the context of Britain's desire to extend rule only over the settler population, whilst retaining a nominal claim to governing the entire country. Normanby went on, in the same letter, to specifically link the extension of British sovereignty to New Zealand with legislative authority being exercised specifically '...over the British subjects inhabiting that territory'.

The principle of extending British authority and jurisdiction only to British subjects living in the colonies of the Empire was not just an anomaly that was prescribed for the New Zealand situation. Rather, it was a thematic component that penetrated the thinking of Colonial Office officials, and therefore, assumed the capacity of a policy. This policy, later articulated by Grandville, aimed at furnishing colonies with administrations equipped to manage only the British citizens living there:

British subjects of all classes, engaged in innocent pursuits, are entitled abroad as well as at home, to the protection of their Gov[ernmen]t. Where they have been treated with injustice, they have a right to expect that redress should be demanded in strong but dignified language....

The only impression that the British Government had some intention of stretching British rule, perhaps through a treaty, to cover the entire population of New Zealand, including Maori, came from dealings between the Colonial Office and New Zealand Company of affairs, the latter of whom were pressing for official sanction for their enterprises in land acquisition from Maori and the subsequent organisation of British settlement. In such circumstances, the Colonial Office needed to assert its position in a resolute manner, hence the following reply to the New Zealand Company in May 1839:

...the Queen should be advised to take measures, without delay, to obtain cession in sovereignty to the British Crown of any parts of New Zealand...officers selected by the Queen will be appointed to administer the executive government within such territory....

Yet, even in this terse assumption of British dominance over the events taking place in New Zealand prior to the signing of the Treaty of Waitangi, no mention is made of the Crown asserting its powers of government over Maori. The Crown was not unaware of the use of specific provisions to govern indigenous peoples, it simply made no decision to attempt to employ them in New Zealand's case. The distinction between assuming sovereignty, and wishing to rule over the indigenous people in the colony was a clear one in British relations with its colonies. The second Virginia Charter of 1609 affected '...the persons beinge our subjects which shall goe and inhabit within the said Colonye and plantacion'. Similarly, the letters patent to the Newfoundland Company of 1610 restrict British jurisdiction to the same degree.

The other type of agreement specifically extended British rule over the indigenous people in the colony they were involved with. The letters patent to Merfield for the islands of St. Christopher, Nevis, Barbadoes, and Monserrat in 1625, gave the Crown agents '...full power and authority for as to order all and singular persons...as well as over natural born subjects as Natives and Savages of the said Islands'. The type of sovereignty asserted in the latter example is a legal as well as territorial sovereignty, covering all persons in the colony, whereas the former category, of which the Treaty of Waitangi was an example, was limited to territorial sovereignty, with legal rule severely restricted -almost invariably to British subjects.

In his instructions to Hobson, written in August 1839, Lord Normanby asserted the common law right of Maori to their land, and their sovereign status. In devising any agreement with Maori, Hobson was advised that the Maori's:

...title to the soil and to the sovereignty of New Zealand is indisputable and has been solemnly recognised by the British Government.

Normanby did qualify the type of sovereignty he believed Maori exercised, however, emphasising that the Crown would not simply seize New Zealand unless there was full, free and intelligent consent from the natives to do so - the sort of consent which was indisputably not acquired through the Treaty of Waitangi for the powers the British later claimed they had acquired from Maori.

Normanby decided to post Hobson to the position of Consul in New Zealand. The powers and rights of a Consul were more specific than those of a Resident, and used to meet a particular level of need. Normanby and his advisors were well-versed in the capacity of Consuls, and were conscious of a Consul's role when they appointed Hobson to that position in New Zealand. The difference between Resident and Consul was clearly definable:

A consul was expected to protect and watch over the interests of his nation's subjects living under the jurisdiction of a sovereign government: the resident was expected to exercise a benign influence on British subjects, and thus ameliorate the effects on Maori of contact.

The appointment of a Consul by the British Government is one of the most important indications of the intent of the British to curtail the extent of British rule in New Zealand.

Gipps' Proclamations of January 1840 were used, in the overall scheme of British policy on New Zealand, as a constitutional 'safety net'. If the Treaty did not receive a mandate from Maori, or if its eventual terms proved insufficient to meet the expectations of the Colonial Office, then Gipps' Proclamations could be resorted to as an alternative:

The Crown moved to institute an exclusive right of pre-emption even before the Treaty, in a proclamation of January 1840 issued by the Governor of New South Wales to prohibit wholesale trafficking in native lands. It was promulgated again in Act 4 Vic No 7 of the New South Wales Legislature in August 1840 and then enacted for New Zealand as a separate colony in the Land Claims Ordinance of 1841. For a brief period from 1844 to 1846 the Crown's exclusive right of pre-emption was lifted (by Governor FitzRoy) but with that exception it was retained until 1862 (when the right was finally disbanded).

Pre-emption was a preferred option for the British in its new colonies because it usually succeeded in shutting the door on reckless land speculators. Maori were limited to selling land to the Crown, depriving them of the same rights and privileges as British subjects. Moreover, this created a monopoly right by the Crown, which New Zealand Governments abused to profit from land sales to settlers.

Regardless of the alleged status of the Treaty as some sort of warrant permitting British rule to blanket New Zealand, it was legislation passed by the British Parliament which formalised and secured this right - and not the Treaty. Thus, the British Government could not possibly have seen the Treaty by itself as granting any right to the Lieutenant-Governor to rule and legislate for all the inhabitants New Zealand.

Under the New Zealand Act of 1840, Letters Patent were issued on 16 November that year (known as the Charter of 1840) which established the islands of New Zealand as a separate colony. The Letters Patent also authorised the Governor or Lieutenant Governor to form a Legislative Council responsible for the enactment of ordinances to regulate the colony.

On 3 May 1841, the inhabitants of Auckland were assembled, along with Government troops and officials, to hear the reading of the Proclamation which established New Zealand as an independent colony of Britain. Following the reading of this Proclamation, Hobson took the oath of office for the position of Governor. It was at this point that the Crown formally subsumed the powers of governance and sovereignty from Maori - without a single Maori signature in sight, and still with no Maori mandate for this sovereignty to be extended to cover Maori.

For the British Government to exercise influence in New Zealand, it was important to produce a treaty which would nurture good relationships between the two parties to it. The British were in no position to conquer and thereafter subdue the entire indigenous population of New Zealand during the 1830s, and so an agreement which seemed to solicit official British involvement in the country was needed. In the immediate wake of a treaty being signed where the British were in a weak position, some concessions of power were made, but this was only until the British position in the colony had consolidated to the point where these concessions were no longer necessary. The cynical nature of this approach was both a common and a successful ploy utilised by the British:

..it was necessary to pay serious regard to recently signed Agreements and to avoid infringements of rights purportedly protected by such treaties. In time, however, British control in political, economic, and social terms became more pervasive, and colonial capitalism tended to undermine the power base of traditional indigenous institutions.

In essence, the practical and material demands that the Empire imposed on a colony always prevailed over any agreements it devised to initially gain entry into the colony: 'Solemn treaties were of no great weight in the scales of justice as balanced by colonial judges and the Privy Council'.

