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THE TREATY OF WAITANGI

A study of its making, interpretation and role
in NEW ZEALAND history.

Thesis submitted for the degree of
Doctor of Philosophy in History

by

Claudia Orange

University of Auckland

February 1984
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PREFACE

From 1840 to the present, the treaty of Waitangi has been a subject of some significance to New Zealand - a distinctive but subtle thread running through the fabric of the country's history and shaping attitudes to race relations. A conviction strongly held by New Zealanders is that the treaty has made the country different from other nations, that it initiated an experiment in race relationships that has secured reasonable accord over the years. Only as the climate of public opinion has shifted slightly in the last twenty years and as Maori protest about failure to obtain treaty rights has become more strident have these convictions been challenged.

It was the growth of protest and an accompanying renewed academic interest in the treaty that first tempted me to undertake this thesis. When contradictory statements and widely divergent opinions on Waitangi were expressed by Maori and European in the 1970s it was evident that there was a serious conflict at the heart of New Zealand's national identity, one that was bedevilling the confident assertion of nationality: Maori and European appeared to share aspirations for a unity that was usually said to derive from the treaty bond, yet at the same time there was a divergence between the two races in their attitudes towards the place of the treaty both in the past and in the present. Since 1973 the recognition of 6 February - the date of the treaty's signing at Waitangi - as a day of national 'celebration' and a public holiday has accentuated the differences in attitudes and increased the discord. The reasons for this state of affairs can be found in the treaty's past history.
Coinciding with this greater public awareness which first roused my interest was the discovery that when the New Zealand Labour Party had drawn up its first Maori policy statement in 1925, it had included promises to investigate grievances arising from non-fulfilment of the treaty. This fact seemed to have been overlooked by historians. Further investigation proved that there was a history of the treaty and its fortunes in New Zealand which research could clarify. This thesis is the result.

To Professor Keith Sinclair I owe a debt of gratitude for persuading me to carry out an earlier study on the first Labour government's dealings with the Maori; there I first came across the treaty in Labour's policies. His encouragement and helpful criticism during the long process of this research have been constantly stimulating. I also appreciate his wise insistence that a study of the treaty required, at the very least, a reading knowledge of Maori. Professor Keith Sorrenson deserves my very warmest thanks, for he has invariably raised new and challenging queries about the subject and has always patiently and thoughtfully appraised the results of my work. His encouragement has been much appreciated. For the interest, suggestions and support of staff and students of the Department of History at Auckland University I have always been grateful.

Others have provided their time, skills and resources for which I am most thankful - in New Zealand, staff of National Archives, the Alexander Turnbull Library, the Auckland Institute and Museum Library, the University of Auckland Library, and the Auckland Public Library. In England, staff of the British Library, the University of Nottingham Library, the University of Durham Library, Canada House London, Rhodes House Oxford, Lambeth Palace, Hatfield House, and the Public Record Office were unfailingly helpful. Professor Freddie Madden of Nuffield College Oxford was quietly encouraging
when called upon for assistance which was much appreciated. To the many
people, Maori and European, who have willingly given information, advice,
some translation assistance and other help, my sincere thanks.

A postgraduate scholarship from the New Zealand University Grants
Committee enabled me to carry out full-time research for three years, part
of the time in England. I am grateful for this and for two research
grants from the University of Auckland to help cover costs of collecting
material.

Family and friends, especially my husband, have given the constant
support and help without which this thesis could not have been completed.
My special thanks go to them. Beryl Stout's excellent typing contributed
that last essential which also deserves my thanks.
GLOSSARY

ariki  
haere mai  
haka  
hapu  
hongi  
hui  
kaiwhaka haere  
kainga  
kainga tautohe  
kaituki  
kaiwhakarite  
kaumatua  
kotahitanga  
makutu  
mana  
mere  
marae  
moko  
pa  
pakeha  
powhiri  
rahui  
rangatira  
runanga  
rangatiratanga  
taiaha

senior or paramount chief  
welcome  
fierce dance accompanied by a chant  
sub-tribe  
to greet by pressing noses together  
meeting or gathering  
organiser or facilitator  
settlement  
disputed land plots  
the person keeping the time for the canoe paddlers - the stroke  
intermediary  
elder  
unity of purpose  
witchcraft  
authority or prestige  
club  
village meeting-place or surrounds  
tattoo  
fortified village, or more recently any village  
European  
to welcome or beckon someone to come in  
a mark to warn against trespass, a prohibition  
chief  
meeting or council, assembly  
chieftainship  
long club
tapu   sacred
tangi  weeping, lamenting for the dead
tinhianga  tricky nonsense
tohunga  an expert, especially in spiritual matters
tupuna  ancestor
utu   revenge, recompense, reciprocity
wahi tapu  sacred spot
whare  house or building
whenua  land

The word Maori has been used to denote singular and plural. Words in the Maori language have not been italicised.
# LIST OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>GBPP</td>
<td>Great Britain Parliamentary Papers</td>
</tr>
<tr>
<td>GBPD</td>
<td>Great Britain Parliamentary Debates</td>
</tr>
<tr>
<td>NZPD</td>
<td>New Zealand Parliamentary Debates</td>
</tr>
<tr>
<td>AJHR</td>
<td>Appendices to the Journals of the House of Representatives</td>
</tr>
<tr>
<td>AJLC</td>
<td>Appendices to the Journals of the Legislative Council</td>
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<tr>
<td>CO</td>
<td>Colonial Office Papers</td>
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<tr>
<td>NA</td>
<td>National Archives</td>
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<tr>
<td>APS</td>
<td>Aborigines Protection Society</td>
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<tr>
<td><strong>JOURNALS</strong></td>
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<tr>
<td>NZJH</td>
<td>New Zealand Journal of History</td>
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<tr>
<td>JPS</td>
<td>Journal of the Polynesian Society</td>
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<tr>
<td>AULR</td>
<td>Auckland University Law Review</td>
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<tr>
<td>NZLJ</td>
<td>New Zealand Law Journal</td>
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<td>NZULR</td>
<td>New Zealand University Law Review</td>
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<tr>
<td><strong>LOCATIONS</strong></td>
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</tr>
<tr>
<td>ATL</td>
<td>Alexander Turnbull Library</td>
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<tr>
<td>APL</td>
<td>Auckland Public Library</td>
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<td>AML</td>
<td>Auckland Institute and Museum Library</td>
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<td>AUL</td>
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INTRODUCTION
The treaty of Waitangi was an agreement made in 1840 between the British Crown and over five hundred Maori chiefs of New Zealand. The wording of the treaty in English indicated that the chiefs were ceding to Britain the sovereignty of New Zealand and were giving the Crown an exclusive right of pre-emption of such lands as the Maori people wished to sell. In return, the Maori were guaranteed full rights of ownership of their lands, forests, fisheries and other prized possessions. In addition, the treaty promised them the rights and privileges of British subjects, together with assurances of Crown protection. Only thirty-nine chiefs signed this treaty in the English language however. Most signed a treaty in the Maori language which was deemed to convey the meaning of the English version. This it failed to do, and the treaty negotiations did not clarify the difference. As a result, Maori and European understandings of the agreement of 1840 varied greatly and have continued to diverge.

Confusion surrounded the Waitangi treaty from the very beginning. Whether Britain ever intended it to secure sovereignty, in any legal sense, for example, is still a debatable point. Difficulties of interpretation and implementation dogged the colony's first years and were to continue. Questions were raised - What rights did the treaty confer or confirm? What responsibilities did it imply for both contracting parties? Did it apply to all Maori or only to the tribal groups who had been committed by their chief's signature? The problems raised by these and other queries were not easy to solve and when answers were found they never satisfied everyone. By 1846 Governor FitzRoy could say of the treaty that 'some persons still affect to deride it; some say it was a deception; and some would unhesitatingly set it aside; while others esteem it highly as a well considered and judicious work, of the utmost
importance to both the coloured and the white man in New Zealand. His comment remains a fair appraisal of the span of public opinion in the country today. Why this should be so may indeed be a puzzle to those who know little of New Zealand's history. After all, dealings with indigenous peoples by way of treaty were not unusual in the history of British imperial expansion. But most of those agreements have receded in importance whereas the Waitangi treaty remains a central issue in New Zealand life today.

In view of the treaty's sustained and continuing impact on New Zealand affairs, it is somewhat surprising that there exists no comprehensive historical analysis of the making of the treaty and its subsequent effect. The gap in informed knowledge has become all the more serious in recent years as public expectations regarding the treaty's status have been heightened by an increase in official recognition and by an escalation in Maori protest. Those seeking more information on the treaty might be surprised to find that until recently there were very few scholarly works on the subject. In fact, remarkably little published material has ever dwelt specifically on the treaty. For many years after 1840, official reports of the treaty-making in the British parliamentary papers were the main source of printed information available. These were relied upon by the early historians of New Zealand - A.S. Thomson, G.W. Rusden, R.A.A. Sherrin, A. Saunders and W. Pember Reeves - none of whom tarried over the treaty. By Thomson and Reeves the treaty was interpreted as the 'Magna Charta' of Maori liberties; the others implied this by a

recitation of the benefits it promised. References to the treaty also appeared in early sketches of New Zealand life and in hand-books for emigrants, but such commentaries were invariably brief and, depending on the political sympathies of the author, could be hostile towards the treaty or lacking in any critical comment whatsoever.\(^3\) Treatises relating to political issues also took up the treaty on occasion but the writers were mainly concerned with directing their efforts towards objectives other than clarification of the 1840 agreement.\(^4\) Even writers committed to the investigation of violations of one or other of the treaty's terms tended to concentrate on certain issues - on the threat to overturn the land guarantee in the late 1840s, on the Waitara dispute, or on particular land purchases.\(^5\)

In the nineteenth century, G.W. Rusden's attempt to deal more extensively and critically with the treaty and with its effects stands alone.\(^6\) But Rusden's work was marred by his Maoriphile stance and polemical presentation, indicated by his choice of title, Aureretanga; groans of the Maoris. Aureretanga undoubtedly argued a case for the Maori people but, since the work appeared at a time when public sympathy for Maori grievances was at a low ebb, the value of the work as a first effort at a critique of the treaty and its aftermath has been largely overlooked until recent renewed interest in the treaty stimulated a reprint.

\(^3\) e.g., C. Terry, New Zealand, its Advantages and Prospects as a British Colony, London, 1842; W. Swainson, New Zealand and its colonization, London, 1859; C. Hursthouse, New Zealand, the Emigration Field of 1851, London, 1851.

\(^4\) e.g., H. Sewell, The New Zealand Native Rebellion, Auckland, 1864.


In contrast to Rusden's critical approach, William Colenso's account of the signing of the treaty - written in 1840 but not published until the fiftieth anniversary of the colony in 1890 - supplemented the information available in the parliamentary papers by providing a detailed non-official record of an eye-witness to the events surrounding the Waitangi signing. Limited as Colenso's observations were to 5 and 6 February 1840, his notes on chiefly opinion and Maori grasp of the nature of events are most interesting. They can still tell us much about the divergence between European and Maori attitudes to the Waitangi treaty.

In 1914 a more comprehensive treatment of the 1840 signing was published - The Treaty of Waitangi, by T. Lindsay Buick, but Buick relied heavily on the official reports of the parliamentary papers as had earlier historians. Although he augmented these with information gleaned from diaries of old colonists, what he produced was merely an uncritical collation of records which dealt with the background to the treaty-making and with the extended negotiations through 1840. Written during the flurry of patriotic fervour just prior to World War One, The Treaty unashamedly celebrated the addition of New Zealand to the Empire in 1840. Thus anything controversial, such as the material discussed by Rusden in Aueretanga, was disclaimed. In two subsequent editions in the 1930s, when preparations for New Zealand's centenary were beginning, Buick did not alter his position. In spite of its shortcomings (which include some inaccuracies), Buick's book remained, for some thirty years after its first publication, the main textual reference for the practical details of the treaty-making in New Zealand.

7 W. Colenso, The Authentic and Genuine History of the Signing of the Treaty of Waitangi, Wellington, 1890. This published work varies in only minor details from the original manuscript: 'Memoranda of the arrival of Lieut. Govr. Hobson in New Zealand; and of the subsequent assembling of the Maori chiefs at Waitangi', MS, ATL.

A similarly uncritical treatment of the 1840 events was presented through New Zealand's education system. For years, *Our Nation's Story* assured successive intakes of intermediate school-children that Hobson 'was a man of courage and honesty', that the Waitangi agreement remained 'the fairest treaty ever made by Europeans with a native race'. An accompanying illustration, which incorrectly depicted the treaty-signing with Hobson resplendent in his dress uniform, left generations of New Zealanders with an impression of pomp and splendour surrounding the events of 6 February, which was certainly not accurate.

As events in the 1930s began to attract public attention to Waitangi and the foundation of New Zealand as a British colony, the *New Zealand Law Journal* began to take an interest in the treaty. In 1934 it published an assessment of the effect of the treaty on subsequent legislation, and its history before the courts. The outline was helpful to later researchers but it was in no way an adequate evaluation of the destructive quality of much of the legislation affecting rights that the Maori held dear. Indeed the author concluded that 'the whole trend of legislation in regard to the Maori has generally followed the spirit of the Treaty', declaring with a final flourish that 'We are now one people'.

Although New Zealand's centenary in 1940 generated a small rush of historical texts, researchers generally showed more interest in the main actors in the 1840 event - Hobson, Busby, Stephen and Nias - than in the treaty itself. There was one notable exception, the historian

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9 *Our Nation's Story*, Auckland [1922?].


Trevor Williams, whose article on the treaty was published in 1940. Williams had several aims: to show the significance of the treaty in the establishment of British sovereignty, to examine the various interpretations placed on the agreement in its first years, and to indicate its importance as a humanitarian step in British colonial policy. The work proved an invaluable offering at a time when little else of academic worth was available. More than this, Williams was acutely aware of the treaty's role as 'a necessary part of the mythology of New Zealand'. Observing that it was fashionable (though inaccurate) to liken the treaty to the Magna Carta, he admitted that the treaty, as with the Magna Carta, 'had been made to play the dual role of a contemporary statement and an antiquarian aid to political polemic'. This was a perceptive comment that remains valid although Williams's assessment in other respects has been superseded by new opinions and more detailed works. In 1949, for example, J. Rutherford considered the question of whether the treaty could be considered the valid legal basis for the assertion of British sovereignty over New Zealand, which Rutherford answered in the negative.

But this did not end the debate over its legality by any means. By 1960 several popular histories of New Zealand had presented nothing new on the treaty. Like the nineteenth-century historians they dealt with the subject briefly, their emphasis falling on Britain's humanitarian concern in the treaty-making. Only A.H. McLintock took a rather

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harder look at the treaty, as a background to his history of the Crown Colony period, but he likewise saw the treaty as 'a chivalrous attempt to reconcile divergent interests'.

In the 1960s, however, attitudes were changing. A thematic approach to Maori history of the late nineteenth century by John Williams covered some of the groundwork of Maori attitudes to the treaty, although it did not make the treaty its main interest. Other works were now appearing and they were more critical of the treaty dealings. Ian Wards, touching on the treaty in relation to a history of race conflict in the colony's first twelve years, queried the humanitarian intent and provocatively asserted that the treaty was 'never intended to be more than an internationally acceptable step of no lasting significance'.

Alan Ward, treating of nineteenth-century amalgamation policies, simply noted the shortcomings in the treaty negotiations and the contradictions that would lead to conflict. For neither historian was the treaty the central issue, although the new element of critical awareness that they introduced pointed the way for other researchers in the 1970s. As treaty-related activities began to multiply at the opening of the decade, the lack of scholarly work devoted particularly to the treaty and its impact on the country's affairs became the more apparent. Moreover, earlier works, which had been written in the context of New Zealand's firm political and emotional affiliation with Britain, had viewed the treaty as essentially a desirable thing, a bias that new studies in the seventies would consciously avoid.