Colouring the Colonial Office's information on New Zealand in the late 1830s was a succession of crude, ad hoc campaigns concocted by some missionaries to coax the British Government into further involvement in and commitment to New Zealand. A few years earlier, Danesdon Coates, the Lay Secretary of the Church Missionary Society, had been one of the leading opponents of further British entanglement in New Zealand. Coates clung to a doomed hope that if the forces of colonisation were able to be reigned in, then the adverse effects on Maori of British imperialism would be minimised. Coates, encouraged by letters from Marsden and others, believed that a British assumption of sovereignty was unnecessary because Maori had demonstrated the capacity to govern themselves. He conceded that some sort of official British presence in New Zealand was needed, mainly to control the excesses of the unregulated settler populations. Eventually, Coates envisaged, British law would seep into tribal systems of justice to the point where a national government would evolve. However, what Coates' prescription for New Zealand failed to register was that the ravaging of the land sharks needed more required more immediate checking.

The Colonial Office was in a position to preside over this dilemma, and stumble forward to the next stage of involvement. While some Maori may have seemed to confirm the growing British perception that they would not object to a more formal British presence in New Zealand, insufficient attention was paid to the specifics of what Maori were saying. Typical of Maori requests to the British Government for more intervention was an underlying desire by one iwi or hapu to gain a strategic advantage over an adversary. This was highlighted in a submission to a Select Committee of the House of Lords in 1838 by the Reverend John Flatt, in which he argued that while some of the more senior chiefs would probably oppose British rule, '...the young men, I am confident, are anxious for it; they say there would be no fear of a Party coming and falling upon them, and that unless something was done, they would all be dead'. In this instance, the missionaries misconstrued the desire for iwi to be better protected from their neighbours as a request for the establishment of formal British rule throughout the country. Significant also in Flatt's statement is a recognition that the older chiefs - the leaders and decision-makers of the iwi - would most likely object to the imposition of British law. It would be this latter group who, two years later, signed the Treaty of Waitangi. Stephen too had suggested in 1838 that Maori had '...evinced a strong disposition to place themselves under British protection', and cited the subsequent failure of Busby to deliver this protection as a contributing reason for the decision to install a Consul.

The path of British policy on extending government to New Zealand was eased by the faulty assumption that Maori would not object to the probable curtailing of their own authority over their own territory by an external power keen to regulate the actions of its settlers in the colony. If there was to be any objection by Maori on a large scale, this was not perceived by the British Government as an insurmountable problem. The Letters patent issued in London on 15 June 1839 omitted any reference to the method of acquiring sovereignty over New Zealand. By late 1839, there was little doubt in official circles that New Zealand was on the verge of becoming a fully-fledged British colony, eventually with its own Governor. A treaty of cession was not the only device which was available to achieve this end. The act of occupation was just as valid a means of securing sovereignty as a formal statement of cession. The Treaty itself, in its preamble, referred to the existing presence of settlers, and correctly anticipated additional settlement in the future as a reason for annexation. Increasingly, settlement assumed priority over an 'official' cession of sovereignty. Hobson's Proclamations of 30 January 1840 referred, significantly, to the existing and prospective settlement of British subjects in New Zealand, as though to provide some constitutional safety-net should the plans for the Treaty not eventuate. Also offering protection if the Treaty failed, was Hobson's citing in his Proclamations of the Letters Patent of 15 June 1839 as being the device by which British jurisdiction was able to be extended to New Zealand - something which smudged the issue of the extension of government, sovereignty, and legal jurisdiction, and certainly neglected the status of the Treaty.

The choice of 1839 as the date of the cession of New Zealand's sovereignty to Great Britain was predicated on the basis of British settlement in New Zealand, as opposed to a treaty of cession. The 1839 date was subsequently adopted by the Colonial Office. In the Return of 20 February 1845, of the 'Date at which each colony or foreign possession was captured, ceded, or settled', New Zealand is noted as 'Acquired by settlement, 1839'. The emphasis of settlement over a treaty of cession as the basis of the British annexation of New Zealand was accepted by the British in a way that was to adversely affect the Treaty of Waitangi:

The Treaty of Waitangi was made nugatory (ineffectual) during the nineteenth century by the simple fact of mass migration. Foreign settlement demanded land; demand for land required the assertion of authority and the supremacy of settler law, treaty or no treaty, and the government required revenue which must come either directly or indirectly from the sale of land.

Hobson's Intentions for the Treaty

Hobson relied strongly on the instructions he received from his superiors in London to guide his early policies in New Zealand. Subsequent historians have invested in Hobson a degree of legal knowledge which was well in excess of his likely abilities as a naval officer whose formal education ended at the age of ten. Hobson's initial plan for New Zealand, devised in 1837, had been for the colony to be divided up into a number of regions, some of which would be controlled by the British Government, indirectly, through a factory system similar in principle to the British East India Company. Within these relatively small territories, British law would apply predominantly, and possibly even exclusively to the European inhabitants. In Hobson's 1837 report to Burke, he spoke of the need of some sort of restraint to be introduced to regulate the behaviour of '...the licentious whites without exciting the jealousy of the New Zealanders [Maori], or of any other power'. There was no mention made in this report of legislating for, or even presiding over Maori. The basis of Hobson's proposed involvement by the British lay in the regulation only of the settler population. The idea of extending British rule to the Maori was only mentioned as a possible future development in the report - an evolution that would take place after the factory system was established for some considerable time. Hobson also recommended that a treaty be concluded with the chiefs, but not for a cession of Maori sovereignty. Instead, such a treaty would serve a much more restricted function of confirming Maori recognition of the factory system, and the protection '...of British subjects [author's italics] and property'.

Events hurried past Hobson's proposals, and by 1839, he had been issued with new instructions which called for a full cession of sovereignty, but in a way that differed from later presumptions about the Treaty of Waitangi. Hobson kept up with the changes - eager not to be seen to be diverging from the policies being laid down by the Colonial Office. He perceived the acquisition of sovereignty as a method of excluding other powers from New Zealand, and of protecting the settler population for lawlessness. In the words of George Clarke junior, the son of the Protector of Aborigines, this was more or less a symbolic 'supreme sovereignty'.

The thought of an administration that would be involved in governing Maori, far from being a principle concern, was not even mentioned by Hobson. From his standpoint, there would be no purpose in immediately embracing Maori in the rule of British law because of what he foresaw as the demise of the Maori population at a pace that would soon result in the country being inhabited solely by Europeans anyway. A partial annexation would have left the rest of the country exposed to interference by the French and possibly other scavenging powers as well. It would also create areas where the British Government would be unable to exercise jurisdiction over its own subjects. The barrier to the Crown asserting the rule of law over any of the British subjects living in New Zealand was that the British Government had yet to secure sovereignty over New Zealand - a technical prerequisite for any attempt at establishing legal authority. In practice, the effective limits of British sovereignty were conceived to be over European settlers. Hobson's proclamations at Kororareka on week before the first signing of the Treaty at Waitangi, clarified exactly over whom British sovereignty would be exercised:

Whereas Her Majesty Victoria...has been graciously pleased to direct that measures shall be taken for the establishment of a settled form of civil government over those of Her Majesty's subjects [author's italics] who are already settled in New Zealand, or who may hereafter resort hither'.

There is no question that Hobson implicitly grouped Maori separately from British subjects because later in the Proclamation, Hobson clearly distinguished between '...Her Majesty's subjects...', and '...the chiefs and native tribes of the said islands'.

Most critical of all to the issue of what Maori ceded to the Crown was Hobson's explanation to the assembled chiefs at Waitangi, just prior to the initial signing of the Treaty, of the reason why Maori ought to give their consent to the Treaty. Hobson's message was pivotal because it constituted part of the Treaty in as far as international law recognises verbal promises made in connection with a treaty as being a binding element of the Treaty. Rather than indicating that the British Crown was resolved to rule the Maori as well as the settler populations in New Zealand, Hobson spoke in terms of the need to extend British law to New Zealand to enable the Crown to protect Maori from British settlers. He commenced by stating that he had been sent to New Zealand, in the capacity of Governor, to conclude a treaty with the chiefs:

...for the welfare of her [Queen Victoria's] subjects [author's italics] living among you...