A start was made in the early 1970s by Peter Adams who completed a detailed review of British intervention, its motives and its practical effect in New Zealand up to 1847. It is unlikely that Adams will be readily superseded in the task he set out to do, but his own defined limits of that task restrict the value of the work in opening up new insights on the treaty; for Adams's interest was less on the treaty-making, to which three or four pages only are devoted, than on the official decision-making leading to and immediately surrounding the treaty. And while his thematic analysis of the second and third articles of the treaty through to 1847 established a valuable foundation for later researchers, Adams ironically implied that beyond 1847, when an official declaration upheld the treaty, there was little more to be said about the Waitangi agreement.

That there was indeed a great deal more that could be said was demonstrated at a Victoria University seminar in 1972 when several participants produced papers that evaluated the treaty's place in British colonial policy, the treaty-making itself, and related legal and human rights aspects. From the historical point of view, the treaty process in New Zealand was looked at more searchingly by Ruth Ross. She broke new ground, as did other 1972 contributors, in attempting to produce some balance between the long-accepted European view that the treaty had been 'good' for New Zealand and the Maori people, and the little-known Maori point of view that all had not gone well with the treaty over the years. Ross particularly emphasised the discrepancies between the English and Maori texts of the treaty thus stimulating a new awareness of the considerable difference in Maori and European understandings.

By the 1970s, legal experts also were re-evaluating the treaty. E.J. Haughey, in 1966, had reviewed Maori efforts to secure claims to lakes, river beds and the foreshore. He concluded that the second article of the treaty had not given advantage to the Maori although, by precedents of British law and by various coincidences, Maori claims to lakes had been partially successful while river and foreshore claims had failed. In 1971, F.M. Auburn asked whether the treaty had been incorporated into the municipal law by the 1960 Waitangi Day Act but he was unable to give a firm answer. A subsequent article by A.P. Molloy dismissed the possibility that the treaty had any binding legality whatsoever - it was 'worthless and of no effect ... a non-treaty'. But Molloy's main contention, that it was not a valid treaty in international law, was refuted in a subsequent article by W.A. McKean. Two further articles took different views again: Betty Carter and J.D. Sutton both contended that the treaty did have status in international law and each discussed the possibility of implementing treaty rights, in the light of new legislation passed in the 1970s and in view of government ratification of international Human Rights Conventions. Their conclusions were hopeful of the treaty being given some legal teeth, but it was a prescription for the future not a review of current policy.

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Neither the historical papers of the early seventies nor the subsequent legal articles tried to relate the various facets of the treaty as a whole. In fact, the only writer who attempted a more detailed treatment of the topic was Adams whose limitations have already been noted. His strength, however, lay in successfully establishing a new 'vantage point' so that a clearer view could be had of the 'whole history of Maori-pakeha relations to the present day'; the new tracks thus revealed he left for others to follow up. There remained then, a need for a comprehensive assessment of the treaty 'on the ground', in the New Zealand context - both its making and the reasons why it has continued to the present to play an influential part in the affairs of New Zealanders, Maori and European. This thesis is an attempt to make that assessment.

Within the confines of one doctoral thesis, some limits will obviously have to be set. Yet to restrict the study to any one period since 1840, to one article of the treaty, or to one major aspect deriving from the treaty, would tend to repeat work already covered. Moreover, research indicates that each facet of the treaty tends to affect the whole treaty issue, a factor that points to the desirability of an extensive review of the treaty over a lengthy time span. With this objective in mind, this thesis attempts to relate the many disparate elements that have derived from the treaty and which have affected New Zealanders' attitudes to it for many years.

First, the thesis is essentially concerned with official dealings relating to the treaty, initially with the role of the British government and representatives of the Crown, but thereafter largely with New Zealand's

colonial administration in which the elected settler representatives became increasingly influential. Such concentration on central government is not a comment on the unimportance of provincial and later local government, nor does it indicate any lack of awareness of local, group or individual influences which often operated in relation to the treaty. These also are part of the treaty story and will be referred to, but in New Zealand they tend to be subordinate to the centralised governmental structure. And it is upon government at the national level that the Maori people have appropriately placed responsibility for working out the treaty. Thus the sources for government dealings with the treaty are mainly official records - the British and New Zealand parliamentary papers and debates, the Colonial Office records relating to New Zealand, and the wealth of government records that are held by New Zealand's National Archives. But because these sources very often tell only part of the treaty story, the diaries, journals, papers and published work of key government men and missionaries, which provide invaluable supplementary material, have been used extensively.

The second major concern of the thesis is to show the effect of the treaty on the Maori. It is possible to trace significant markers along a trail of Maori searching into the 'real meaning' of the Waitangi agreement, and to outline the Maori struggle to secure public recognition of a degree of genuine autonomy within the mainstream of New Zealand life - a right based on a Maori understanding of the treaty and repeatedly claimed in various ways, including protest. If these factors can be demonstrated, then the thesis will give some appreciation of the perspective from which many Maori have tended to view the treaty in New Zealand's history. There has seldom been a meeting of minds and hearts between Maori and non-Maori New Zealanders and because this conflict has become
a critical issue in recent years it has seemed worthwhile in the final
thesis chapter to trace the treaty's history rapidly through to the 1980s.
However brief, the chapter reinforces the main arguments of the thesis
by revealing the continuities (and sometimes the changes) in the treaty's
fate.

In looking at the treaty from the Maori point of view, sections of
the thesis have expanded upon certain areas of interest that seemed vital
to the main arguments: for example, the treaty's fortunes with some
tribes, some of the legislation that Maori have perceived as infringing
rights which are said to derive from the treaty, and the attitudes of
some of the Maori movements that have taken their stand on the treaty.
Each warrants a separate study but the aim in this work is to show the
inter-relationship of these factors. Hopefully, it may also prompt
researchers in the right direction. This lies in the field of Maori
sources, including documentation in the Maori language. The thesis has
drawn upon such material in private possession, in libraries and in
National Archives, where letters, submissions, petitions and other records
reveal Maori thinking on the treaty and related matters. Maori news-
papers, published since 1842, have also been helpful. Moreover, neither
translations of these Maori sources nor alternative reports in English
(where these exist) have proved as useful as the ability to read and
capture the nuances of the original documents oneself. In this respect,
a reading knowledge of Maori and some appreciation of its nineteen-
century variations has been an essential tool acquired for this research.

Emerging from the analysis of official dealings with the treaty and
the effect of these and the treaty on the Maori people are a number of
themes and arguments which are taken up more fully in the body of the
thesis. The most important of these is the argument that British and
later non-Maori New Zealanders, as well as Maori, have tended to make use of the treaty in varying ways to further what were considered legitimate interests and to validate assumed rights. This process has led to a great deal of confusion over what the treaty was (and is). Europeans, in particular, have been prone to alter their position on the treaty to suit their purposes at any particular time. A brief outline may be helpful in clarifying this point.

Initially, as Adams says, the treaty was 'the indispensable political preliminary to the peaceful British occupation of New Zealand'. It gave Britain an almost unquestionable entitlement to the country, a factor that deserves greater consideration than Adams gives it. For although the treaty served several purposes, there was a genuine legal problem which the treaty was designed to overcome. Crown law experts were aware that British statutes on at least three occasions had recorded New Zealand as not within British dominion. In 1835 Britain had also recognised a Maori Declaration of Independence. It was thought that these actions might constitute a legal impediment to the acquisition of sovereignty. Hence James Stephen at the Colonial Office considered it preferable to make a treaty than to rely on Cook's discovery or on the contemporary view of native rights at international law, which would have relieved Britain from the necessity of treaty-making. As a result, the treaty was formally negotiated and officially accepted by the London authorities.

Setting aside the question of the legal validity of the 1840 agreement - a point that is still a matter of debate - the important factor for the Maori people in the long term was the impression given in 1840

28 ibid., p.11.
and subsequently reinforced by oft-repeated official statements that the Waitangi treaty was truly a binding agreement. Predictably, Maori came to regard the treaty as a guarantee of their rights, an acceptance of the nature of the agreement that was much encouraged by officials who were often more concerned to further European objectives than to protect Maori interests.

For some twenty years after 1840, for example, upholding the treaty ensured the reasonably safe existence of a European minority amidst a Maori majority. Officially it was considered expedient to reiterate the benefits of the treaty to the Maori and to play down the corresponding responsibilities, as they were often called. Amongst Europeans generally, however, there was not a uniform acceptance of the 1840 compact. Attitudes depended very much on individual interests and individual understanding of the nature of the colony's foundation. Some Europeans no doubt believed sincerely that justice and the good faith of the British Crown required that the promises of the treaty should be kept. But colonists who had arrived in the country after 1840 (and their numbers were continually expanding) could not be expected to have the same commitment and acceptance of an agreement in which they felt they had no part. Matters came to a head towards the end of the 1850s with the formation of the King movement in the Waikato and the outbreak of fighting in Taranaki. In both instances the issues involved were land, authority and sovereignty. In a sense, the treaty had given Britain a de jure sovereignty only, and it was to the assertion of a de facto sovereignty or absolute supremacy that the colonial government bent its energies in the 1860s.

As the decade of the sixties opened, it was apparent that public statements might be made that were not always in accord with the speaker's private opinions on the treaty. Politicians in New Zealand, for instance,
were usually wary of rejecting the treaty outright. There were various reasons for this. With some there was a genuine regard for the original agreement. With others there was a fear of inciting Maori to war by arousing suspicion of European motives, although this aspect became less apparent as war fever mounted in the sixties. Another important factor was the British government's interest which was retained as long as New Zealand was not a fully self-supporting colony. The settler government argued that obligations for the Maori fell on the British government, since it had been responsible for the treaty in the first instance; thus it was argued that war costs should not be carried by settlers who had not accepted treaty obligations.

Since it was difficult to ignore the treaty or reject it completely, a war of sovereignty was now fought on two fronts through the 1860s - on the battle-field and on the floor of the colonial parliament. In the long term the latter was probably the more telling. The sword of war touched only some areas. The pen of the legislature reached out to all Maori. With regard to land, for example, the 1862 Native Lands Act purported to be giving better effect to the treaty by setting up a tribunal, the Native Land Court, to determine title of Maori land as confirmed by treaty. But the act, together with subsequent legislation, had as its purpose to free Maori land for direct European purchase and easier acquisition - an effect that Maori were to consider a violation of the treaty. The 1862 act also made another important change by abrogating the pre-emption clause of the treaty which had long been proclaimed a protective measure for the Maori. Thus the treaty was infringed and altered by the New Zealand government. Yet the following year the government relied upon the treaty to justify legislation whereby land could be confiscated; it was argued that Maori had forfeited treaty rights
by what was termed 'rebellion'. From these contradictory instances it appeared that the New Zealand government could decree the outcome of the treaty's effect by altering the rules by which the treaty's terms could be applied.

Twelve thousand miles distant, imperial halls of government reverberated with echoes of New Zealand's war of sovereignty, but the humanitarian impulse that had modified government policy twenty years previously was no longer so influential in official decision-making. By contrast, government thinking in the sixties favoured British withdrawal from responsibility for indigenous races where a colony was self-governing.

By the end of the sixties, as the wars drew to an untidy conclusion and as the New Zealand government assumed full responsibility for Maori affairs, it was made clear that in European understanding of the treaty the Maori people had ceded away the mana\(^29\) (the sovereignty) of New Zealand - a statement about European intention in 1840 that Europeans in official positions had previously been rather reluctant to put so bluntly. At the same time, it was claimed that the Maori had virtually the same rights as the European, in fact in some instances additional rights, especially since special parliamentary representation with full male franchise had been granted the Maori race in 1867. The Maori, having been accorded this and other privileges, it was generally argued by Europeans that there was no cause for them to seek separate institutions and no basis for alleging that their rights under the treaty had been ignored or imperfectly implemented. Thus the treaty, that foundation-marker of the colony, tended to drop from settler consciousness as the structure of a new colonial society rapidly emerged after 1870. For this new society, the treaty was an increasingly irrelevant matter.

\(^{29}\) The term is discussed below, p.393.
Apart from certain difficulties of dealing with the Maori people, especially Maori-owned land, the New Zealand government appears to have shared this view. Only when the government came under a degree of public pressure from Maori protest in the 1880s was it deemed necessary to give serious consideration to its position on the treaty. In those circumstances, Sir William Fox, veteran colonial politician, wrote a lengthy exposition for the governor's information. Concerning the treaty, Fox refuted the argument that it had been a valid basis for the 1840 assertion of sovereignty in New Zealand. Instead, he asserted that the British claim rested on the grounds of Cook's discovery just as surely as did British claims in Australia where no treaty had been made. This was indicative of the assignment of the treaty by officialdom and by the public to a less significant role, as suited the needs of the period. Years later, however, the treaty would serve other uses and again would be given official prominence as a consequence.

For Maori, on the other hand, it was a different story. From 1840 there was always some awareness amongst them of the existence of the treaty and its terms, in spite of some contemporary European comment to the contrary. This was evident in various situations when Maori individuals or groups - including Te Wherewhero, Wiremu Tamihana and other Waikato, representatives of Ngapuhi, Rarawa, Ngaitahu and Arawa - called upon the 1840 treaty to justify claims. This was sometimes done regardless of adherence to the treaty in 1840. The Arawa, for instance, were non-signatories who dissociated themselves from the treaty's provisions in the early 1850s; yet by the late fifties they were claiming to have a

representative signatory in order to support their case for non-affiliation with the King movement. This was an obvious case of Maori about-face in appealing to the treaty to legitimate a course of action. And it was by no means an isolated instance. Thus Maori, as well as Europeans, perceived that the treaty could be made use of in varying ways. Events in the thirty years after 1840 tended to confirm Maori belief that the treaty had powers that Maori might draw upon just as Europeans made the treaty their point of reference on numerous occasions. From 1870 onwards, therefore, the treaty became a much debated issue with Maori, as various groups explored the extent to which the agreement accorded them legal and political rights, or moral leverage, by which they might influence government.

A second major argument of this thesis is that there is a Maori understanding of the Waitangi treaty which has been encouraged by Europeans and especially by officials. This understanding encompasses several related ideas: that the treaty was a covenant in the religious sense; that it was forged between the Crown and the Maori people on the basis of a special relationship which began prior to 1840 and which was sustained through the nineteenth and into the twentieth century; and that in this relationship the Maori people were regarded by the Crown with special affection, an attitude justified by Maori capacities and encouraged by the humanitarian influences which had been at their peak in the treaty-making period. In Maori understanding, therefore, the treaty has been seen as primarily a protective instrument.

31 This point was initially developed in 'The Covenant of Kohimarama: a ratification of the Treaty of Waitangi', NZJH, XIV, 1 (1980), pp.61-82.
Yet it is scarcely possible to speak of a single Maori understanding of the 1840 agreement; rather there is a variety of Maori understandings. Evidence suggests, for example, that in the immediate post-treaty years Maori assessment of the treaty was somewhat confused. Explanations given at an 1860 conference of Maori chiefs, who met under government auspices at Mission Bay near Auckland, helped to clarify the nature of the agreement, but it was a clarification that presented the original Crown act of 1840 in a most benevolent light. In fact the 1860 conference exemplifies the several ideas concerning Maori understanding outlined above and will be explored further in Part Two, Chapter One. But the persistence with which these ideas survived from 1840 to influence current attitudes to the treaty requires some expansion at this stage.

That the treaty had the characteristic of a solemn compact or covenant is a concept that has its origins in the first negotiations at Waitangi. An analysis of that event in Part One, Chapter Three indicates this fact. Ngapuhi, with whom the treaty was first signed, were the most likely of the tribes to adopt this understanding because Christian conversion and influence was most widespread in the north. The idea was probably planted, or at the very least encouraged by the English missionaries. It was a concept that had special meaning for Christian Maori who were versed in both the Old and New Testaments where the covenant is the central theme; in fact, the Maori translation of Testament is kawenata or covenant. For Maori associated with the English missionaries, the notion that the treaty was a covenant had a still deeper significance by virtue of the Queen being one of the partners, for in the person of the Crown is combined both spiritual and temporal leadership as far as the Anglican Church is concerned. Consequently, the aspiration voiced at Waitangi that the treaty made English and Maori 'one people' suggests
an understanding of an equal partnership of races under one law, spiritual and temporal, under God and the Queen. While it is possible that tribes other than Ngapuhi might have similarly understood the treaty as a covenant in 1840, there is no doubt about the fact that the idea was more widely promoted by officials at the 1860 conference noted above, where most New Zealand tribes were represented. The idea, therefore, has found its way into a general Maori understanding of the treaty, although it remains strongest in the north.

To a lesser extent there has also been a tradition in European thinking on the treaty which regards the agreement as a solemn compact, but the emphasis has been less on the religious aspect than on the moral commitment involved: the treaty was an act of trust made by the Maori people to whom the good faith of the Crown and the British nation were thereby pledged. Although the understanding is a moral one to the European, religious convictions possibly have played a part also, especially in the nineteenth century when protagonists of treaty rights for the Maori were very often committed Christians. Thus with both Maori and European, this sense of the treaty as a solemn compact has survived the years.

Related to this notion is the idea that there exists some special relationship between the Maori and the Crown in the person of the monarch. This idea has been nurtured consciously or unwittingly by Crown representatives and at times even by British nationals. It pre-dates the making of the treaty, the most significant event from the Maori point of view being Crown acceptance of a Maori declaration of their independence in 1835, a gesture from which the treaty followed. Concerning this relationship, much emphasis was placed by Europeans on the protective and personalised nature of the Crown both in treaty negotiations and in subsequent
assurances by various authoritative speakers. This thesis argues, therefore, that the Maori perception of their relationship with the Crown has been an important factor in encouraging them to continue appealing to the Crown on the grounds of the covenant entered into in 1840. Governors in particular have continued to stress this special relationship that Maori were said to enjoy with the monarchy, beyond a time when that relationship had any power to afford the Maori real protection of their rights. As a result, a belief has been sustained that some effect could be given to treaty promises if only sufficient pressure could be brought to bear on the Crown. Even when it was understood that authority had been transferred from the British government to the New Zealand parliament, failure to move the latter body turned Maori protest towards England and the monarchy. Lack of success has not halted such appeals. A lack of success in seeking legal redress has similarly not stemmed efforts in that direction.

A third theme of the thesis deals with the notion that New Zealand has been a special experiment in relationships between a European and an indigenous people, an experiment that was initiated by the Waitangi treaty. That this was an ideal in the minds of some contemporaries there can be little doubt. But Victorian attitudes to race, though complex, had in common a conviction of racial superiority. This applied as much to the well-meaning humanitarian attitude of 1840 as to the aggressively anti-Maori stance that became more apparent amongst New Zealand settlers from the 1850s. The belief that the Maori deserved a better deal than that meted out to other indigenous races of the Empire was an admirable ideal and was indeed part of the official thinking in the making of the treaty. But the creation of an ideal and its oft-repeated expression did not guarantee its ultimate implementation; nor was there a readiness amongst
non-Maori New Zealanders to tolerate Maori refusal to accept amalgamation as apparently prescribed for Maori by the Waitangi agreement. Consequently, while many Maori have continued to strive for a degree of autonomy and a survival of their identity, European New Zealand has continued to voice an aspiration of 'one people', united by the bond of the treaty. Lack of accord in this matter has always been met officially by uneasiness, for discord reveals the shortfall between ideal and fact. This thesis argues that there has always been a gap between Maori and European expectations of the treaty. Furthermore, evidence suggests that the long-standing assumption that New Zealand was a special experiment in race relations because of the treaty should be qualified. While the treaty ideal has had a modifying influence on official dealings with the Maori, it is also clear that the European record of dealing with the Maori has shown a determination to dominate. In many respects New Zealand, in spite of the treaty, has been merely a variation in the pattern of colonial domination of indigenous races found elsewhere.

History has its myths but the Waitangi treaty probably has more than its fair share. Some have been often repeated and are of no great consequence. It is regularly asserted, for instance, that the Ngapuhi chief, Rewa, did not sign the treaty,\(^{32}\) whereas evidence in this thesis indicates that he did, although under duress. Of more importance is the assertion that Waikato, the major tribal confederation in the centre of the North Island, 'never signed',\(^{33}\) but there are indeed many Waikato signatories to be found on copies of the treaty. New myths are also in the making. In December 1982, one newspaper stated that the treaty was

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32 New Zealand Tablet, 24 November 1982, p.5.

33 L. Barber, 'The Return of the King', Radio New Zealand Concert Programme Talk, 9 July 1981.
signed not at Busby's house but on the present-day marae at the Waitangi river mouth - an error that may write into history yet another myth. 34

In recent years the notion that New Zealand's 'good' race relations can be attributed to the treaty has been more widely questioned: Is the treaty New Zealand's national myth? Perhaps the thesis that follows may cast light on the substance and shadows that form this idea in the minds of New Zealanders.

'Friend and Brother,

... King William will not forget this proof of your friendship and he trusts that such mutual good offices will continue to be interchanged between His Majesty's subjects and the chiefs and people of New Zealand as may cement the friendship already so happily existing between the two countries, and advance the commercial interests and wealth of both.'

The Earl of Aberdeen, one of His Majesty's Principal Secretaries of State, to His Highness Titore, 31 January 1835 (in reply to a letter and gift from Titore, Bay of Islands chief).
When a representative of the British Crown arrived in New Zealand in 1840 to negotiate with the Maori for the cession of the country, the British and the Maori were no strangers to each other. Some seventy years of contact between the two peoples preceded the formal climax of the 1840 treaty-making at Waitangi. The first overtures were made during Cook's three exploratory voyages from 1769 to 1777. From the subsequent establishment of the British penal colony in New South Wales, ships' captains ventured tentatively into New Zealand waters, seeking to exploit the country's resources and aiming to find an intermediate stopping-point in a potential Pacific trade network.

As New South Wales and the other Australian colonies developed, British contacts with New Zealand multiplied. Before 1800, spars were being collected by British ships from the Thames district near Auckland; and when the East India Company monopoly in the South Seas was relaxed in the early nineteenth century, New Zealand waters were frequented by sperm whalers, British and American, though Maori made no differentiation in the early years.¹ Operating off the north New Zealand coast and the eastern coast of Australia, these ships and their crews were attracted by the northern harbours of New Zealand, especially the Bay of Islands, in order to refit and refresh. The Bay also became a port of call for ships engaged in the Sydney-Tahiti pork trade. Though the massacre of the Boyd's crew in 1808 caused a temporary set-back, the port of Kororareka was well established by 1830 as a major trading and supply stop for vessels of various kinds.

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¹ This appears to be true through to the 1820s but may not apply from 1830 when American whalers increased their operations to the north of New Zealand, calling more regularly at the Bay of Islands.
A similar intrusion of European interests occurred in the South Island, starting in the early 1800s in the far south where ships from Sydney vied with American whalers in exploiting the seal fisheries. From around 1803, sealing gangs were left in the Poveaux Strait area for months and even years at a time to establish semi-permanent shore stations. In a burst of furious activity which tapered off by 1815, the gangs virtually exterminated the seals. But this early commercial interest of New South Wales had by no means exhausted the potential of the New Zealand fisheries. From the late 1820s, shore whaling stations fished and processed the right (or black) whale. These establishments, usually owned and managed by Sydney or Hobart men, operated seasonally from April to September; often they were associated with the sperm whalers who fished the open sea in all seasons. There were five or six shore stations by 1835 - in the South Island at Preservation Inlet, Otago, Banks Peninsula and Cloudy Bay; and in the North Island at Kapiti. By 1839, the shore stations had risen in number to over twenty, and sperm whalers were using other places around the coast for brief periods.

In the 1820s, new commercial possibilities were explored. Kapiti became the centre of a thriving southern flax trade which was promoted by the New South Wales government and private interests. Elsewhere on the coast, flax traders were dropped off by vessels and left to assemble

2 E. Tapp, Early New Zealand; a Dependency of New South Wales 1788-1841, Melbourne, 1958, pp.15ff.

cargoes for later collection. At the same time, Europeans were setting up timber mills on the west coast at Hokianga, and on the east coast at Mahurangi, Mercury Bay and other spots. At Hokianga and at Otago ship-building commenced. As early as 1833, one observant European noted that there was already 'scarcely a part of the coast' where Europeans were not settled. Most of these semi-permanent settlers were British subjects although there were a few Europeans of other nationalities and some Americans. They were a varied set, adventurers of the kind that frequent most frontier societies, with a sprinkling of escaped convicts and Pakeha-Maori, Europeans who had 'gone native'.

But not all Europeans who arrived in the country came for trade or related activities. There were also missionaries. The first Church Missionary Society workers came in 1814 to the Bay of Islands setting up a mission first at Rangihoua, then at Kerikeri and Paihia. They were followed in the 1820s by the Wesleyans. After an abortive beginning at Whangaroa, the Wesleyans worked mainly on the west coast under an agreement which left the east to the other mission body. In the 1830s the two groups began to expand. The C.M.S. went inland to Waiate, north to Kaitaia, down the east coast to Thames, Tauranga, Rotorua, Waikato and East Cape; on the west coast, to Manukau and Otaki. Some of these stations experienced mixed fortunes because of serious outbreaks

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4 Adams, p.24; R. McNab, Murihuku and the Southern Islands, Invercargill, 1907, p.242.
6 See e.g. Tapp, pp.48ff. Europeans were living with the Maori from the earliest period of contact.
of inter-tribal warfare; by 1839, however, the C.M.S. had a total of ten stations. The Wesleyans, prompted partly by this expansion and partly by the broken agreement with the C.M.S., also expanded. Moving out from their headquarters at Mangungu in the Hokiang, they had opened eleven stations down the west coast by 1840. These mission efforts were rewarded and further stimulated by the beginnings of a substantial Maori conversion in the 1830s. Though the nature and extent of this change are debated by historians, the Anglo-Christianity introduced by the English missionaries undoubtedly had a strong influence on Maori society. The latecomers, a Roman Catholic mission under the French Bishop, Pompallier, were not a serious challenge when they began work in the Hokiang in 1838, but rather a cause for bitter sectarian jealousy.

The intrusion of British subjects in New Zealand affected the periphery of the country mainly; the hinterland of North and South Islands remained virtually unknown until close to 1840. A combination of geographical factors and the exploitative nature of early commercial activity had left the land relatively untouched. Early settlers and missionaries in some instances had purchased land, but the individual holdings were rarely extensive and they had been agreed to by chiefs

7 Adams, pp.21-22, 33.
for immediate use. A likely Maori understanding of such transactions was that a right of usufruct had been granted rather than an alienation in fee simple, as Europeans assumed. In the two or three years prior to 1840, however, several small farming ventures suggested the design that Europeans would ultimately impose on the land. At the same time, there was a rush of speculative purchases by New South Wales interests, most of them not taken up and subsequently found to be of dubious legality anyway. But these trends gave some forewarning of the impending European struggle to wrest the land from the Maori.

Although the growth in European contact was marked in the 1830s, the number of permanent European settlers by 1840 was still not large. It had risen from around 300 in 1831 to some 2,000 in 1839, 1,300 in the North Island and 500 in the South Island. By comparison, the 1840 Maori population was variously estimated as between 150,000 and 200,000, at face value, an overwhelming preponderance of Maori numbers, ensuring a dominance of Maori influence. Yet in terms of total European impact on the country, the figures are somewhat deceptive, for they fail to take into account the transient European population which could be numbered in several thousands annually by 1840. In fact, up to that time, it is safe to say that thousands of Europeans, mainly British or at least English-speaking, had spent some time in the country, and


10 Farming was being carried out at Kapiti, Mana, Wairau, Akaroa and in the hinterland of the Bay of Islands, but not on any large scale. Adams, p.27; McNab, Old Whaling Days, p.228; Straubel, p.xxxiii; McNab, Murihuku, p.331; E. Dieffenbach, Travels in New Zealand, London, 1843 (Capper reprint, 1974), I, p.64.

11 Adams, pp.25, 28, 36.
had gained some experience and knowledge of the Maori people at first hand. As a result, information about the Maori was carried far beyond New Zealand's shores, not only by word of mouth but also through written accounts.

Cook's journals were the first to publicise the country and for years they remained the basic reference text for any ship's captain venturing into the Pacific. Cook probably did the Maori an invaluable service in establishing a fairly favourable reputation for them and in providing a fund of knowledge about their customs, habits and characteristics. Thus later visitors had certain expectations to which they bore testimony in their journals which in turn added new information. By the 1830s, therefore, personal experience and an expanding list of publications in English provided British subjects with a basis for understanding the Maori.

From the information available, Maori society was known to be stratified, comprising chiefs, common people and captives. A chief's

12 J.S. Polack, New Zealand, London, 1837 (Capper reprint, 1974), I, p.33, speaks of 3,000 to 4,000 ships having used the Bay since the time of Marion (1772). Since no statistics were kept until 1833, it is impossible to check this, although the figures in the 1830s show that more than 1000 ships were recorded in that period. Ships' crews varied in numbers. Taking an average of 30 men and officers, which was the usual complement of whalers, this would mean that approximately 30,000 Europeans had visited the port in ten years. Adding to this the previous years and bearing in mind the development of other areas of the coast in the 1830s, some idea of numbers can be gained.

power was understood to be limited to his own tribe and to be determined by the opinion of his own people. His authority might be partly hereditary, partly established by his own prowess in battle, and partly aided by his ability to provide for his subordinates. Within the tribe, a chief’s authority had certain limits and tribal members shared in consensus decisions. Beyond the tribe, there was no universal form of government, only many tribes, each with its own independent chief. Between tribes, feuds and warfare might be easily sparked off by one cause or another. Something was also known of the central concepts of Maori belief and behaviour such as mana and tapu, so that if conflict was to be avoided, it was appreciated by the Europeans that respect should be shown where mana or status demanded it, and that what was tapu, or sacred and reserved, should be avoided. Customs such as the hui, the tangi, the haeremai of welcome, the hongi and the haka were recognised and acknowledged by visitors. Maori were consequently seen by Europeans as rational and predictable, at least to a degree.

In practice, the characteristics of Maori society affected European response. It was essential for a trader to negotiate with a chief and to acquire his protection if he wanted to do satisfactory business. On the other hand, too close an association with one chief could work to a European’s disadvantage, for he could become involved in the inter-tribal disputes of his adopted tribe and suffer in consequence. There was also a strong risk that offence might be innocently given to some chief or tribe, for inter-tribal suspicion and jealousy were intense and easily provoked. Yet Europeans had no fear of a general Maori combination forming against them because inter-tribal co-operation on any scale was notably absent. The nature of Maori society was thus both an aid and a hindrance to Europeans. Most importantly, it necessitated
adjustments and modifications in their behaviour in a New Zealand that was predominantly Maori. Most Europeans were forced to the realisation that they needed Maori co-operation to obtain provisions, to extract the products for which New Zealand was useful, and to secure services as guides, pilots or informants. Without this co-operation, European objectives could be thwarted.