Hobson then offered a rationale for the requirement of a treaty: '...as the law of England gives no civil powers to Her Majesty out of her dominions, her efforts to do you good will be futile unless you consent [to the Treaty].'

If any ambiguity remained, at this juncture, Hobson believed he swept it away as he continued with his deliberation to the chiefs:

Her Majesty, always ready to protect her subjects, is also always ready to restrain them. Her Majesty the Queen asks you to sign this treaty, and so give her that power which shall enable her to restrain them [i.e. the settlers; author's italics]. I ask you for this publicly....I will give you time to consider of the proposal I shall now offer you. What I wish you to do is expressly for your own good, as you will soon see by the treaty. You yourselves have often asked the King of England to extend his protection unto you. Her Majesty now offers that protection in this treaty. I think it not necessary to say any more about it.

Hobson deliberately presented the Treaty to Maori as an instrument of protection - a means of allowing the Crown to rule over the settler population in order to regulate their behaviour. Hobson was not explicit about this rule cloaking Maori as well.

Felton Mathew, who was present at the signing at Waitangi, made a detailed note in his journal of what Hobson, through Williams, was advising Maori. Mathew's summation was even more categorical than Colenso's on the vital issue of what Maori were told by the Crown's representatives regarding the contents of the Treaty. According to Mathew's notes, Hobson pointed out:

...the necessity which existed for the [British] Government to interfere for their [Maori] protection on account of the number of white people who had taken up abode in this country.

Mathew understood the element of protection to be the key determinant in Maori acceptance of the Treaty. Mathew went on to describe how the Treaty effectively resulted in Maori '...throwing themselves on her [Queen Victoria's] protection, but retaining full power over their own people...[author's italics]'.

Various representatives of the Crown were dispatched by Hobson around the North Island to get more Maori signatures on the Treaty. In the process, the explanations of what the Treaty actually promised became even more warped. Major Bunbury, desperate to get virtually any chief to give their consent to the Treaty, explained in one instance to a prospective Maori signatory, that the Treaty would eventually require:

...that tribes must no longer go to war with each other....Strangers and foreigners must no longer be plundered and apprehended by natives, who, in their turn, were not to be injured by white men. It was not the object of H.M's Government to lower the chiefs in the estimation of their tribes, and I said that his [Te Hapuku's] signature being now attached to the treaty could only tend to increase his consequence by acknowledging his title.

With an agreement promising to deliver so much, with no visible concessions required by Maori in return, Bunbury predictably experienced no difficulty in getting Te Hapuku to sign.

For historians, the picture of Hobson's intentions for the Treaty becomes more murky because of the shifting attitude he displayed towards it within the space of a few months from when it was first signed. On 5 February 1840, Hobson wrote to Gipps, indicating that he was desirous of avoiding even the impression that the chiefs were coaxed or bribed into signing the Treaty:

In the course of this proceeding I have courted the utmost publicity, and I have forborne to adopt even the customary measure of propitiating the consent of the chiefs by presents or promises; and not until the treaty had been signed did I give them anything.

Yet, by April, there had been a full reversal of this policy by Hobson. As the desperation rose in Hobson's mind to get more Maori endorsement for the Treaty, he abandoned the prohibition of bribes, and instructed missionaries collecting signatures for the Treaty to:

...treat with the principal native chiefs, in the southern parts of these islands, for their adherence of the treaty....I have the honour to enclose a copy of the treaty, which I have signed; and to request you will obtain the signatures thereto of such high chiefs as may be willing to accede to its conditions, first explaining to them its principle and object, which they must clearly understand before you permit them to sign....Such presents as may be required will be put on board. and placed at your disposal.

Hobson's capitulation to the expediency of offering gifts in exchange for Maori support for the Treaty was indicative of two things. Firstly, it demonstrated the declining importance he placed in the Treaty - something which was confirmed in his Proclamations of Sovereignty of May 1840, which in Hobson's opinion effectively overrode the Treaty. Hobson had satisfied his Colonial Office masters by achieving a nominal cession of sovereignty from Maori, and therefore no longer needed the Treaty as part of his governmental armoury. On the other side of the world, Lord Russell was congratulatory of the manner in which Hobson and his assistants had effected Maori adherence to the Treaty.

The second feature revealed by Hobson's introduction of the gifts-for-signatures policy is that it shows how far Hobson had come to view the Treaty as a token formality. As far as Hobson was concerned, the real extension of British rule over the Maori was not achieved by the Treaty. Indeed, British law only began to apply to Maori later on, and gradually. As for the reality of

governing Maori, this was not fully achieved until half a century later. Certainly, in the first few years after the Treaty was signed, the power of the Crown in New Zealand was limited, and only able to be exercised in a haphazard fashion, as noted by Swainson:

Before parliamentary, or "responsible", government is established in a Colony, the representative of the Crown both reigns and governs: he fills up all appointments to vacant offices, determines upon the policy and measures of the Government, and his officers carry them into effect. He is entitled to command their advice, but he is not bound to act upon it; and in the exercise of his powers he is responsible to her Majesty alone....the Governor has an arduous and harassing duty to perform: he is at all times, almost unavoidably, in a state of unpleasant relations with some portion of the community; and he is personally made the principal object of attack by the Colonial Press. In the ordinary discharge of his duty, he has frequently to thwart the projects of those who, regardless of the public interests, seek to promote their own aggrandisement; and even in the disposal of the patronage of the Government, he makes more enemies than friends; and, however popular he may have been at the commencement of his reign, he is soon surprised to find himself pursued with malice by a host of bitter enemies.

Coarse and violent abuse is too common to have much weight; and even the most unscrupulous assertions are little heeded in the Colony itself where the writer, his character and motives, are known and understood: but the calumny may find its way to England, and, if read, may possibly be taken for a truth. A Colonial Governor has not only to see himself daily held up to public odium, and to bear the trying responsibility of a difficult command, but has his life constantly embittered by the apprehension of being suddenly recalled - with his reputation damaged, and all his hopes of professional advancement utterly destroyed; and it needs but some public Company or Colonial Agent in England, ever ready to undermine him in Downing Street, to fill up the measure of his uneasiness. No man who fears responsibility, and who has a reputation to lose, should seek to become the Governor of an infant Colony.

The first session of the Legislative Council of New Zealand was opened on 24 May 1841, and all members of the public were permitted to attend. Hobson used the occasion to discuss his views on the policy direction required for the colony. His speech was significant in connection with his perception of whom he was primarily responsible for governing. While Hobson outlined a vision for the country, his reference to Maoris, as well as being almost in passing, indicates that his government would not be passing laws which applied to Maori as much as passing laws the effects of which would supposedly benefit Maori:

...it will be my endeavour, during the recess, aided by the advice and assistance of the law officers of the Crown, to prepare for your consideration, such laws as will best provide for the administration of justice and the contingencies of social life in New Zealand; therefore the measures now proposed to you, must be deemed temporary and contingent, as resulting from the present peculiar condition of the Colony.

By command of Her Majesty, I will bring under your consideration, the repeal of the Land Commission Act, and submit for your adoption, an ordinance for the same general purposes, but granting to the Governor of New Zealand the same powers as heretofore enjoyed by the Governor of New South Wales. I will, likewise, lay before you, Bills for the regulation and collection of Her Majesty's Customs, for establishing Courts of Quarter Sessions and Requests, and for the prohibition of distillation. These, Gentlemen, are the only subjects for the present, on which I shall require you to deliberate.