Important to the growth of European-Maori relationships was the fact that contact was mutually advantageous from the first. The Maori rapidly became eager traders. Items that Europeans traded at first were mainly substitutes for articles that were essentials in Maori society: nails, fish-hooks, metal tools, and muskets were improvements on traditional implements and weapons. By the 1830s, guns and related equipment were the most valued trade items, for which there was a fairly well-recognised rate of exchange. Provisions or services would be withheld from Europeans unless this rate was met. But by the middle of the thirties, if not before, the Maori market was virtually saturated with muskets and Maori were seeking a greater variety of European trade items - in the winter, blankets and woollen 'slops', and all the year round, pipes and tobacco, tomahawks, clasp knives, calico, cotton handkerchiefs, cloaks, peaked caps and clothing of all kinds.\(^{14}\) Since these were goods that only Europeans could supply, each race had a vested interest in good relationships. Incidents of racial violence were relatively few.

In order to secure European goods, substantial changes in Maori society were taking place by the 1830s. Crops suitable for trade were being extensively cultivated, labour resources had been organised and living habits adjusted to meet European demands for flax and for work of

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various kinds. Maori also wanted Europeans for what they could personally contribute in introducing new skills to Maori society. Chiefs competed in the 1830s to secure a European presence in their locality, for Europeans brought not only trade and knowledge but also mana to the tribe. Such substantial changes were occurring in Maori society in the 1830s that it has been argued that Maori attitudes were shifting from expressing cultural confidence to revealing cultural uncertainty and dependence on the Europeans. The real situation remains unclear. But certainly European impact and Maori activity with Europeans were not so much signs of revolutionary change as accretions on a traditional culture that sustained a continuity.\(^{15}\)

Change was most evident amongst coastal Maori, especially in the north where European contact had been longer and more intense than in other tribal areas. For years, northern Maori had spent time with visiting ships, learning the ropes, engaging in searching discussions and entertaining bored crews.\(^{16}\) As shipping increased, others travelled beyond New Zealand waters into the Pacific, to Australia, Asia, North America, England, and to Europe, sometimes serving on ships for up to three and four years.\(^{17}\) Some are recorded as returning to their tribal areas to become purveyors of information concerning the world overseas. They were also useful as intermediaries in the early trade

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16 There are numerous references to this, see e.g. Cruise, p.178.

17 Maori travelling overseas has not been documented, but see e.g. Polack, New Zealand, II, p.215; Earle, p.29; H.A. Morton, 'Whaling in New Zealand Waters in the first half of the 19th century', Ph.D. thesis, University of Otago, 1977, pp.278ff.
contacts, having acquired varying degrees of fluency in English, a
skill which Maori in steady contact with Europeans in New Zealand
developed too. Maori ability with English was so advanced at the Bay that
the trader, Joel Polack, predicted that in 'two or three generations,
the native language will become obsolete, in favour of the English',
a 'consummation' of the Maori amalgamating with the British.\textsuperscript{18} This
was brash Anglo-centric optimism. Nevertheless, the significance of
Maori knowledge of the English language in easing communications and
encouraging good race relations in early New Zealand is easily overlooked,
possibly because of the Maori's high literacy rate in their own language
acquired through missionary work in the 1830s which academic studies
have emphasised.

By comparison, inland tribal groups were not affected by European
influence to any extent until the 1830s and some districts were barely
touched even then. Yet in that decade there would have been few Maori
districts that had not at least heard of Europeans, and many chiefs were
interested to make contact but were prevented by the accident of geography.\textsuperscript{19}

\textsuperscript{18} Men serving on whalers and those who worked for European households
or with missionaries usually acquired some ability, e.g. Ruatara,
Waikato, Rangi (Te Koki's son), 'Moyhanga', Te Pahi's son, Whareumu,
Tuai, Titore, Taiwhanga, Ruhe, Nene and Patuone, all northern chiefs.
Southern Maori are recorded as having a smattering of English and
women are said to have picked it up too. See e.g. Earle, pp.18,
172; Cruise, p.93; Polack, New Zealand, II, pp.171-2, 279-81; R.
McNah, From Tasman to Marsden, Dunedin, 1914, p.120; O. Wright,
trans., The Voyage of the Astrolabe, by Dumont d'Urville, Wellington,
1955, pp.145-6; J.S. Polack, Manners and Customs of the New

\textsuperscript{19} e.g., the Bay trader, Joel Polack, noted that Tirarau in Kaipara,
close to the Bay, was keen to begin trading but the dense bush
hinterland was an obstacle.
Contact, when it came, was almost invariably with British subjects of course, a factor that undoubtedly eased relationships, for the seventy years of early contact had left Maori and British reasonably well-informed about each other. The racial tensions that so often accompany an inability to communicate or comprehend had been reduced in New Zealand by the involvement of only one other language and culture for each people. Furthermore, by the 1830s, Maori and British were living, working and playing together in reasonable amity. Instances of racial bias were not entirely absent, but it is more common to find the Maori being compared most favourably to other native races, especially to the Aborigines, a comparison that contemporaries found the more remarkable because Maori and Aborigines were so near geographically yet so distant in cultural development. By the standards of racial assessment then current - skin colour, physique, skills, characteristics and, in particular, capacity to adopt British ways - the Maori people were considered by many to rank more highly than any other indigenous race, so highly in fact that the possibility of preserving this unusual people from unregulated European contact and of amalgamating them with British settlers would be used as justification for the final step of British intervention in 1840.

In analysing British contact up to 1840, historians have experienced difficulties in describing an official British policy towards New Zealand, or have doubted if a policy existed at all. Some have applied terms such as 'non-intervention' and 'minimum intervention'; or have assessed

20 e.g. Earle, p.59, where he notes the convivial exchange possible between English and Maori.
21 e.g. Adams, p.49; Morton, pp.281, 284.
22 e.g. Nicholas, I, pp.8-9, 24; Cruise, pp.22-23, 204-5, 215; Earle, pp.57-58, 187.
23 J. Ward, British Policy in the South Pacific (1786-1893), Sydney, 1948, Ch.5.
British actions as expedients - 'remedies for particular evils and policies in particular situations when decisions had to be taken'.24 A more cautious analysis identifies simply one 'constant' and 'fundamental' governmental attitude to New Zealand - 'a reluctance to intervene there at all'.25 Such a cautious conclusion regarding British policy is probably correct because reluctance was an attitude fundamental to British colonial policy in the first half of the nineteenth century. The Colonial Office was fully aware that any expansion of the Empire by territorial acquisition inevitably meant a charge on the British government in terms of men and money, a factor that was not always popularly acceptable. As a general rule it was deemed preferable to sustain British interests through such non-governmental representatives of Empire as traders, missionaries, explorers and adventurers. And when these British nationals moved beyond the imperial frontiers they knew that they did so at their own risk; sometimes they were warned accordingly by British government agents.

Yet in practice, the Crown did admit a certain amount of responsibility for British subjects. A firmly held conviction of nineteenth-century industrial Britain was that the cumulative progress of individuals would assist national commercial progress; in this sense, the nation was confidently imperialistic. Respectable, law-abiding traders, settlers and missionaries believed that it was their right to work and settle wherever their business could be furthered and that the Crown


25 Adams, p.52.
could be called upon to support and protect them in the legitimate promotion of their activities. Likewise, lawless British subjects were not considered by the government to be beyond the restraints of English law when they moved beyond the geographical limits of British authority. The extent to which the law was effective was always restricted, of course, by practical problems of application and sometimes by the rule of local law or custom, but theoretically at least an Englishman was liable to his Sovereign for actions taken in any circumstances. This bond between Crown and subject was significant in British relations with New Zealand for it meant that if British subjects became involved with the country, or with the Maori people, then Britain would eventually have to intervene, either to protect or chastise her subjects as circumstances required. In New Zealand's case, the involvement of British nationals drew Britain's attention to the country from the early years, but it was the expansion of the New South Wales seaward frontier that was the primary cause of New Zealand and the Maori coming within the scope of imperial concern.

When Britain first became involved in the establishment of the penal colony in New South Wales, the early governors were given no specific jurisdiction over New Zealand, although their commissions did tend to include the country in varying degrees of latitude. This left the relationship of New Zealand with New South Wales undefined, a situation which probably was desired; the Crown thereby marked out a sphere in which the governor might keep watch over British interests, but at the same time not incur new responsibilities. In much the same way as the islands of the Pacific, New Zealand was to be regarded simply as an area

26 ibid, p.55.
of potential use for resources to support the new penal colony. The flexibility of this situation left a good deal to the discretion of the governors.

Some of the early governors of New South Wales took a personal interest in developments relating to New Zealand as the area was drawn into the orbit of trading expansion from Sydney. Governor P.G. King, for example, became concerned about the welfare of Maori involved in the maritime trade as seamen. It was only one aspect of the larger problem of recruitment and regulations concerning Pacific trade in general, but government orders issued by King in 1805 were directed specifically at curbing the extent of ill-treatment of Maori on ships operating out of Sydney. Five years later, Governor Lachlan Macquarie endeavoured to have more stringent rules applied. A good behaviour bond was to be applied to ships' masters, Europeans were urged to act prudently in New Zealand itself with regard to paying just wages and to pressing either male and female into service, and British subjects guilty of serious crime against natives were threatened with severe punishment. These orders, with little change, were repeated in 1814, and were followed by the appointment of the missionary, Thomas Kendall, as Justice of the Peace in New Zealand. At the same time, three Bay of Islands chiefs - Ruatara, Hongi and Korokoro - were vested with authority to implement government orders. No Maori was to be removed by ship, nor crew discharged, without the chiefs' permission which Kendall could certify.28

27 J. Ward, especially Ch.4. It was customary to refer to some areas as 'dependencies' of the Crown - a term which was loosely applied to territory over which Britain did not necessarily hold any legal authority but which was considered to come within British influence.

28 J. Binney, The Legacy of Guilt; a life of Thomas Kendall, Auckland, 1968, p.25; R. McNab, Tasman to Marsden, pp.152-3; Nicholas, I, pp.30-33. The Rev. J. Butler was also appointed in 1819 as a Justice of the Peace.
Macquarie's orders of 1813 and 1814 made it plain that the Maori people were understood to be under the 'protection' of the Crown. Like King before him, Macquarie probably assumed that he had some degree of political jurisdiction over New Zealand. Where British subjects were involved he certainly had some right of authority but because New Zealand itself was not technically within British dominion his orders were of dubious legality. Their practical effect, as with the earlier attempts, was even more doubtful. It was virtually impossible to make British subjects answerable under law in Sydney or London for their actions taken in New Zealand. And in New Zealand, without any means of enforcing the government orders, Kendall was powerless. The three chiefs fared no better. Accreditation to the Crown, without Crown backing, proved worthless. At 1200 miles distance from New South Wales, British law could be scorned with impunity. At best, the moves were gestures of goodwill; an indication that the Crown showed some responsibility for the actions of its subjects and for the protection of Maori from the effects of those actions.

Since the Crown continued to be dogged with problems in controlling relationships between British subjects and Maori, as well as other native races in the Pacific, the British government attempted to provide legal remedy with three statutes, passed in 1817, 1823 and 1828. The legislation was no more successful in bringing serious criminals to trial

29 An 1817 Act (57 Geo.III c.53) provided for the punishment of murders and manslaughters committed by British subjects in New Zealand, Tahiti or other islands 'not within His Majesty's dominions', nor under the jurisdiction of any other European state or the United States. Such crimes were to be dealt with in the same way as those committed on the high seas for which legal provision then existed. Since Australian courts held no commissions to try these offences, an 1823 Act (4 Geo.IV c.96)[sec.3] provided for the setting up of Supreme Courts in New South Wales and Van Dieman's Land, increased the number of indictable offences, and prescribed the same penalties as would apply in similar cases in Britain. In 1828 this arrangement was made permanent (9 Geo.IV c.83)[sec.4]. Adams, pp.52-53; J. Ward, pp.39-40, Chs.6, 7.
than the previous moves had been. The three statutes did clarify one matter. They defined New Zealand as 'not within His Majesty's dominions'. Thus this indication of the legal status of the country as independent territory had to be taken into account by the Colonial Office when deciding to negotiate for the cession of sovereignty in 1840.

While statutory definition had placed New Zealand outside the limits of British dominion by the end of the 1820s, paradoxically the country was being confirmed as a British economic interest through a marked expansion of trade with the Australian colonies beginning in the late 1820s. Within a decade, a thriving trans-Tasman trade grew up with some seventeen ships and two hundred seamen engaged in the business on a regular basis, often making several crossings in a year. Apart from this, trade dealings with Pacific-bound shipping from the Australian ports also seems to have increased. Trade figures reveal the change. In 1831, the value of New Zealand's exports to New South Wales and Tasmania was £34,282; in 1839 it had risen to £83,470. New Zealand's imports were substantial too; they were valued at £23,350 in the fifteen months beginning 1 January 1830.

Even in 1830, before the major expansion of trade, it was not unusual for the Bay of Islands to have some thirty ships at anchor at one time with a total complement of about 1,000 men. Although only several hundred might be ashore at any one time, their carousing and

30 Effective legal remedy in the Pacific was not provided until 1875: Pacific Islanders Protection Act. See Adams, p.54; and for another viewpoint, J. Ward, Ch.6.
31 Adams, pp.25-26; McNab, Old Whaling Days, pp.298-9.
32 Adams, p.250.
33 ibid, p.25.
their association with local women led to regular bouts of fighting and other violence. Contemporary observers confirm that throughout the thirties the village of Kororareka and its environs exhibited all the excesses of a popular rest and recreation precinct. The missionary, A.N. Brown, and his fellow workers observed with alarm the effects of more than 500 sailors being released on shore in a single day of March 1837 from one English and three American vessels. As shipping increased, the associated problems escalated. From a total of 89 ships calling in 1833, 155 ships were listed in 1839 and the record was not complete.

While British interests continued to be predominant in New Zealand, increase in American and French activity in the South Pacific and New Zealand waters in the thirties was a new factor that began to cause concern amongst British traders and missionaries. Since the end of the Napoleonic Wars, France had been treated with some suspicion by the British, although any anxieties were invariably more keenly felt by those operating on the imperial frontiers than in London's official circles. Yet the arrival of the two powers on the South Seas scene did indicate that Britain's earlier freedom of action, based on minimum competition and maritime preponderance, was contracting. The United States, at the prompting of her whaling and trading interests, began treaty-making in the Pacific in 1826 and in 1839 appointed James Clendon as the United States consul in New Zealand. The same year, eighty American whalers

34 A.N. Brown Journal, 6 March 1837, (typescript), AUL.
35 Tapp, p.177.
were frequenting New Zealand waters, most of them calling at the Bay. The choice of Kororareka as the headquarters for the French Catholic mission from 1839 served to increase the non-British presence in the north. While the American whaling and trading involvement in the Pacific was not supported by extensive naval power, France on the other hand actively backed its trade and missionary interests by regular naval visits. Colonial Office decisions on New Zealand in the 1830s do not seem to have been seriously affected by the actions of either France or the United States, yet it was evident that Britain had some international competition from the early thirties. This was sufficient, at least, to stimulate appeals to the British government from local British interests who favoured a serious British commitment in New Zealand.

The likelihood that Britain might be more disposed to intervene in New Zealand was heightened in the 1830s by a further factor - the growth of the humanitarian movement in England which was concerned with the trusteeship of native races. Humanitarian awareness, springing from intellectual, religious, literary and philosophical roots in the latter part of the eighteenth century, gave birth to a movement which succeeded in the 1830s in emancipating slaves, in producing the House of Commons

37 C. Wilkes, Narrative of the United States Exploring Expedition during the years 1838-1842, London, 1845, II, p.413; Straubel, pp.xxiii-xxiv; Tapp, p.177. James Reddy Clendon, 1801-72, from Kent, began trading in New Zealand about 1830, settling at Okiate in the Bay of Islands. Although he remained American Consul until April 1841, he assisted Hobson in negotiating the treaty. He sold his Okiate property to Hobson and later shifted to Hokianga.

38 See Adams, pp.76ff., where this point is made in a review which dismisses French expansion as a significant factor in British decision-making. It may indeed have been an unspoken assumption affecting policy, however; it was certainly commented upon by British visitors: FitzRoy, Narrative II, pp.593ff.; Hobson to Liz, 'from the Rattlesnake off Timor', 25 August 1837, Hobson MS Papers 46, ATL. See also J.S. Marais, The Colonization of New Zealand, Oxford, 1927, pp.92-97, and p.93, fn.3, where Marais notes the interest of the French Ministry of Marine in late 1839 in a proposed French settlement in the South Island.
Report on Aborigines in British colonies, and in establishing the Aborigines Protection Society to promote the views of the report. At the peak of its activity in the thirties, the movement was not monolithic in organisation or activity; nor were its principles of trust and responsibility consistently acted upon by those of humanitarian disposition. Rather, the movement encompassed many strands of belief and activity emanating from a variety of sources - the humanitarian societies, the evangelical missionary groups with headquarters in London, missionaries overseas, Colonial Office officials of humanitarian outlook such as James Stephen and from others in public office. The humanitarians shared a conviction that a responsibility towards native races should be complementary to the expanding imperial dominance and affluence of the nineteenth-century British Empire. This responsibility was expressed in concern to 'protect' native races from the worst effects of uncontrolled European contact. In many areas, contact had brought a chain of consequences thought to be almost inevitable - disease, loss of land, degradation, depopulation and ultimately racial extinction.

In New Zealand, the humanitarians saw signs of the 'fatal impact' in the thirties but also a chance to redeem the British record. Thus by the end of the 1830s the argument that British intervention could 'save' the Maori race was an important element in the arguments put forward in official decision-making. This salvation would not lead to the preservation of traditional Maori society or culture. On the contrary, the humanitarian objective was to destroy it, for it was seen as degraded and as a barrier to Maori adoption of the infinitely superior

culture of Victorian England.\textsuperscript{40} This adoption would be a progressive assimilation for the Maori and an upward step in a hypothetical scale of human development. In no way would it be an amalgamation of equals in a cultural sense. Like the biblical pagan, the Maori would have to doff his old covering of heathenism and put on the new garb of Christian, British civilisation. While humanitarian 'protection' and amalgamation, therefore, purported to 'save' the Maori race, it was actually bent on its own kind of extermination.

In the early 1830s, however, it was not so much the notion of humanitarian protection as the idea of Crown protection that predisposed the Maori to accept the appointment of a British Resident. Long before the Resident, James Busby, arrived in the country in 1833, the concept of the Crown as a protector had been consciously and incidentally encouraged in Maori thinking. It had begun when New South Wales governors first showed an interest in Maori welfare. Some had even accommodated the odd Maori visitor. King, who had been especially concerned to promote good relationships with the Maori, had invited some to confer with him about the early shipping problems. He offered them alternatives of repatriation or trade-training which were declined, but the Maori appeared to be pleased by the governor's concern and by the promises of official redress for maltreatment.\textsuperscript{41} King was not as altruistic as he seemed. He reasoned that his actions might dispose New Zealand Maori to welcome British ships when they called at the Bay of Islands. He followed up his policy in Sydney by sending gifts to Te Pahi who was

\textsuperscript{40} The attitude of British superiority was applied to all other races and cultures not merely to non-European ones. A nineteenth-century British historian could be confidently Anglo-centric, therefore, and maintain that 'all the civilizations of the world were so many deviations from the norm embodied in British civilization', cit. F. Bedarida, A Social History of England 1851-1975, Paris, 1976 (trans. A.S. Forster, London, 1979), p.94.

\textsuperscript{41} McNab, Tasman to Marsden, pp.99, 102-3.
considered to be a chief of some influence in northern New Zealand; and Te Pahi and several of his sons responded by visiting New South Wales on at least two occasions between 1804 and 1808, when they were treated to the hospitality of Government House. One of Te Pahi's sons, Matara, even made a trip to England with King, returning in November 1808.

British traders and travellers making contact with New Zealand came to rely on the willingness of colonial governors to receive Maori visitors. Like King, they hoped that such Crown recognition would impose obligations of reciprocity. Maori who were hospitably treated in Sydney and later in Hobart could be expected to reciprocate for Europeans in New Zealand. If Crown representatives neglected to cement this mutual relationship, and especially if chiefs believed themselves to be slighted, traders feared for their safety and for the security of British commercial interests. Over the years other lessons in the value of good relationships had been learnt from bitter experience. It was realised, for instance, that Europeans who perpetrated some crime against the Maori in New Zealand placed innocent British subjects at risk of Maori retaliation. Of course, this by no means curtailed all crime, but it did encourage an official awareness that expanding British trade interests involving the Maori would be best served by ensuring fair dealings as far as this was possible. It paid to conciliate the Maori. Thus towards the Maori people, the Crown turned the benevolent side of its face; and in an age before the extension of democratic rights, Maori experience of government was personalised.

For some thirty years prior to 1840, contacts between Maori and New South Wales governors were encouraged and reinforced by the missionary activity of Samuel Marsden, New South Wales chaplain. His Paramatta establishment often played an important role in establishing the first
contacts between the Maori and the Crown. Maori visitors to Paramatta were mainly northern chiefs bringing their sons to stay; later, Maori from other areas would call on Marsden. Marsden's objectives in cultivating these connections were twofold: to educate young Maori towards civilisation and Christianity, and to give some security to his New Zealand missionaries for whom the Maori students could act as guarantors. At one time, serious thought was given to the proposal of forming a permanent Maori settlement in New South Wales for Maori migrants. There was some interest amongst Maori, in spite of the high mortality rate amongst the lads, but the plan was shelved for lack of suitable coastal land.

Marsden's visits to New Zealand were also significant for he used these opportunities to develop the idea of the Crown as a protector. His first visit in 1814, when the C.M.S. mission was established at the Bay of Islands, was associated with the official appointment of Kendall and the three Bay chiefs in an attempt to control the shipping problems. By Marsden's own account, on this and on his six later visits, he promoted the belief that the Crown had a paternal interest in Maori welfare.

A copy of the 1814 regulations designed to give some protection to Maori seamen was received by at least one chief, a 'highly gratifying' experience for him, according to Marsden, though the document's value certainly lay more in the nature of the expectations it may have stimulated than in the power it had to restrain European misconduct. The 1817 Act was also drawn to Maori attention with the explanation that

42 Marsden's Journals have many references to Maori visitors at Paramatta; see e.g., J.R. Elder, ed., The Letters and Journals of Samuel Marsden, 1765-1838, Dunedin, 1932, p.509; for a description of Paramatta, see A.T. Yarwood, Samuel Marsden; the great survivor, Melbourne, 1977, p.216.


44 Nicholas, I, pp.30-33, 82-83; Elder, pp.80-81; Tapp, p.32; and see McNab, Tasman to Marsden, pp.168-9, where he notes that Marsden was asked to report on New Zealand for the governor with a view to a British settlement being established there some time in the future.
'King George wished to protect them [the Maori] from violence as well as his own people'. \(^4^5\) The 1823 Act was actually translated into Maori, thereby facilitating the explanation that Australian courts were empowered to deal with crimes committed by British subjects against Maori, either within New Zealand or overseas. \(^4^6\) Though neither Kendall's appointment nor the Acts proved effective, they do appear to have encouraged the idea, amongst some Maori at least, that the Crown was willing to extend its protection and that it accepted responsibility for Maori welfare on much the same footing as it held itself responsible for the behaviour of British subjects. Resting their confidence in this, Thames Maori in 1820 (possibly anticipating the devastating Ngapuhi raid that was about to fall on them), requested that Britain afford them protection. \(^4^7\) There would be similar requests later.

Marsden's long-standing involvement with New Zealand was crucial for Maori, for it encouraged them to move out of the country, provided a secure basis in New South Wales for initiation to the European lifestyle, and, most significantly, gave Maori an introduction to government circles, not only in Australia but also in England. The notion of a personal approach to the Crown was established from the earliest years as a consequence, Chiefs sometimes having quite unrealistic expectations of government officers. \(^4^8\) To see the British monarch himself became

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\(^4^5\) Elder, p.207.

\(^4^6\) H.W. Williams, A Bibliography of Printed Maori to 1900, and Supplement, Wellington, 1975, does not list this, but it is held at Auckland Public Library, listed as No. 4b. At this time Maori had not become literate in their own language, but the translation in Maori no doubt facilitated the explanation that could be given them besides providing a copy that could be read aloud by Europeans. The document called on Maori to apprehend British subjects who had committed outrages in New Zealand.

\(^4^7\) Elder, p.332.

\(^4^8\) See e.g., Earle, pp.194-200.
a not unnatural aim of some Maori, and a few succeeded. The most
notable were Hongi and Waikato, the Ngapuhi chiefs who journeyed with
Kendall to England in 1820. Favoured with an audience by George IV,
they returned with Hongi equipped to initiate a ten-year period of tribal
warfare more violent and destructive than the traditional battles. 49
Hongi also carried back the idea that he had come to some agreement with
the King. It was based on no more than the exchange of pleasantries
by the two men, but in northern Maori tradition it would be understood
as a special bond.

There were various ways in which the Maori were drawn into a direct
and personal relationship with the Crown over the years. Beginning
in 1820, for example, the British navy took spars and timber from New
Zealand. Since the timber sought after grew mainly from the Thames
northward, chiefs in these areas had a distinct advantage over other
tribes in establishing a relationship with the Crown. Chiefs jealously
guarded their trade with the navy and were liable to make rash promises
of cargo loads which they were unable to fulfil. 50 When stands of
timber at the Bay of Islands and Whangaroa were depleted, Te Horeta of
Thames and Te Taonui of Hokianga personally solicited navy attention to
their areas. 51 Other chiefs, such as Nene and Patuone, who were later
to be strong Government supporters, were drawn into the trade too. 52
Chiefly participation was usually officially recognised by way of gifts,
which reinforced the reciprocal nature of the trade. Apart from the
value of the spar trade and the gifts, Maori also appreciated that their
association and assistance furthered the power and might of Britain;

49 Binney, Legacy, pp.54-67.
50 e.g., Cruise, p.27.
51 ibid, pp.61-62, 107. Cruise writes of 'Towretta' and 'Te-to-ny'.
The identification of the chiefs is tentative.
52 See e.g., Dacre to Busby, 3 October 1834, NA, Brit.Res. 1/1.
Titore, for instance, referring to Britain's past conflict with France, offered to tapu certain forests for spars which could be used in any future Anglo-French engagement, a commitment which was acknowledged by a letter from the King and the gift of a suit of armour. Such recognition, either consciously or unconsciously, encouraged Maori to consider their trading contacts with the navy as personal involvements with the British monarch.

The idea of the 'Crown' as a personality was also promoted by Europeans in their dealings with the Maori people. The Maori were told, for instance, that naval uniforms, weapons and all government issue belonged to the King who would be 'angry' if they were bartered or given away, an argument which no doubt gave an impression of unlimited Crown wealth. In one case of theft by a Maori, it was pointed out that 'King George and his gentlemen in England would be ashamed' when they heard about such Maori misdeeds. While European misconstruction of the real nature and power of the Crown may not have been a regular feature of British dealings in New Zealand, it was sufficient to stimulate Maori response of a similar kind: a ship of war was recognised as a 'King's ship' and welcomed accordingly; ships were renamed by Maori in favour

53 The extent of gift-giving to the Maori, seldom discussed by historians, deserves closer attention. Chiefs who had dealings with the Crown invariably benefited by way of personal gift in addition to the gain through trade; e.g. Patuone received a suit of plate armour from William IV and a sword from Hobson in addition to special recognition from Busby; Titore likewise received a suit of armour; Moka was given a plough and Rewa a horse by the New South Wales governor. These are some of the more notable gifts. It was customary for Busby to give blankets and/or tobacco at any major meeting. E. Fairburn, 'Maharatanga', MS 91, APL, Hobson to Liz, 25 August 1837, Hobson MS Papers 48, ATL. On Titore's death the suit of armour passed to Hakiro and the accompanying letter from the King to Whai: Bunbury to Hobson, 28 June 1840, GBPP, 1841, (311), p.100.

54 e.g., Sadler to Wood, 14 July 1836, CO 209/2, 378. NA, Brit.Res. files have various letters indicating the extent to which Busby was drawn into negotiations for the Admiralty.

55 Cruise, pp. 24, 26.

56 Elder, p.163.

of Crown and Governor, the Dromedary and the Prince Regent becoming the King George and the Governor Macquarie respectively, for the duration of a voyage; and ships' officers, admired by Maori for their uniforms and discipline, were thought to be the 'King's sons'. Maori were also not slow to turn arguments of Crown power against Europeans themselves. Perahiko, a Taianai chief, critical of the wastage when the Dromedary exercised her 'great' guns, predicted that King George would be displeased when the ship returned to England.

From scattered references, it is apparent that Maori derived a good deal of kudos or mana from an association of any kind with the Crown or its functionaries. 'Korra korra' [Korokoro?], for instance, was so impressed by the great respect that he observed was paid to Macquarie that he wished to be treated similarly. And some years later, Hongi and Hinaki indulged in a display of showmanship on the battlefield at Mokoia, Hongi exultantly bragging that he had seen King George (as indicated by the coat of mail, the helmet and sword he wore), whereas Hinaki, dressed in English regimentals, could only boast a meeting with Macquarie.

Aware of the mana ascribed to Crown associations, Europeans used it to their own advantage: Joel Polack, a Bay of Islands trader, claimed that his rank rose 'full five hundred per cent' when it was known that he was from London, the kainga (village) of King George, because Maori concluded that Polack must somehow be related to the monarch 'by blood and marriage' if he lived in such close proximity to the King. The very

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58 Cruise, p.27.
60 Nicholas I, pp.49-50.
61 Elder, p.357.
personal interest taken in the Crown was also demonstrated in Maori curiosity regarding Crown attributes. Was the King a believer?\textsuperscript{63} What was the real extent of his power?\textsuperscript{64} Maori interest in some cases even extended to a modelling behaviour or identification with the King, such as that of Pomare's wife, who found consolation in her blindness from the fact that George III had similarly suffered;\textsuperscript{65} and 'Te Kopede' [Te Kopiri?], a crippled chief from the north, who excused himself from ever boarding a vessel because he had heard that the King, a man of some status, never went on ship-board.\textsuperscript{66}

Because trade and missionary activity in New Zealand before 1830 had been almost entirely British, or involved English-speaking people,\textsuperscript{67} Maori were naturally attached more closely to Britain than to any other power - an association that was consolidated as trade and missionary influence expanded in the 1830s. In Maori oral tradition, it was recalled that the British were the first Europeans to come to New Zealand. Details of Cook's visits were known in the north, at Thames, the Bay of Plenty, Tolaga Bay and in the South Island.\textsuperscript{68} To some extent, this tradition may have received wider dispersion through Maori society by the publication of Cook's Voyages which ships in the South Seas customarily carried. On Marsden's 1814 visit, for instance, some northern chiefs were shown the drawings in the published work 'with all of which they seemed much pleased', asking 'in the full exuberance of their hearts', if King George the 'nuue nuee areekee [the very great chief], had seen it.\textsuperscript{69} Te Rauparaha and Te Hiko, some years later, were given the same

\textsuperscript{63} Brown Journal, 1 May 1836,(typescript), AUL.
\textsuperscript{64} Elder, p.1113.
\textsuperscript{65} Cruise, p.182. This was Pomare I.
\textsuperscript{67} In the period before 1830 European visitors noted that the Maori made no distinction between British and Americans.
\textsuperscript{68} Polack, New Zealand, II, pp.127-8; Cruise, p.182; Kemp Journal 5 July 1839, (typescript), AUL; Wright, p.125.
\textsuperscript{69} Nicholas, I, p.301.
opportunity of looking over the illustrations in the *Voyages* and 'talked of the English having been the first to come to see the country'.