Gentlemen, - We have a solemn and important duty to perform; by our means conflicting interests are to be reconciled, harmony and tranquillity established, and measures are to be adopted for improving and elevating the character of the aboriginal inhabitants....

Evidence that Hobson was concerned predominantly with British rule over British subjects in New Zealand can also be traced from particular geographical factors. The areas where he sent officials and to where he wished to extend law and order were all, without exception, European settlements. During the period of Hobson's rule, a Police Magistrate and Sub-Collector of Customs were posted to New Plymouth, Nelson, and Wellington. In practice, this was the extent of Government involvement in the country. The system itself did little to expand the Government's horizons of control beyond the main pockets of British settlement. Regional branches of Government were later devised as a way of increasing the control over the settler populations of New Zealand, and in 1841, Russell suggested to Hobson that a system of municipal administrations should be formed to facilitate New Zealand's progress towards full self-government. In 1842, Hobson duly passed the Municipal Corporations Ordinance in an attempt to achieve this, but with little immediate success. Even two decades later, the pitiful extent of Government control in New Zealand was remarked on by the Governor at the time, Gore Browne:

Some of the most populous districts, such as Hokianga and Kaipara, have no magistrates resident among them; and many, such as Taupo, Taranaki, and the country about the East Cape, have never been visited by an officer of the Government. The residents [settlers] in these districts have never felt that they are the subjects of the Queen of England, and have little reason to think that the Government of the Colony cares at all about their welfare.

In this extract, the Governor used the term 'populous' to refer to concentrations of Europeans. The emphasis was maintained on the provision of a functioning system for justice to the European population of the country. Browne did not include Maori as being covered either to the same extent or necessarily fully by the same system. Certainly, for Hobson, a few decades earlier, the matter of attempting to govern the Maoris was an entirely different one to that of establishing rule over Europeans. He foresaw from early on the potential for problems:

...the native population offer us but trifling interruptions; yet their habits are so inveterately opposed to those of civilised life, and their practices so repugnant to the customs of Englishmen, that we can scarcely hope to preserve such harmony when the settlers become more numerous.

Hobson did not intend to govern Maori as much as he did manage their interaction with the European population, over whom he did have some constitutional rights of rule. It is critical that the Crown policies on Maori in the few years immediately following the signing of the Treaty be seen in this light. This way, the statements of officials at the time become more explicable. For example, the following two contemporary assessments of the role of the office of Protector of Aborigines illustrates how the relationship between the Colonial Government and Maori was more one of trusteeship than of rule:

"Protector of Aborigines" is the official person by whom these duties are professed to be performed; but it is perfectly impracticable, that the various numerous duties of such an office, over such an extent of country, and so great a number of natives, can be performed by one person, with satisfaction to the Government, or with justice to the Aborigines.

...allusion is made to the Protector of Aborigines. Were the functions of this officer confined to the protection of the natives from physical injury or injustice there could not be two opinions on the subject of his duty; but in matters which relate to their general welfare he and I, with equal zeal in their cause, may entertain very different ideas. I sincerely hope that the duties of this officer may be exactly defined, and that the Government may be secured from the effect of captious opposition.

One of the most important statements connected with the limits of the authority of Hobson's Government over Maori came from Lord Russell. In his January 1841 instructions to Hobson regarding the office of Protector of Aborigines, Russell stressed that the Government's functions in relation to Maori were limited to '...promoting the health, civilisation, education and spiritual care of the natives', and not of directly ruling them.

For the colonial administration in New Zealand, the restrictions of a Treaty did not need to become a barrier to stretching out the arms of government to embrace Maori. Hobson was able to organise the government of the colony irrespective of the understanding of the Treaty he had given to Maori. A practice that became common in other parts of the Empire as well. The assumed right to govern Maori was adopted gradually and in an ad hoc fashion, in contrast to the earlier reluctance to extend rule to anyone other than the European settlers.

What Maori Ceded

On 10 March 1842, Barzillai Quaife, a Congregationalist missionary in Kororareka, and editor of The Bay of Islands Observer, published a stinging editorial on the way in which the Crown appeared to have deliberately misconstrued the Treaty for sordid political ends. Quaife's editorial provides one of the most lucid examples of a contemporary acknowledgement that the Treaty's provisions of governance did not extend to Maori:

If the subjection of the Maoris to the Crown commenced with the Treaty of Cession, how is it that the servants of the Crown are attempting at this very hour, as they have done all along, to pass an act binding them retrospectively?....There is only one way to account for this - they are mixing up the old 'right of discovery' principle afresh with the right conferred by the treaty of cession, although they are as destructive of each other as alkali and acid, and are sure to produce violent effervescence....

If the subjection of the Maoris with regard to themselves and their territory arose only out of that Treaty and was expressed only by their voluntary signatures to that document, how, it may be asked, is it that the whole country is regarded by Captain Hobson's administration as under British authority no exception being made in any of the actual measures of government with regard to such chiefs as never signed the Treaty, or with regard to their lands?

The Maoris are not and cannot be governed by the Crown [author's italics]. Those who signed it and those who didn't alike disregard it, as far as the Government is concerned....The sovereignty over them on the part of Great Britain is entirely nominal....

Thus, there are really two distinct communities in this country, living and more or less mingling with each other, governed on different principles, and by different laws and customs, and acknowledging a totally different authority. This evil - and can deny that it is such? - is wholly

owing to want of accurate distinction in the first movements in colonising this country.

It is absolutely certain that Maori did not and indeed could not have ceded full sovereignty to the British Crown. Maori were not conquered by the British, and therefore were not a vanquished group signing some agreement to avoid further military punishment. The British were '...not in possession of physical force to make itself respected in a single Native pa'. Moreover, it is questionable whether Maori even had the right to cede sovereignty, based on the absence of Western legal rights to do so in traditional iwi structures, and on the fact that the chiefs who signed the Treaty were not bestowed with the capacity to give away the sovereignty of their iwi or hapu. Dieffenbach noted this point in 1843, arguing simply that:

...the chief has no authority to give away what he does not himself individually possess; each of its [the tribe's] members is the sovereign possessor of his own plot of ground, and to have the consent of all would have amounted nearly to an impossibility.

George Clarke, who had direct experience with Maori land-holdings during the early 1840s, through his involvement in the office of the Protector of Aborigines, concurred with this understanding:

The private, separate, and exclusive ownership of land was not recognised among them [Maori], though I have seen this denied....No Chief, however high his rank, could dispose of a single acre without the concurrence of his tribe. Without such a law, no tribe could be sure of its integrity, and any number of wedges might be driven into its territory....It was fatal to the tribe to allow the individual, on his own mere motion, to admit a stranger to get a foothold on its land.

Another contemporary observer, Charles Terry, was even more detailed in his analysis of the cultural impasse that necessarily prevented British policies from being legitimately realised. Terry's description of the principles of traditional Maori land tenure highlighted a problem that the British officials had chosen to ignore:

Next to the proper understanding and acknowledgment, by the Natives, of any document it may have been alleged they have signed, is to ascertain, whether the Natives, who have been parties to such sale, are the real owners of the land claimed. The laws and customs of the aboriginal chiefs and natives, regarding land, are so well understood and acknowledged amongst themselves, that the various respective boundaries of every tribe and chief are well known, and can easily be ascertained. They possess their land either

hereditarily, or by right of conquest, and such dominions are not the property of one individual or chief, but the property of the tribe in common, according to their grade, as minor chiefs or rangatiras, and their relatives, the younger branches of old families, and frequently females who claim in right of their parents. The chief is the organ of the tribe; but he has neither exclusive property nor power, except similar to clanship or the feudal system, which, in truth, approximates nearer to the customs of the Natives in New Zealand, than any other form of government. They never actually divide their property; but move, according as their inclination, or their idea of more productive cultivation may prompt, from one part of the property of the tribe to another. Then each individual occupies and cultivates a certain quantity of land, which is regarded as his exclusive property for the time: occupation being held sacred.

Various tenets of international law support these assessments. The key to the endorsement of a treaty is the possession by both groups of signatories of Full Powers. The original purpose of a Full Power was to grant a duly authorised agent of a sovereign state to bind the state to a treaty. Hobson fulfilled this function on behalf of the British Crown, but the Maori chiefs could not automatically be said to be in the same position.

That the signatures of the chiefs were accepted by the British was as much a case of expedience as anything else. In the case of a treaty, the chiefs had no reason to believe they possessed Full Powers to bind their iwi in perpetuity. At least, nothing in Maori lore up until that point bestowed such a function on chiefs. In Hobson's bid to earnestly comply with his instructions from the Colonial Office, he seems to have been deficient in his duty to adequately verify to Full Powers of the other party to the Treaty.

George Clarke, whose experience with Maori in his administrative capacity was almost unrivalled among his cohorts, was the first to acknowledge that the basis of Maori land possession effectively precluded the Crown from exerting governance over Maori, no matter what the Crown may believe. The links bonding Maori land and Maori rule appeared immutable:

Most of the land held by tribes was held by right of inheritance - but not a little was claimed to have been wrested from its original owners by force of conquest. To establish the force into a right, it was never enough to invade and overrun a given district, and even to drive out for a time the inhabitants if the invading force were then to retire from the raid. Permanent occupancy was the condition of permanent possession, and it was expressed by building paika, making tracts of actual cultivation....

Thus, according to both traditional Maori practices and contemporary international legal principles, the tribe which occupied an area was also the absolute sovereign and governing authority in that area, unless another group could physically demonstrate their dominance - usually militarily, and then through subsequent occupation. Under such a system, the sovereignty of iwi was pronounced and clearly delineated. The ambiguous graduations of governance and sovereignty that Hobson had argued to his superiors he had successfully introduced were entirely incommensurate with the regimes and precedents of Maori.

The British Government was adamant that the opposite was true however. Lord John Russell's dispatch to Hobson on 9 December 1840 maintained that Maori sovereignty had been ceded to the Crown, although why Russell was so desperate to argue the point when the Treaty had supposedly already confirmed this ten months beforehand is unclear and perhaps slightly suspicious. Russell's justification that the British had acquired Maori sovereignty was founded on the faulty pretext that Maori were a single sovereign entity - thus denying the sovereignty of individual iwi. Furthermore, Russell's reliance on the belief that Maori ceded their full, collective sovereignty exposes the tenuous claim the British had to 'title' over New Zealand:

...[the Maori tribes] are not mere wanderers over an extended surface, in search of a precarious subsistence; nor tribes of hunters, or of herdsmen; but a people among whom the arts of government have made some progress;....In addition to this, they have been formally recognised by Great Britain as an independent state; and even in assuming the dominion of the country, this principle was acknowledged, for it is on the deliberate act and cession of the chiefs, on behalf of the people at large, that our title rests.

For Maori, tino rangatiratanga necessarily took precedence, over any attempt by an outside body at governing tribes. In the context of the Treaty, rangatiratanga had biblical associations with notions of the kingdom of God, earthly kingdoms, and master, whereas kawanatanga or kawana had been used in connection with Pontius Pilate, and the idea of a prince or regional ruler. Therefore, according to the Maori version of the Treaty, supreme sovereignty remained where it always had: with the iwi. Rewa, one of the northern chiefs, articulated the primacy of the iwi in the debate preceding the initial signing of the Treaty on 5 February 1840:

What do Native men want of a Governor? We are not whites nor foreigners. This country is ours, but our land is gone. Nevertheless we are the Governor - we, the chiefs of our fathers' land. I will not say 'YES' to the Governor's remaining. No, no, no; return. What! This land to become like Port Jackson and all other lands seen (or found) by the English. No, no. Return. I, Rewa, say to thee, O Governor! Go back.

The question then emerges of whether Maori ceded to the British the right to govern all the peoples in New Zealand. A good prima facie case has been made for this by most writers on the Treaty. Ngata staunchly defended the view that Maori surrendered such rights absolutely. In reference to the wording of Article the First of the Treaty, Ngata mistakenly observed that: 'These are but a few words but they indicate a complete cession'. But this ignores a vital question: over whom did the Maori cede the right of the British Crown to govern? Was it over all the population of the country, or just British settlers? If Maori intended the British to rule over all the people in New Zealand, including themselves, then it would have been unnecessary to insert Article the Third into the Treaty, because the Maori cession of this level of authority would automatically imply that Maori were British subjects, and it would therefore be superfluous for Article the Third to state that Maori were to be granted the same rights and privileges as British subjects. However, Article the Third was included in the Treaty exactly because Maori were not British subjects, but rather, were granted the same rights and privileges as British subjects. The distinction may seem almost trivial, but it is one which provides a substantial piece of evidence that Maori retained not only their sovereignty, but also their right to self-government, which they exercised both constitutionally, and in practice. The right bestowed on Maori by Article the Third of the Treaty - effectively one of joint citizenship - supplemented rather than transplanted Maori claims to self-government.

It may be retorted that, in fact, Maori at least ceded some rights of government to the British through their agreement to the terms of the Treaty. But the historical precedent in Maori communities of a Governor, and the conception of Governorship, was so weakly developed in most cases as to be effectively non-existent. In practice, the experience of most Maori who had any contact with a British official prior to 1840, understood the role of those officials as one which focused on protecting the interests of their fellow British citizens. And Busby in particular demonstrated repeatedly his ineffectiveness even in this area. Any idea he may have conceived of governing Maori would have been physically impossible. There was no reason why Maori should have treated Hobson any differently, or perceived him any differently, when he arrived in New Zealand at the end of January 1840. With a physical presence that was even more insipid than that of Busby's, Hobson had yet to demonstrate any sort of authority of the nature that would later be associated with Governorship when he signed the Treaty. It would have been difficult for Maori to even imagine the extent of rule they were allegedly ceding, based on the collective experience they had accumulated to that point in time on the exercise of British government in New Zealand. The authority of the Governor was certainly something that was not understood by Maori. In a culture in which the mane of a person was critical to their standing in the community, Hobson still had to demonstrate his credentials as a leader:

Where does the Governor get his authority? Is it from the Queen? Let him come; what power has he? Well, let him come, let him stop all the lands from falling into the hands of the Pakehas. Hear, all ye Pakehas!....

Other chiefs were almost indifferent, simply seeing Hobson as being as useless as Busby had been:

Will the Governor remedy the crooked dealing [in land]? If they would listen and obey. Ah, yes! Good that! But have they ever listened to Busby, and will they listen to thee - a stranger, a man of yesterday?

Even if the faint likelihood existed that a handful of Maori did possess some comprehension of the concept of a Governor and of Governorship, it is not possible to turn a blind eye to the fact that when negotiating the Treaty with the Maori on 5 February 1840, Hobson was not a Governor, but a Consul. On this basis, it would make more sense to argue that kawanatanga equates to Consulship in practice rather than Governorship. Certainly, this would have been the more likely conclusion arrived at by the chiefs signing the Treaty at Waitangi.