As increasing numbers of Maori travelled outside New Zealand in the 1820s and 1830s they would have compared British power with that of other nations, especially France. Since Maori had a shrewd assessment of the potential and real use of power they were bound to have been impressed by the fact that Britain was the major maritime power of the first half of the nineteenth century. Moreover, British might had proved itself in defeating France in 1812 and, compared with France, Britain had a stable Crown that had not tumbled, as France had, through several revolutions, including that of 1830. In areas as far apart as India, Capetown, the North American sea-board, and later, Singapore and the East, Maori visitors on ships could see evidence of British power. Returned travellers such as the northern Maori, 'Moyhanger', could even draw distinctions amongst those who wielded that power: 'King George was a great King, but ... the Governor at Port Jackson was no king at all.' From the Maori point of view, then, an association with the King, that pinnacle of British might, would be a boost to Maori prestige.

With the long-standing connection between the Maori people and the British, combined with the cultivated belief in British protection offered the Maori, it is hardly surprising that Maori should look to Britain when circumstances seemed to demand this in the early thirties. There were two events that sparked off Maori appeals for British cooperation and assistance. The first was the participation of British subjects in the *Elizabeth* affair of 1830 when an English captain and crew

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70 Shortland to Stanley, 18 January 1845, p.7, GBPP, 1845,(108). Hobson also referred to studying the *Voyages* on his visit to New Zealand in 1837.

71 Nicholas, I, p.165.
conspired with Ngatitoa of Kapiti to raid Ngaitahu of the South Island. The second appeal arose from the visit of a French naval vessel to the Bay of Islands in 1831. This French 'threat' turned out to be a harmless bogey though it proved a useful diplomatic lever in government dealings with the Maori; it was the Elizabeth affair that really persuaded British officials to make a positive move in New Zealand.

Governor Ralph Darling had been appalled when the grisly details of the affair became known in Sydney. The Elizabeth's captain had entered into a trade deal with Te Rauparaha to convey a Ngatitoa war-party to Akaroa where a surprise attack was launched on the unsuspecting Ngaitahu. Incidents of cannibalism were said to have occurred and several reports confirmed the torture and murder of the most senior southern chief, Tamaiharanui; other members of his family had been killed too. Because of legal complications, the British culprits avoided punishment. Darling considered that the gruesome case and its complications were serious enough to warrant the appointment of a British Resident in New Zealand, preferably with the backing of a warship. This was his recommendation to the Colonial Office. An important element in persuading Darling to take this move was pressure from Marsden, who had some time earlier urged the governor to station a 'small armed King's vessel' on the New Zealand coast. The Elizabeth case now gave Marsden good cause to plead for more, for an authorised British agent, so that justice could be done the Maori and protection given to British settlers against Maori retaliation. Without this, Marsden predicted an end to commercial intercourse with New Zealand. A secondary concern to both

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72 There are various accounts of the affair, see e.g., McNab, Old Whaling Days, pp.398-401; A.H. McLintock, ed., An Encyclopaedia of New Zealand, Wellington, 1966, I, p.568.

73 Marsden to Darling, 18 April 1831, Marsden Family Papers 453, f.1, ATL.
Marsden and Darling was the development of a trade in preserved Maori heads, a gruesome business that was adding new tensions to Maori-European relationships.

Marsden's representations to Darling were well supported. They were backed with the evidence of Ahu, Tamiharanui's teina (younger brother or cousin), and by 'Ware' [Whare?] from the Bay of Islands where the Elizabeth had called on its way to Sydney. Ahu naturally sought satisfaction from the British for the participation of British subjects in the murders, whereas Whare was concerned about the wider implications of Europeans interfering in Maori quarrels, thereby giving one side an unfair advantage, as in the Elizabeth case. Whare, a brother-in-law of Waikato, drew attention to the 1820 audience with the King when George IV was reputed to have stated that Maori and British subjects were not to kill each other. According to northern Maori opinion, the 'agreement' had been violated in the Elizabeth affair. It is understandable that northern Maori would have been disturbed by the Elizabeth case or by the possibility that it might set a precedent, for an alliance of European and Maori force with such an outcome had not occurred before. The implications for inter-tribal warfare were grave, especially for Ngapuhi. Hongi's death in 1828 had temporarily ended

74 Shepherd to Busby, 5 February 1840, NA, Brit. Res. 1/2, mentions a chief called 'Ware' [Whare] from the Matauri-Whangaroa district. It seems more likely, however, that the 'Ware' in this instance was Wharerahi. In contemporary usage the name was Whare and may have been a contraction of the longer Wharerahi. R.G. Jameson, New Zealand, South Australia, and New South Wales, London, 1841, pp.232ff., notes the chiefs of Kororareka in 1834 - 'Rivas' (Rewa), 'Moko' (Moka), 'Aywarre' (E Whare or Wharerahi), 'Taria' (Tareha) and 'Emminn' (E Mene).

75 Marsden to Darling, 18 April 1831, Marsden Family Papers 453, f.1, ATL; Elder, pp.498ff.; J. Busby, 'Occupation of New Zealand 1833-43' (typescript) MS 46, AML, p.29, notes that in 1836 Waikato still possessed a gift from the King, a 'double barreled fowling piece' which the chief believed gave him some special claim on Busby as the King's representative.
their victorious campaigns against tribes as far south as Hawkes Bay. But if Ngapuhi opponents combined with Europeans then the north might face an unexpected new threat. East Coast Maori were already giving offence by selling preserved Ngapuhi heads to shipping that sometimes called in subsequently at the Bay of Islands where the heads were recognised. In this way too then Europeans were exacerbating tribal rivalries; and with the 1820 'agreement' of the King, in addition to the assurances of Crown protection received over so long a period, a northern appeal to the Crown to control its subjects was very likely.

While the appeals to the Crown from Ngaitahu and Ngapuhi were genuine enough, when Marsden pressed the matter with Darling he claimed, with some exaggeration, that the Maori people generally were anxious and were looking 'for redress and protection to the British government according to His late Majesty's promise'. There is no evidence to support this. Yet it was on this understanding - that the Crown was responding to Maori wishes at large - that Busby was to be introduced to the country. The real fact of the matter was that British interests were being threatened. Some action had to be taken. The Elizabeth case had been so extreme and had been so well publicised that it had stimulated a series of memorials to the Colonial Office from merchants, missionaries and individuals seeking British intervention. The arguments advanced in favour of Britain making a move in New Zealand were an amalgam of commercial, humanitarian, legal, political and strategic motives; they reflected the varied interests of their authors. But for the Crown the decisive factor would be trade interests.

Before the results of the Elizabeth appeal were known in either

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76 Marsden to Darling, 18 April 1831, Marsden Family Papers 453, f.1, ATL.
New South Wales or New Zealand, a second and more formal appeal to the Crown was sparked off by the visit of a French warship to the Bay of Islands. Northern Maori had never forgotten their unhappy experience with the Frenchman, Marion du Fresne, in 1772, when various blunders had led to the massacre of some 250 Maori; they memorialised the episode by reference to the French as the 'tribe of Marion'. When La Favourite worked her way into the Bay on 3 October 1831, therefore, she caused great consternation. Her arrival was expected. The C.M.S. missionary, William Yate, and the Bay chief, Rewa, had returned from Sydney two weeks earlier bearing the rumour that the French warship intended to annex New Zealand for France. The rumour was later found to have no foundation whatsoever, but for some time it was not known in New South Wales or New Zealand what orders Captain La Place carried. The resulting uncertainty led some of the northern chiefs to petition the British government for protection. This idea, according to the missionary, William Williams, originated with the governor of New South Wales, although it is far more likely that the C.M.S. missionaries themselves initiated the move, or at least encouraged it. Missionary sponsorship had already prompted similar petitions in the Pacific. It was La Place's opinion anyway that certain rumours had been spread by the local

77 Cruise, p.46, said that Korokoro was able to give in 'minute detail' the killing of part of Marion's crew, although the event had occurred nearly 50 years previously. For an alternative impression more favourable to the French, see Wright, p.188, where d'Urville thought that Kawakawa Maori cherished Marion's memory.

78 Adams, pp.75ff.; Yate Journal, 4-5 October 1831, C.M.S. Papers, New Zealand mission, CN/099b; Rogers, pp.191-2, 20 September 1831.

79 ibid, p.192, n.37. For a series of similar appeals to the British Crown, see J. Ward, pp.33, 69-70, 73, 92-93, 131, where Tahitians pleaded from 1809 to 1842, with little result. Britain appointed a consul to Tahiti in February 1837. The Tahitian connection with events in New Zealand should be researched further.
missionaries, that the French government had sent him, together with his four hundred armed men, not only to annex the country but to avenge the killing of Marion as well.  

It would not have been difficult to rouse Maori fears against the French; indeed, uneasiness amongst local British subjects about the warship would have been sufficient in itself to convey a sense of threat since Maori were particularly susceptible to rumour and characteristic-ally suspicious of the motives underlying any actions. In the days preceding La Favourite's arrival, several chiefs approached Henry Williams to discuss a 'letter to the King'; Titore dwelt on the matter for over two hours. By the time the ship arrived, a measure of the local tension was apparent in the behaviour of Rawiri Taiwhanga, a Christian chief of the Paihia mission. Since Williams was absent in connection with the proposed petition, Taiwhanga, whose 'dread' of the French was so extreme that it amused Mrs Williams, urgently sought her permission to hoist a British flag on the mission flagstaff. Identifying himself with the British in New Zealand, the chief reasoned that if the French tore the flag down, then Williams would be able to 'write to the rulers of our land to fight for us'.

With the warship already anchored in the Bay of Islands, thirteen major chiefs from Hokianga and the Bay gathered at Kerikeri to sign the

80 Elder, p.503.
81 Rogers, p.192, 28 September - 1 October 1831.
82 Mrs Williams to her father-in-law, 3 October 1831, cit. H. Carleton, The Life of Henry Williams, Auckland, 1877, I, p.92. Rawiri (David) Taiwhanga was a chief from the hinterland of the Bay of Islands. One of the first C.M.S. converts in the 1830s, he adopted European clothes and style of living, had a weatherboard cottage and kept a dairy herd, supplying butter to settlers. One of his children, Sydney, was later involved in agitation for the fulfilment of treaty rights. See below, pp.520-30.
petition to the King.\textsuperscript{83} They acknowledged the special trade and missionary contacts with Britain, and requested that the King become a 'friend and the guardian of these islands', preserving them from foreign threat, from the 'teazing of the other tribes', and from the misconduct of British subjects.\textsuperscript{84} Immediately following the signing, it became clear to the missionaries that \textit{La Favourite} had no designs on New Zealand, but the petition was nevertheless allowed to go forward through Yate to the New South Wales authorities.\textsuperscript{85}

This false alarm having been disposed of, within weeks another vague rumour reached Sydney that \textit{La Favourite} had, in fact, made some sort of claim for the French at the Bay of Islands.\textsuperscript{86} The colonial government was sufficiently uneasy about possible French pretensions that it dispatched H.M.S. \textit{Zebra} to check the rumour out. Captain De Sausmarez was authorised to caution the French, if it were necessary, that New Zealand was under British protection 'according to the expressed wish of the inhabitants'.\textsuperscript{87} Since the rumour was untrue, there was no need to bring the recent Maori petition into play against the French. But De Sausmarez and Henry Williams spent most of three days debating 'whether ... anything could be done to the satisfaction of the natives during the stay of the Man of War'. Whether this related to the French

\textsuperscript{83} The Kerikeri mission station had been established in the 1820s, under the protection of Hongi. At the time of the petition, Kerikeri was the main port entry to the Bay for Maori from the interior, especially Waimate and Hokiana, the latter using the Waihou Valley access from the west. The settlement saw a constant passage of Maori to and fro, besides being the main centre of C.M.S. meetings at that time.

\textsuperscript{84} Petition encl. in Yate to Colonial Secretary, New South Wales, 16 November 1831, GBFP, 1840, [238], p.7.

\textsuperscript{85} Adams, pp.76ff.

\textsuperscript{86} See Elder, p.503. \textit{La Place} may have been unconsciously responsible for this because he carried out a survey of parts of the Bay including the Kawakawa River and surrounding district.

\textsuperscript{87} cit. Adams, p.77.
threat, to the 'teazing' of the tribes, to the misconduct of British subjects, or to all three is not clear, but Williams was relieved when the Zebra departed: 'The good Captain could not come to any conclusion. He could not trust his own understanding nor anybody else.' Evidently no chiefs were involved in these discussions about the King's Petition because all the principal chiefs in the Bay were, by this time, caught up in a projected Ngapuhi expedition against Tauranga. De Saussmarez may indeed have been puzzled that Maori anxieties about the foreign threat, from which the petition had sprung the previous month, had passed so quickly.

Reports on the French 'scare', together with the Maori petition, were despatched to the Colonial Office by Richard Bourke, the newly appointed governor. Neither then, nor at any other time in the 1830s, was the British government seriously concerned that France wished to annex New Zealand, but the government nevertheless took the precaution of affirming that France had no such plans.

Before news of the French 'scare' ever reached London, approval had been given for the appointment of a Resident to New Zealand. The 1831 petition was not responsible, therefore, for committing Britain in New Zealand. Yet the petition continued to be of some significance. It enabled Busby to promote the idea that Britain was intervening in response to a definite Maori request. More importantly, the formal Maori approach to the Crown, made under such peculiar circumstances, was later recalled by British officials to remind the Maori people that Crown authority was exercised in New Zealand by Maori invitation, an assertion that was difficult to deny. In a subtle sense the responsibility for British intervention was thus shifted to the Maori.

88 Rogers, p.205, 19, 20, 21 November 1831.

89 e.g., see below, p.388.
But for the British government the crucial factor in intervening in New Zealand was to ensure the continuation of orderly trade. This was spelt out by the Secretary of State for Colonies, Viscount Goderich. In approving Darling's recommendation to appoint a Resident, Goderich endorsed the humanitarian reason justifying the move, but in his subsequent address to New Zealand chiefs he emphasised that the British relationship with New Zealand was essentially a trading partnership which was mutually beneficial to British subject and Maori; internal disorder disrupted that 'close commercial intercourse' which a British Resident could protect. This line of argument corresponded with Darling's thinking and with that of his successor, Bourke, who was left to deal with the matter. Bourke made it clear to Busby that his appointment was primarily to control the activities of British subjects: reputable settlers were to be assisted if possible; trade was to be encouraged, and shipping and crop statistics kept; complaints involving British subjects were to be investigated, and convicts were to be apprehended and returned to New South Wales. To achieve these purposes, Busby was directed to seek the co-operation of the chiefs and to work in liaison with the missionaries.

This definition of the Resident's role almost exactly matched Busby's specification which he had incorporated in an 1831 memorial to

90 Goderich to chiefs, 14 June 1832, GBPP, 1840,[238], pp.7-8; Goderich to Bourke, 14 June 1832, in Historical Records of Australia, Series I, XVI, Sydney, 1923, p.662.

91 Bourke to Busby, 13 April 1833, GBPP, 1840,[238], pp.4-6; Bourke to Goderich, 23 December 1832, Historical Records of Australia, XVI, pp.482-3, noted that Darling had drawn Colonial Office attention to New Zealand trade and the disruptions to it on 12 August, 22 September 1830, and on 13 April, 7 September 1831. Bourke said that he had thought of appointing a Resident himself to protect trade but decided it was outside his authority. Action was called for not only for the preservation of trade but also 'on the score of humanity'. A Resident would have to be supported by a military force, in the opinion of the New South Wales Executive Council.
the Colonial Office. This had urged on the government the need to protect and encourage 'valuable' British trading interests in New Zealand which he believed were being placed at risk by disruptions caused by escaped convicts and by the increased activity of France. The emphasis on the importance of trade was reiterated when Thomas McDonnell at Hokiana was appointed Additional Resident in 1835. Without the trade contacts and the presence of British subjects, there would obviously have been no need for an official British presence in New Zealand. For that reason it was with the interests of the British that the official appointees were primarily to concern themselves. Protection of the Maori on humanitarian grounds was related to this, but it was a secondary consideration, a factor that had arisen from the preceding intrusion of the British.

When Busby arrived at the Bay of Islands on 5 May 1833, he carried with him an official reply to the 1831 Maori petition. Although the Resident's appointment had not been decided upon in response to that appeal, Bourke wanted Busby to create the maximum effect and directed that Goderich's reply be presented at Busby's arrival. This was orchestrated with some care. A formal meeting was deferred until 17 May when twenty-two chiefs, including several from the Hokiana, were able to assemble at the Paihia mission. By Busby's own account, the missionaries and the captain of his ship did their utmost to 'render the conference imposing in the eyes of the natives ... to impress their minds

92 Busby, 'Memoir ...', CO 209/1, 197-9; also J. Busby, Authentic Information relative to New South Wales and New Zealand, London, 1832, pp.57ff. Busby had also mentioned Russia.

93 FitzRoy, Narrative, II, pp.198ff.
with the importance of this event to the future welfare of their country'. The display was incidentally calculated to secure some respect from the Europeans present.

From the great fuss created for Busby's arrival ceremony, the assembled chiefs could well have accepted these first overtures as indicators of the Crown's high esteem for the Maori people and as British recognition of the Maori as virtually their equals. Busby landed to a seven-gun salute, made a progress the length of the Paihia settlement and was finally accorded a traditional Maori welcome. Europeans present stood with heads respectfully uncovered as Busby read the 'King's letter' which was then translated into Maori by William Williams. The chiefs were told (with a reference only in the Maori version, to the French 'scare' eighteen months earlier), that the King was pleased that the danger threatening them had passed away; and that he hoped that their trade relationship with Britain would not be disturbed in future. To ensure their protection and the better control of British subjects, Busby, the 'King's man', was sent to be a 'kaiwhakarite', an intermediary between the races. In an accompanying address, Busby supported these sentiments. By way of further explanation, he pointed out that the King was honouring them, 'whakarangatiratanga', (literally increasing their chiefly mana) by his appointment in the same way as similar appointments were made to European states and to America. There was more than a hint in this of an ambassadorial representation to an independent country, and

94 Ramsden, pp.56ff.; Busby to Col.Sec., New South Wales, 17, 30 May 1833, Busby Dispatches, qMS, ATL. Busby gives no indication of the chiefs present though he does mention Nene.

95 See Elder, p.509, n. for the William Williams description of this. The meeting was held near the Paihia church.

96 There is no such reference in the English version. Williams probably deemed it wise to include it in view of the transient interest in foreign threats shown by northern Maori in 1831. See above, pp.57-59.
though this was possibly accurate in respect to New Zealand's legal status it did not truly represent Britain's paternal attitude to the country and to the Resident appointment.

Busby concluded his address with a homily on British history from which the lesson should have been drawn that Maori progress depended on their first listening to the word of God. From this, their land would flourish, and 'ships ... shall bring clothing, and all other things which you desire'.  

Some of this beneficence made its appearance at the end of the meeting when each of the twenty-two senior chiefs received a blanket and six pounds of tobacco. A feast was then held for the six hundred or more Maori present, while fifty of the Europeans were entertained by William Williams. The effort was the best that could be made in the circumstances and since no like event had preceded it, the attempt to impress the Maori probably had some effect.

On missionary recommendation, the two addresses of the day were printed in Sydney and distributed amongst northern chiefs. In view of the Maori enthusiasm for literacy then gaining momentum, this action was no doubt intended to reinforce the words of the Crown and to disseminate them amongst a wider audience than those actually present at the Paihia meeting. It was a beginning. What Busby would make of it remained to be seen.

97 Busby to Col.Sec., New South Wales, 17 May 1833, encl. his address, Busby Dispatches, qMS; ATL.

98 See Elder, p.509, n., where Williams speaks of preparing 800 dishes for the Maori.

99. Busby to Col.Sec., New South Wales, 25 May 1833, Busby Dispatches, qMS, ATL. Though William Williams had provided the translation, Yate checked the proof sheets for publication. See also W. White to Busby, 3 October 1833, NA, Brit.Res. 1/1, 97, where he reports that he had disposed of some of the addresses in the Hokianga, and still had some to hand. For the address, H.W. Williams, Bibliography, No.11, a copy held at APL.
At the suggestion of the chiefs, the Resident and his family selected land at Waitangi where building commenced on a residency home. From the beginning, his position was circumscribed. The Colonial Office had directed that Busby operate under orders from the governor of New South Wales and be paid from that colony's funds. A somewhat pernickety and troublesome character when his personal interests were affected, Busby clashed with Bourke who was not disposed to work co-operatively with the new Resident. Apart from a difference in personalities, the two men did not share the same political views. There was also resentment in New South Wales that New Zealand had become a tax on that colony's treasury when the country was of imperial interest and should have been a charge on the British treasury. Busby's requests for assistance were consequently treated with uncompromising parsimony. The British government declined to support Busby with a warship stationed permanently at New Zealand, as Darling and Marsden had originally recommended. And, as a civilian appointee, Busby was not entitled to troops. Bourke even quibbled about payment for constables. Busby, therefore, lacked naval, military and civil backing; moreover, his appointment to an independent territory precluded his holding magisterial office, which meant that he had no powers of arrest and was unable to take sworn testimony. His role was reduced to that of a mediator and peacemaker in matters affecting British subjects alone, and a kind of race relations conciliator in affairs between Maori and Pakeha.

100 Ramsden, pp.46, 60-61, 85. There had been previous European occupants on at least a part of the land, i.e. William Hall and Dr Ross. When Busby came to make a rehagotiated settlement with Waitangi's Maori owners, it was agreed that the whare on the property could still be used by their owners when fishing in the area. But it was apparently only a verbal agreement and was not written into the purchase document. Busby later denied the Maori right, although the missionaries upheld it.

101 Bourke was a Whig and pro-emancipist in his colonial sympathies, whereas Busby was from a Tory free settler family. Relations between the two men were also complicated by the fact that Busby's father had been engaged for many years in engineering a major water supply project for Sydney; this was proving to be a more lengthy and costly business for the colonial treasury than had originally been estimated. Ramsden, pp.39ff.

102 J. Ward, p.82.
To achieve his objectives, Busby was directed by Bourke to utilise chiefly authority. He was also to encourage the possibility of a more settled form of orderly rule and law so that the chiefs might eventually be made to accept responsibility for controlling European behaviour in New Zealand. Missionary support was officially requested to assist the Resident. Other than this, the only backing Busby could hope for was the occasional naval visit which had already been carried out since the 1820s. On the above terms, it is not surprising that Busby failed to meet the needs outlined in missionary and merchant appeals. Prompted by their pleadings, and impelled by Darling's recommendation, Busby's appointment was the smallest possible concession that the British government was prepared to make to deal with the New Zealand situation.

Busby has usually been regarded by historians as a total failure, a 'man of war without guns', but this hardly does him justice. Some contemporaries, at least, were kinder. Captain Robert FitzRoy, calling at the Bay in 1835, made a succinct and sympathetic assessment: 'Mr Busby's official occupation at New Zer and appeared to me of a very neutral character. An isolated individual, not having even the authority of a magistrate, encircled by savages, and by a most troublesome class of his own countrymen, I was not astonished at his anxiety to receive definite instructions, and substantial support; or at the numerous complaints continually made by the English settlers.' And Edward Markham, another visitor to the Bay, assessed Busby's ill-defined and unsupported situation with brief, shrewd insight: Busby simply was not 'devil enough' for the situation which called for a man of some 'nous'. True, a man of stronger personality might have been able to make something out of such a position

103 FitzRoy, Narrative, I, p.319.
104 cit. Ramsden, p.221.
of weakness, but the real failure, as FitzRoy perceived, lay in the
nature of the appointment itself. The Crown, aware that any move was
a forward step involving Britain more deeply in New Zealand affairs,
had been exceedingly cautious and timid. As a result, Busby's appoint-
ment satisfied no-one.

Busby himself was fully aware of the inadequacies of his position.
He knew that Bourke had been dissatisfied with the nature of the Resident
appointment from the outset and did not favour him personally. Within
the first year of Busby's tenure, Bourke and his executive council took
a strong line on New Zealand affairs. They decided to act independent-
ly of Busby by authorising H.M.S. Alligator to rescue Europeans from
the barque, Harriet, which had been driven ashore at Cape Egmont in
April 1834. Some of the ship's crew had been killed by local Maori
and others were being held to ransom, including the European wife and
two children of a well-known whaler, John Guard. Captain Lambert of
the Alligator dealt out severe punishment, bombarding several pa,
destroying canoes and killing a number of Maori, although the facts of
the case did not warrant such extremes. Bourke subsequently used
the Harriet affair to exemplify the deficiencies of the Residency
appointment to the British government. He reported that Busby was
'ineffectual', which was hardly surprising since he had not been consult-
ed and had no force to hand anyway. But Bourke was playing politics.

105 For an eye-witness account, see W.B. Marshall, A Personal Narrative
of Two Visits to New Zealand in His Majesty's Ship Alligator, A.D.
1834, London, 1836, pp.149-301; Adams, p.91. The Alligator was
assisted by a detachment of soldiers and by a second vessel. The
injustice done the Maori was strongly criticised by Dandeson Coates
of the C.M.S. London, and by Hobson. It was an episode of gun-boat
intimidation of the kind used by the French against the Tahitians
later in the thirties and in the early forties.

106 Adams, p.69.
He believed that unless a British appointee to New Zealand held judicial authority or was supported by a warship, British law and order would be held in contempt; better to withdraw Busby perhaps than have that happen.

The Secretary of State for Colonies, Lord Glenelg, was unable to determine whether the fault in the Alligator affair lay with Busby or in the terms of his appointment. But because neither New Zealand's needs nor Britain's policy of limited commitment had changed, he decided to continue the Residency position. For a while he did toy with the possibility of an act which would provide Britain with extra-territorial jurisdiction, but nothing came of it. He may have given Bourke some small satisfaction in allowing him discretion to replace Busby, but the governor took no action. 107 He was wanting more than just a replacement.

In New Zealand, British residents were quick to see that the shortcomings of the appointment would lead to failure. Their expectations, raised by the presence of a Crown representative, were soon disappointed by his incapacity to offer redress for their problems. Busby was expected to settle shipping problems such as desertion, brawling, maltreatment of crew and misappropriation of cargo. On shore, his mediation was required to deal with land transactions, boundary disputes, stock trespass, and cases of theft, assault and murder. In most instances, he could do no more than attempt to arbitrate, sometimes on his own initiative, sometimes with missionary advice or co-operation from local chiefs. The majority of cases were beyond his mandate. 108 Bourke and his successor, George Gipps, realised the limitations of Busby's jurisdiction, yet they were remarkably unsympathetic with the Resident's dilemma.

107 ibid, pp.69-70.

108 NA, Brit.Res. files esp. 1/2, letters from no.102 onwards indicate these problems.
In the few instances in which Busby did manage to manipulate matters effectively so that justice might be done, or appear to be done, he was cautioned for acting beyond the limits of his responsibility and was left to stand the costs of his initiatives.\textsuperscript{109} For Busby it was a thankless position to find himself in and his problems became even more complex as shipping increased towards the end of the decade, involving the nationals of other countries in New Zealand affairs.

The situation for British subjects in New Zealand proved increasingly exasperating. The C.M.S. missionary, Thomas Chapman, noted that Busby's arrival had greatly encouraged British trade activity because it was 'tantamount ... to a promise of protection to life and property, to such as might become residents in New Zealand'. But as Chapman, echoing local British opinion, lamented: 'where is the increase of protection or rather where is the protection at all?\textsuperscript{110} British subjects at the Bay of Islands, using their right of appeal to the Crown, petitioned for more effective official support in 1834, 1836 and 1838 - periods when local matters were sufficiently unsettled to provide some cause for complaint.\textsuperscript{111} Attention was also drawn to the absence of effective law and order agencies when the 'respectable' Bay settlers organised themselves into citizen vigilante-type groups, first in 1833 and again in 1838.\textsuperscript{112} But such clamour was as much a series of calculated attempts to get government action as justifiable pleas for help with crises.

\textsuperscript{109} Ramsden, pp.228-30.

\textsuperscript{110} Chapman to C.M.S. London, 6 August 1838, Chapman Journal (typescript) AUL.

\textsuperscript{111} There was probably some fear that trade would be lost from the Bay through an absence of law and order. See e.g. Mair and Powditch to Busby, 8 February 1834, NA, Brit.Res. 1/1, 134.

\textsuperscript{112} NA, Brit.Res. 1/1, 92, 93, September 1833. Eleven Bay settlers formed a Kororareka Union Benefit Society and stated their intention to abide by certain regulations which they had drawn up. For the 1838 effort, see Owens in Oxford History, p.48.
If Europeans had expectations of Busby, Maori anticipated something from the appointment of a Crown representative too. In this respect, Busby's introduction to Maori society, provided by the English missionaries in New Zealand, was crucial. Bourke had recognised this by accrediting the Resident to the mission body who offered Busby their hospitality, their network of organisation and contacts amongst the northern Maori and most importantly their mana, which had been boosted by the significant beginnings of Maori conversion in the early 1830s. That this conversion coincided with the appointment of a Crown representative was most fortunate, because the Christian faith of the English Protestant missionaries gave the Crown a special significance - in the person of the British monarch was combined both spiritual and temporal leadership. Since this was a concept that had a similar counterpart in Maori society of the tohunga, Maori people probably had an insight into the dual role of the Crown that has not usually been acknowledged. Christian Maori in particular could be expected to have ascribed to Busby, the King's man, some of the mana of the King himself. Busby had encouraged this idea at his first meeting with chiefs by presenting England as a model of the rewards of temporal wealth and progress that Maori could expect to follow upon their conversion to the Christianity of Victorian England.