For many chiefs however, the issue of governance, in whatever manifestation, was palatable only when it applied to other Europeans. Aperahama Taonui, a chief from the Hokianga region, spoke of the delineation of the powers of the Governor in February 1840 as the Treaty was being signed at the Mangungu Mission Station. Taonui's statement is one of the clearest examples of the Maori belief that the Crown's request for the right of governance should apply only to British rule over the settlers:

We are glad to see the Governor. Let him come to be a Governor to the Pakehas. As for us, we want no Governor. How do the Pakehas behave to the black fellows at Port Jackson? They treat them like dogs!....

The understanding of the Treaty, as it was presented to Maori at Waitangi, was heavily influenced by the explanations given to the assembled chiefs by Hobson, and then by Henry Williams. Hobson's conveyance of the notion that the Treaty had been devised to protect Maori from the settlers by delivering a means by which the Crown could regulate the settlers' behaviour was elaborated on by Williams and became one of the main theme of the British presentation to Maori. Williams suggested, more seductively, that the Treaty was:

an act of love towards them on the part of the Queen, who desired them to secure their property, rights and privileges; that this treaty was a fortress for them against any foreign power which might desire to take possession of their country....

Neither Hobson nor Williams, two of the principal protagonists of the Treaty who were visible to Maori at Waitangi, mentioned anything about the rule of British law being imposed on iwi. Instead, both were eager to portray the document as one which would serve Maori interests without denying or removing any existing traditional Maori rights. On this basis, it is not surprising that there was widespread Maori endorsement of the provisions of the Treaty as they understood them to be. The role of missionaries again surfaces at this point as being crucial. The subsequent interpretation that some missionaries gave to events tended to distort rather than explicate the position of Maori in relation to the Treaty. Buick cited Samuel Marsden as having claimed that the Maori chiefs were actively seeking some form of stable government from the British to take the place of their tribal system. This appeared to be proof that Maori were agreeable to ceding their right to govern to the Crown. However, in actuality, the chiefs Marsden referred to were not seeking government at all, but rather, just '...the protection afforded them from the British Government'. Buick perpetuated this confusion between the chiefs seeking British protection, and requesting that their iwi be ruled by the British: the former was a strategic initiative, the latter an irrational and inexplicable response to the shifting balance of power among iwi.

Hobson's reaction to the confusion he had sown was less than satisfactory. Instead of addressing the problem and trying to clarify the issues that were perplexing his audience, he stubbornly suggested that any misunderstanding was no longer his responsibility:

If the Native chiefs do not know the contents of this treaty, it is no fault of mine. I wish them fully to understand it. I have done all that I could do to make them understand the same....

This attitude only compounded what was already an increasingly negligent approach by Hobson to the issue of Maori comprehension of the Treaty. Certainly, from the Maori perspective, the understanding and awareness of the Treaty often differed dramatically from what the Crown's representatives had attempted to convey. At least some chiefs had acknowledged an unfamiliarity, not only with what was being ceded, but even the process of signing the Treaty:

We all tried to find out the reason why the Governor was so anxious to get us to make these marks. Some of us thought the Governor wanted to bewitch all the chiefs, but our pakeha

friends laughed at this, and told us that the people of Europe did not know how to bewitch people. Some told us one thing, some another....We did not know what to think, but were anxious [that the Governor, Hobson] might come to us soon; for we were afraid that all his blankets, and tobacco, and other things would be gone before he came to our part of the country, and that he would have nothing left to pay us for making our marks on his paper....and when we met the Governor, the speaker of Maori [that is, the interpreter] told us that if we put our names, or even made any sort of mark on the paper, the Governor would then protect us, and prevent us from being robbed of our cultivated land, and our timber land, and everything else which belonged to us....The speaker of Maori then went on to tell us certain things, but the meaning of what he said was so closely concealed we never found it out. One thing we understood well, however, for he told us plainly that if we wrote on the Governor's paper, one of the consequences would be that great number of pakeha would come to this country to trade with us, [and] that we should have an abundance of valuable goods....we were very glad to hear this.

Colenso evidently felt much the same about the Maori comprehension of some of the terms and conditions of the Treaty, although he betrayed no anxiety about the situation: 'I have spoken to some of the chiefs concerning it [their understanding of the Treaty]...' Colenso whispered to Hobson as the chiefs were putting their marks on the document, '...who had no idea whatsoever as to the purport of the treaty'.

Other sources verified the worrying lack of appreciation some of the chiefs had regarding the document they were committing themselves and their iwi to. Charles Wilkes, commander of the United States Exploring Expedition, was in the Bay of Islands within two months of the first signing of the Treaty. Wilkes' observations must preclude any serious argument that most Maori fully comprehended the content and implications of the Treaty:

So far as the chiefs understand the agreement, they think they have not alienated any of their rights to the soil, but consider it as only a personal grant, not transferable. In the interview I had with Pomare, I was desirous of knowing the impression it had made on him. I found that he was not under the impression that he had given up his authority, or any portion of his land permanently; the latter he said he could not do, as it belonged to all his tribe.

As the Treaty was circulated around Northland, the feeling among several chiefs was that the explanations of the Treaty provided by its promoters were far from adequate, and occasionally conflicting. To compound this problem, for some Maori, there was not necessarily a distinction between what those Europeans promulgating the Treaty promised, and the assurances given by other Europeans:

The Pakehas say the Governor comes to take the land. This is the first time I have heard the pukapuka [the treaty]. The pakehas explained it differently. Some people say plenty of Pakehas are coming to buy our land, but not for our good. They say the soldiers are come to shoot us, and that the Governor will not be a shepherd for us. They say Mr. Puckey and Mr. Matthews know what is to become of us but will not tell us. These are my sayings.

When the Treaty arrived in Ngai Tahu territory, the nature of the promises told to the chiefs were important influences in the acquisition of signatures, but were also later to become a source of disillusionment:

It has been stated to me on many occasions by our Pu Korero that the European had offered the Maori a world free of conflict, free of barbaric practices, where all men would be equal. This was but one of the attractions advanced to encourage our ancestors to sign the Treaty....These noble thoughts were agreed to by our people in faith and trust, in expectation of the agreements made with our Treaty partner, that further lands would be allocated to our ancestors.

....On the other hand, much discussion has taken place since the signing of the Treaty...as to the material needs that people require for survival. This Marae, this wharehau has heard the echoes of these complaints, the non fulfilment of the...agreements between the Maori and the Crown, within the Treaty of Waitangi....

With these, and numerous other accounts of the degrees of Maori comprehension of the terms of the Treaty, any serious historian would shudder at claims that the Maori knew they were ceding the right to govern the country, in perpetuity, to the Crown. Still, for 150 years, it was reiterated in histories of New Zealand that Maori were fully aware of what they were giving their consent to when signing the Treaty of Waitangi.

In many cases, the assumed purpose of protection from hostile neighbours was a compelling reason in itself for some chiefs to sign the Treaty. John Flatt's 1838 submission to the Select Committee of the House of Lords made this reason for Maori enthusiasm for the Treaty explicit, and following the signing of the Treaty, Major Bunbury inadvertently confirmed this key motive for many Maori agreeing to the document:

On being told I was chief of a body of soldiers....the chief inquired, Should his tribe [be] agreeable to my request [to sign the Treaty]....would the governor send a portion of my force to protect them?

Bunbury's vague answer was enough to convince the chief to sign. The deceptive promise of military protection which the chief understood to be a provision of the Treaty was of no concern to Bunbury thereafter.

As for those iwi representatives who either refused to sign, or were denied the opportunity, the British Government responded to the New Zealand Attorney-General, Swainson's, suggestion that those iwi did not come under British jurisdiction by declaring that the opinion of the Attorney-General had been '...overruled by the opposite opinion of the Queen and Parliament and must thenceforward be silenced'.

Thereafter, British administrators in New Zealand unhesitatingly abandoned any traces of adherence to the verbal promises which constituted part of the Treaty, even though international law asserted and continues to assert that solely written elements need not be the only requirements necessary to create a treaty, provided that:

...the two persons whose spoken words are relied upon as evidence of the agreement, are duly authorised bind their States, there is no reason in principle why a binding relation should not result.

Despite the inconvenience and the generally undesirable nature of verbal components of a treaty, they remain on an equal legal footing with the written parts of the agreement. Of course, for the uneasy and anxious colonial administrations in New Zealand in the 1840s, the suggestion of determining and enforcing the verbal provisions of the Treaty would have seemed preposterous. An arbitrary assertion of unilateral sovereignty over the territory and peoples of New Zealand was an infinitely more practical proposition, and was the one eventually pursued. The iwi concerned were themselves, however, bound on a different path, and were soon to challenge the British claims of sovereignty. The Treaty of Waitangi was about to be severely tested.





What errors are in this depiction?

6. Final formalities

Hobson wrote immediately to the Colonial Office: *"I assured them in the most fervent manner that they might rely implicitly on the good faith of Her Majesty's government."* He told them that he had secured the agreement of twenty-six of the chiefs who had signed the Declaration of Independence in 1835. That, he wrote *"must be deemed a full and clear recognition of the sovereign rights of Her Majesty over the northern parts of this island."*

Hobson was anticipating full Maori agreement to the treaty elsewhere. He personally attended meetings and collected signatures in Northland and Auckland (where he fell ill, Feb. 21) and the official Willoughby Shortland took over the job of obtaining signatures. Traders, officials, soldiers and missionaries travelled as far south as Stewart Island collecting over 500 signatures by the last signing on September 3, 1840.

On 12 February, at Mangungu on the Hokianga, Hobson met with hundreds of Maori, intent on gaining more signatures.

"We are glad to see the governor, but let him be a governor to the Pakeha. We'll be our own governor. How do the Pakeha behave to the blacks of Port Jackson? They treat them like dogs: a Pakeha kills a pig – the black comes to the door and eats the refuse." (The chief knew; he had been to Sydney, a theme also mentioned at Waitangi).
Te Taonui

Chiefs told Hobson they were suspicious of British motives for making a treaty...

"We think you are going to deceive us. The Pakeha tell us so. Where do you get your authority from anyway? Is it from the Queen? If you do come as governor, you had better stop all our lands falling into Pakeha hands. I want everyone to hear that. It's only right to say what we think."
Mohi

"We are not willing to give up our land. The land is like a parent to us. We obtain all things from it. The land is our chieftainship. We will not give it up."

Te Taonui

After eight hours of debate, chiefs began to sign.

John Hobbs, a local missionary who acted as interpreter, believed that the promises given by Hobson were decisive. He had translated Hobson's *"repeated assurances... that the Queen did not want the land, merely the sovereignty, that... her officers might be able more effectually to govern her subjects... and punish those of them who might be guilty of crime."* He also pledged that the land would *"never be forcibly taken"* and gave Hobson's *"most solemn assurance" that the Queen's government would always act with "truth and justice"*.

These explanations shaped Maori understanding, one chief referring to the treaty as a "very sacred" deed which he must take care of. He probably regarded the treaty as a pledge, similar to a religious commitment entered into by both parties – the Maori chiefs and the British Crown.

No Unanimous Maori Agreement.

Hobson's report of October, 1840 failed to mention the number of very famous chiefs who refused to sign the Treaty. Te Wherowhero refused, offended at the limited scale of festivities offered at Manukau – compared with Waitangi. Taraia of Thames and Tupaea of Tauranga shared the view of others who wanted to retain full control over their own affairs... unrestricted by a governor. In some areas like Wanganui to Mokau, north of Taranaki and most of Hawkes Bay and the Waiarapa... chiefs were not asked to sign. Te Arawa of Rotorua and Ngati Tuwharetoa of Taupo refused to sign. Mananui Te Heuheu, of Ngati Tuwharetoa returned the gift of blankets given to his younger brother Iwikau, who had signed in the Bay of Islands. Mananui saw no reason to put his mana under that of a mere woman – the Queen.

Proclaiming British Sovereignty.

The New Zealand Company, without any sanction from the British government, had carried on with its settlement plans. Before the Treaty was signed, it entered into land purchase deeds signed at Port Nicholson, Kapiti and Queen Charlotte Sound. Its aim was to purchase from Maori a huge area of the North and South islands. It had then, also without government approval, sent a fleet of emigrant ships to Port Nicholson, establishing the new settlement of Wellington. They started to establish their own government, even though they knew of Hobson's actions. Hobson saw their actions as disloyal to the Queen, and a challenge to him and his work; he alone had the authority to set up a British colony in New Zealand.

William Hobson decided that it was urgent to proclaim sovereignty over the whole country. This would leave the Port Nicholson settlers in no doubt that they were bound by British government policy and were not entitled to regard themselves as forming an independent colony. Hobson took this step while copies of the Treaty were being taken around the country for signing. On 21 May 1840 he proclaimed British sovereignty over the North Island by cession and over the South Island by discovery. In June 1840 Thomas Bunbury, unaware of Hobson's actions, separately proclaimed British sovereignty over the South Island by cession.

The last formal steps were taken later in 1840 when the boundaries of the colony of New South Wales were formally altered to include New Zealand. In 1841 New Zealand was established as a separate Crown colony in its own right. The Chatham Islands were inadvertently left out of the official boundaries of New Zealand until 1842.

Maori reasons for signing the Treaty of Waitangi.

(Orange, P 37-40)

Almost everywhere Maori leaders were extremely cautious about giving their agreement to the treaty. Many objected strongly at the treaty meetings but then signed. Others signed willingly.

Why, then, did so many sign?

From what the chiefs said, at the time and later, it is known that they signed the treaty for one or other of many reasons.

Authority.

They expected the treaty to be the start of a new relationship with Britain – one in which there would have to be a sharing of authority in the country.

They expected officials in New Zealand to control troublesome Europeans, whereas chiefs would look after their own people. Their rangatiratanga – in effect, Maori sovereignty – was safe in the treaty's second clause.

The mana of the land, therefore, would still be held by the Maori people. It would even be increased by the agreement with the world's major naval power, who might help them against France or other nations.

Most especially they believed that the Queen had a personal authority and that the treaty was a personal agreement between the Queen herself and the chiefs. Treaty negotiators had explained it that way to get Maori agreement.

Land.

The issue of land was usually foremost in influencing chiefs to sign. Some communities needed support against aggressive European land buyers, while others were keen to sell land to the governor.

Many tribes saw a way of fighting old enemies: if they sold disputed land, they would no longer have to fight their rivals for it.

Many chiefs hoped that the new agreement would bring peace to the country. For instance, Ngati Whatua leaders travelled to the Bay of Islands in mid February 1840 to ask Hobson for his protection against old enemies, Nga Puhi and Waikato. They offered him land on the Waitemata Harbour for his government.

Trade and Settlement.

All who signed hoped for a share in the good things settlers would bring: more markets for produce, more goods to buy and a demand for Maori labour and services of all kinds.

They had no idea the British government planned to bring settlers to the country in large numbers.

The Covenant.

Above all else, Maori leaders believed that missionary advice was wise and could probably be trusted: the treaty would be good for the country and the people.

They were certainly influenced, too, by the way the treaty was explained to them. The missionaries had been careful to explain the treaty as the personal wish of the Queen – her “*act of love*”.

Missionaries, at least at Waitangi, had also presented the treaty as a covenant between the Maori and the Queen, as head of the English Church and state. Many Maori would look on the treaty as a bond similar to the covenants in the bible. This was very important to them, for, by 1840, nearly half the Maori population was following Christian beliefs and ways.

7. Some primary documents

Wakefield comments on the methods by which signatures are gained for the Treaty

Fully to understand the value of this contract, the circumstance under which it was procured must be kept in view. Captain Hobson's commission [stating that he had been appointed Lieutenant-Governor of New Zealand, directly responsible to the Governor of New South Wales] was read at Kororareka, in the Bay of Islands, on the 30th January, the day of his arrival. On the 5th of February, he presented the Treaty to an assembly of the natives of the Bay of Islands; and on the 6th it was signed by 46 chiefs. On the 12th he met the natives of the Hokianga; and 56 more chiefs signed the treaty. In March, Mr. Shortland, Captain Symonds, and four missionaries were appointed to secure the adherence of the chiefs of the northern islands to the treaty. One of the missionaries deputed his colleague, Mr. Chapman and the master of a coasting trader, named Fedarb, to obtain signatures. Copies of the Treaty were thus dispersed about the Northern Island. Some of the chiefs refused to sign it; but at last, between the 6th of February and the 3rd of September, 512 signatures were obtained. Of these signatures, upwards of 200 were those of the chiefs inhabiting the peninsula north of the harbour of Manukou and the estuary of the Thames; leaving only 300 to represent the inhabitants of more than three-fourths of the North Island. There is no evidence whatever that the assent of the powerful and warlike tribes of the interior, in the upper valleys of the Waipa and Waikato, around Lake Toupou and the Rotorua lakes was ever asked; certainly it was never obtained. The greater part of the signatures was obtained at flying visits, and after one or at the most two interviews. Presents of blankets and tobacco were made to the chiefs who signed; and there cannot exist a doubt that to obtain these presents was with many the motive for signing.

Having not even the name of Governor or Government in their language, it may be supposed that the natives had no very precise or definite ideas of government; a thing unknown in fact to their institutions. Having no collective name for their own country, it may be supposed that they had no distinct idea of different countries, of national distinctions, and therefore none of foreign relations. There is no evidence that adequate means were taken to explain those large and novel ideas to them, so necessary to the proper understanding, not only of any treaty, but even of what a treaty is. Captain Symonds had been only a few months in New Zealand, knew but little of the language, and had not the benefit of the assistance as interpreter of the missionary at Manukou, who was absent; and it may be doubted whether Mr. Fedarb, the master of the trading-vessel (who from his name appears not to have been an Englishman), was capable of understanding the treaty, much less of explaining it to the natives. It was obvious, from these considerations, that the framers of the Treaty purposed to bind the natives to conditions which there were not even the words to convey. And, on the other hand, they accepted of signatures from those who could not know to what they were putting their hands, and professed to the white settlers to have procured a valid adhesion to the compact [signing of the Treaty].♦ The Treaty of Waitangi has been truly described by the [British] House of Commons' Committee of last year as 'little more than a legal fiction'.

♦ Editor's Note: Similar objections apply of course to Wakefield's own [land-buying] transactions with Maori chiefs.

Why is Wakefield significant?

8. Mr Pipe's analysis of the Treaty of Waitangi

Fill these in yourself after Mr Pipe's lecture

CCVOTES

Note that some of these flow into each other eg V with O

A.	The number of different versions	V
B.	Oral versus written	O
C.	Signers and non-signers	C
D.	Translation problems	T
E.	Contradictions	C
F.	Eurocentrism	E
G.	Speed	S

A. Number of versions

B. Oral versus written

C. Signers and Non-Signers

D. Translation problems

The major areas of translation contention are:

S	versus	K
P	versus	R
P	versus	R of R

E. Contradictions

F. Eurocentrism

G. Speed

9. ANSWERS to TREATY QUIZ

1. **FALSE** – This idea was a myth, constructed as a consequence of Social Darwinist ideas current at the time of its invention. It was totally disproved in the 1920s. Like other Maori, Moriori were Polynesian. They share a common ancestry with Maori. They are as much a Maori tribe or iwi as Ngai Tahu or Tainui are.
2. **FALSE** – This quote comes from the English version of the Treaty. Both versions clearly state that Maori are to have full control or rangitiratanga/chieftainship over the land, forests, fish and other treasures. There are no major translation issues with Article Two.
3. **FALSE** – Before the arrival of Pakeha in New Zealand, Maori generally referred to their iwi or tribe, or occasionally their waka as their ultimate national identity. The arrival of Pakeha necessitated a distinguishing of “us” from “them”. “Maori” literally meant “normal” or “extraordinary”. “Pakeha” meant “extraordinary”. This was highly appropriate given that even by 1840, Maori outnumbered Pakeha by about 80 000 to 2000! We seem to have a tendency to demand literal meanings of words outside our own language but not within it. Just because I get paid a “salary” doesn’t mean that I get paid in salt, even though literally that is what it means. “Pakeha” is probably as good a word as any to describe New Zealanders who migrated to New Zealand after Maori.
4. **TRUE** – This was one of the biggest moments in nineteenth century New Zealand history. In 1858, many tribes or iwi combined their strength and established the position of Maori King. They did this in response to breaches of the Treaty of Waitangi. They wanted to protect their land and establish a form of self government.
5. **TRUE** – This direct breach of the Treaty had disastrous consequences for Maori. The confiscated land was used as payment for militia troops and to settle Pakeha on. If you drive from the Mangatawhiri River (south of Pokeno) to the Puniu River (south of Te Awamutu) you are driving the length of the confiscation. This is the fertile dairy country that was “the backbone of the New Zealand economy” till the 1980s. The 90 minute drive is a good length of time to think about the \$170 million that Tainui accepted as compensation for this invasion and confiscation. It tends to put it into a bit of perspective!
6. **TRUE** – The 1881 Native Schools Code gives some precise instructions to teachers about stamping out the use of te reo Maori in the senior school. The Pakeha teacher was also required to build a white picket fence around his house and to have a wife who could act as sewing mistress!
7. Both completely **TRUE** I’m afraid!
8. **FALSE** – According to the Office of Treaty Settlements, the total cost of settlements with iwi since 1989 has been just \$596 million. Remember Doug Graham’s fiscal envelope of \$1 billion? There’s still plenty left! As a point of comparison, Telecom’s profit for the 2003 financial year was \$709 million and the New Zealand Government collected \$57 billion worth of our taxes in the year up till June 2003.
9. **FALSE** – The Court of Appeal simply said that the Maori Land Court was the body which should make the judgement about whether the foreshore and seabed are Maori customary land. The Labour Government doesn’t want the issue to be taken to the Maori Land Court. Instead they want the ownership of the seabed and foreshore to be invested in the “People of New Zealand” with some recognition given to Maori customary rights. That is why Tariana Turia wants to cross the floor!
10. **FALSE** – There are some quotas to encourage Maori students into medicine but they need to get exactly the same marks as everyone else to qualify as doctors. According to the *Sunday Star Times*, there are 1451 scholarships available for tertiary education in New Zealand. Of these 154 are solely available to Maori.

I do hope that you enjoyed the quiz or found it to be informative!