Apart from the usefulness of the inextricable links of the English Church with the Crown, Busby was also able to build his position upon Maori expectations that the Crown took a special interest in the Maori people. This idea had been carefully nurtured for many years and was associated with the beneficial trade contacts between the British, especially the navy, and Maori. Busby, therefore, stressed that his role was to be a facilitator of European-Maori contacts, a 'kaiwhakarite'. It was a role for which a precedent had been partially established
by mission efforts. By the 1830s Maori were looking to the missionaries as negotiators and conciliators in their inter-tribal disputes, and had utilised missionary assistance in trade dealings for some years. While Busby was forced to move into a negotiating role in association with missionary assistance and advice at first, Maori nevertheless appear to have appreciated that the Resident constituted a new medium for negotiation, an identity associated with missionary mana yet independent of it. This was essential because many chiefs were not Christian nor very well disposed to the missionaries, and from 1838 on, some chiefs adopted the Roman Catholic faith.

Maori response to Busby during his six years of office was certainly not overwhelming, nor even very obvious, yet he served the important function of preparing Maori to accept further British government intrusion in 1840. In small ways, changes in Maori attitudes towards the British Resident began to occur. Some modification in Maori behaviour possibly evolved from missionary influence which Busby was drawing upon to sanction his role, but the Resident records show that northern Maori were also appealing directly to Busby on a number of occasions, on the understanding that he could provide some redress, especially when problems involved Europeans. In a case of theft in the Kawakawa area, for instance, the chief, Mauparama, called on Busby to settle the dispute because the Resident was the King's 'Kaiwhakarite'. In the Hokianga, the chiefs Nene, Taonui, Pi, Moetara and Haimona Pita pledged their co-operation with the Resident - King William's 'Rite'. Nene approached Busby with a complaint of European intimidation; and

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Taonui, refraining from the customary utu or compensation for European cattle trespass at Horeke, sought Busby's advice and finally requested documentary authority to force his point with the offending Europeans. In the Kaipara, Busby established connections with Tirarau and Mate; in the central hinterland with Hau and a group that had close mission associations at Waimate; and in the northern Bay of Islands with Hemi Kepa Tupe and others. In the vital Bay of Islands area itself, Titore proved most co-operative in Busby's first years. After his death, Busby had to deal with Tareha, Rewa and Hakiro. Pomare had adopted a fairly independent stance with the Resident from the beginning, possibly because of Busby's relationship with Titore, to whom Pomare had lost Kororareka in the 1830 Girls' War. Nevertheless, Pomare also called on Busby to negotiate in a case of European theft. In fact, the chief added a Maori gloss to the Resident's role by referring to him in writing as the 'Tahuhuru'. This was the metaphorical ridgepole that held the Maori house together - a concept with subtle allusive connotations and one which would emerge with greater significance when relations between the Crown and the Maori people concerning the matter of sovereignty and land reached a crisis in the late 1850s.\[^{114}\] Its use in the 1830s suggests a Maori acceptance of Busby's role as a middle-man, a go-between in relationships between the races. More importantly, the fact that he was not particularly effective in controlling British nationals would be a telling argument in persuading Maori to agree to a more comprehensive British authority in 1840.

While northern Maori were mainly concerned in Busby's early years to settle disputes with Europeans that were mutually irritating - assault, theft, stock trespass and murder - by 1838 there were new problems. Papahia and other northern Hokianga Maori had become involved with the newly arrived Roman Catholic Bishop, Pompallier. The chief and his tribe were subjected, it seems, to a kind of sectarian harassment by those tribes associated with the Protestant missions. Papahia appealed to Busby to determine his rights and Busby assured him that affiliation with the newcomers in no way affected his relationship with the Crown. Just prior to 1840, as other new arrivals - land speculators from New South Wales - began to exert pressure on northern Maori to sell their land, Busby received a number of appeals from chiefs who were anxious to secure their land title. Hau, for example, was concerned that tribal land had been sold without authorisation by one member of their group. Tupe and others requested some assurance that land between Matauri and Whangaroa would be left untouched by Europeans. And in the Mahurangi area, where Ngapuhi and Hauraki Gulf Maori interests overlapped, Herua expressed his fears that Pomare might use his powerful Bay position to effect a sale.

Although the requests to Busby for his intervention might have been prompted perhaps by local missionaries, Maori themselves seemed to be showing an increasing awareness that from the Crown alone stemmed the

116 William Marshall Hau to Busby, December 1839; Hemi Kapa Tupe to Busby, n.d. [1839?], speaking for himself, Paora, Ururoa and Hare Hongi; Herua to Busby, n.d. [1839?]: NA, Brit.Res. 1/2; Rogers, p.342: Henry Williams saw Herua at the Whakatiwai pa, West Hauraki Gulf, in November 1833. Pomare succeeded in forcing a sale in the early 1840s. Although he was entitled to his interest in the land, William Fairburn, the missionary stationed near Whakatiwai, pointed out to Busby that the Mahurangi area was in Maori cultivation and was a favourite fishing ground with various Maori groups. Fairburn to Busby, 20 December 1839, NA, Brit.Res. 1/2.
kind of authority that was capable of controlling this new and essentially
temporal difficulty. This Maori concern for the changes affecting the
land in 1838 and 1839 seemed to be an indication of a predisposition
to accept a greater regulation of Maori-European affairs. One chief,
Wakena Rukaruka, put the Maori position explicitly to Busby. When it
came to a matter of negotiation, Wakena held that his own chiefly rank
was no advantage since in certain situations he would be lowering his
prestige if he initiated discussions with another tribe. Such circum-
stances, in Wakena's opinion, were ideally suited for the intermediary
role of Busby - the representative of the British monarch (from 1837
Queen Victoria). 117 It was a pointer to the future.

For several years prior to 1840, Busby's official reports to
England urged the need for greater British commitment in New Zealand.
The Resident's usual line of argument was his inability to handle affairs
adequately. Faced with difficulties for which he was not equipped, he
naturally sought more official assistance, but his reports, imbued with
overly pessimistic gloom, have created two somewhat erroneous impressions.
The first is that Busby was a weak character. His own admission of
weakness for the task left him open to this personal attack. Thus just
as he had originally recommended himself to the British government for
the Resident's position by a memorial on New Zealand written in 1831, 118
he similarly hastened his eventual replacement by a series of negative
reports. These reports have also created the impression, long accepted
as fact, that New Zealand affairs were out of control in the late thirties;
that there was in Busby's own words a state of anarchy. If Busby meant

118 See p. 51 above.
a lack of government, this was true. Contemporaries in England, however, interpreted it to mean a breakdown of law and order. Evidence suggests that this is not entirely correct.

While it is no doubt true that certain problems of law and order stimulated settler moves such as memorials to the British government and the formation of the protection societies, it is the more remarkable that without any regular form of government, general business and European-Maori relationships fared as well as they did. This surprised the naval-trained FitzRoy during his stay in 1835, and it impressed Bishop Broughton of New South Wales on his visit in 1839. Like any other imperial frontier, the possibility of violence was never entirely absent from the New Zealand situation. But Busby’s position at Waitangi was only twice threatened, once in 1834 when burglary was attempted and again in 1836 when two Maori groups forsook negotiation to brawl on the Residency lawn. Busby used both occasions to draw official attention to the need for stronger backing to support his appointment, but privately he confessed that he considered New Zealand the ‘safest country in the world’; that once the upset of 1834 had passed, he felt more secure at Waitangi than in the Australian bush.

The most certain indicators of European confidence in New Zealand in the late 1830s are provided by the shipping numbers for the Bay of Islands and trade statistics for the whole country. These show a steady growth of activity. Together with an increasing investment by New South Wales speculators in Maori land, they indicate a situation in which

119 FitzRoy, Narrative, II, pp.582-618: FitzRoy gave details of what he called ‘anarchy’, but his observations reveal a remarkable degree of accord; see also Ramsden, p.221.


121 Adams, pp.249-50, gives export statistics for New Zealand, 1830-40, which show both the growth rate and the diversity of product - flax, timber, whale bone and oil, various grains, and produce, including pork.
Europeans could operate with reasonable safety. It is notable also that elsewhere in New Zealand, as contacts between the races multiplied in the 1830s, Europeans and Maori were forced into a workable accord in order to further mutual interests.

In a more cautious assessment of the state of New Zealand in the late 1830s, therefore, European petitions that publicised the lack of government and Busby's 'failure', should be recognised less as an indictment of the Resident's performance than as a pressure on the British government for further commitment in New Zealand. Likewise, Busby's reports should be judged as the efforts of a man who had a vested interest in encouraging more decisive moves by the Crown. Had Busby seemed too successful at his job there would have been little cause to justify further British intervention. It was the very weakness of the Resident position that opened the way for the next intrusion. But before that happened, Busby had tried an alternative - the creation of an independent Maori government.
CHAPTER TWO

THE MAKING OF MAORI SOVEREIGNTY

'I have already stated that we acknowledge New Zealand as a Sovereign and independent State, so far at least as it is possible to make that acknowledgement in favour of a people composed of numerous, dispersed, and petty Tribes, who possess few political relations to each other, and are incompetent to act, or even deliberate, in concert. But the admission of their rights, though inevitably qualified by this consideration, is binding on the faith of the British Crown.'

- Normanby to Hobson, 14 August 1839, Great Britain Parliamentary Papers, 1840 [238].
When Busby first took up his New Zealand appointment, Governor Bourke instructed the new Resident to direct the Maori, if possible, 'towards a settled form of government and ... some system of jurisprudence'. It would be a 'more efficient' means of achieving law and order for all persons in the country than anything else he could suggest, added Bourke.\(^1\) Busby himself was convinced that only the exercise of a 'collective' Maori sovereignty could effectively put a stop to inter-tribal warfare: 'I am resolved to lend the whole strength of my mind to effect this object ... and it is probable that the surest method of commanding success is if possible to discover a case in which such a union would prove to their [Maori] advantage, and to give it the appearance of originating with themselves.' Busby found such a case in the need for a national flag.\(^2\)

From 1829 ships built in New Zealand had sailed without a register. They did not qualify to fly the British ensign, nor carry a British register, because New Zealand was technically independent territory; in the absence of an acknowledged national flag they became liable to seizure.\(^3\) With an increase in New Zealand-built ships and in trans-Tasman trade, some arrangement was needed. This had been emphasised at Sydney, some time before Busby's appointment, by the seizure of the Hokianga-built Sir George Murray. The fact that she was carrying two 'leading chiefs' had

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1 Bourke to Busby, 13 April 1833, GBPP, 1840, [238], pp.4-6. The instructions were published in FitzRoy, Narrative II, pp.198-202.
2 Busby to Col.Sec., New South Wales, 13 May 1833, Busby Dispatches, qMS, ATL.
3 Yate, p.29.
angered Maori who presumably interpreted the seizure of a vessel, in which they had a close interest, as an insult to their personal mana.4 When Busby arrived in New Zealand, two other Hokianga ships were awaiting registration.5

Busby, shrewdly perceiving that the satisfaction of Maori mana might be linked to the settlement of the registration question, planned to manipulate the situation to create an embryonic Maori government. He proposed that the acknowledged chiefs of the district where a ship was built should provide the ship with a register which the Resident would certify. To initiate this procedure, however, he would grant his certification only on the condition that two-thirds of the chiefs at his inaugural meeting agreed on a flag, and petitioned the King that their flag be respected. On this basis, he hoped to coerce the chiefs subsequently into acting in a 'collective capacity' as a 'tribunal', thereby bringing into existence an established government of confederated chiefs.6 There was also talk of a Parliament House, and a passport system that included deportation of undesirable Europeans, but Bourke

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4 Busby to Col.Sec., New South Wales, 13, 30 May 1833, Busby Dispatches, qMS, ATL; C.W. Hawkins, Out of Auckland, Auckland, 1960, pp.18-33. The two chiefs were probably Patuone and Taunui who protected the ship-building establishment of Raine, Ramsay and Brown at Horeke. The barque, Sir George Murray, 392 tons, was delivered in late 1830 to Sydney where she was purchased by Thomas McDonnell. There is a discrepancy between Busby who refers to the seizure of the Sir George Murray, and Hawkins, pp.28, 32-33, who notes the seizure of the New Zealander. Either both ships were seized or one writer is in error.

5 The schooner Industry, 80-100 tons, owned by Styles and Harris; and the brigantine New Zealander, 140 tons, Grose the 'proprietor'. Busby to Col.Sec., New South Wales, 27 May 1833, Busby Dispatches, qMS, ATL, wrote that Grose intended to get a register in the Sandwich Islands if he failed in New Zealand.

6 Busby to Col.Sec., New South Wales, 13 May 1833, Busby Dispatches, qMS, ATL. The ideas, in principle, were retained though the proposal to initiate them at Busby's inaugural meeting was dropped.
favoured neither. Ten months after Busby's arrival only the suggestion of the flag had been implemented.

On 20 March 1834, some twenty-five northern chiefs assembled with their followers, at Busby's invitation, in a large tent specially erected on the Waitangi lawn. Out of a choice of three flags brought from Sydney by H.M.S. Alligator, the chiefs voted for a national flag of white with a red Saint George's cross; in the upper corner on the left side, a blue field with a red cross and four white stars. According to Busby, it resembled the flag used by the C.M.S. missionaries in the South Seas. The flag was immediately hoisted with the British flag alongside it, cheered by some fifty invited Europeans, and honoured with a 21-gun salute by the man of war. It was later gazetted in Sydney and the Admiralty directed its naval vessels to acknowledge the flag and respect the Maori registers. A number of ships subsequently flew under the New Zealand flag, although in lieu of the proposed registers for which no provision

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7 Ramsden, p.64. A specimen passport was actually sent to be engraved, enclosed in Busby to Col.Sec., New South Wales, 17 June 1833, Busby Dispatches, qMS, ATL. I am grateful to R. Wigglesworth for the chance to peruse a copy of the specimen passport held at the Mitchell Library, Sydney.

8 Marshall, p.108. Busby had deferred the presentation of a flag earlier for two reasons: the flag in hand, sent from Sydney, had no red in it (a colour which was favoured by Maori); and his Waitangi home was incomplete.

9 Busby to Col.Sec., New South Wales, 22 March 1834, Busby Dispatches, qMS, ATL; Ramsden, pp.64-69. Busby took the opportunity of asking for a 'small ship's ensign' for his own use, and obtained suitable ropes to erect a permanent staff at Waitangi. The occasion of choosing the flag was probably the first time that a flag was officially flown on the Waitangi property.


11 NA, Brit.Res. Papers, 1/2,96,97,114, indicate registration of Hokianga-built New Zealander, Industry and Fanny; the Bay of Islands-built Trent; the Whitianga-built Mercury, and the Tokirau, salvaged from shipwreck in the Pacific and requiring new registration. Evidence suggests that other ships may have had New Zealand registration: the Joseph Weller, the Hokianga and the Uleta - see J. Walton, Twelve Months Residence in New Zealand, Glasgow, 1839, pp.21-24. While no specific reference can be found to the flag being sighted on New Zealand ships, it is assumed that it must have been flown, e.g. Busby to Bourke, 23 July 1836, CO 209/2, 254, listed five New Zealand-owned ships calling at the Bay of Islands in the first six months of 1836.
seems to have been made, they carried a 'certificate of registration' from
Busby. At Australian ports they were accorded the same duty-free entry
as British and colonial vessels. 12

Busby, the missionaries and the Alligator's crew had taken consider-
able trouble to make the presentation of the flag an impressive event. 13
But what did the Maori make of it all? Unfortunately there is no certain
way of telling, although evidence suggests that the initial reaction was
favourable. The attendance of some thirty chiefs was a good one and the
group represented a wider selection of chiefs from the north than the
handful who had signed the 1831 petition. Moreover, several of the assembly
were dressed in European clothing, by contemporary accounts a sure indica-
tion that the solemnity of the occasion was appreciated by the chiefs.

But the chiefs may have been somewhat disappointed at the way proceed-
ings were handled. Busby was evidently determined to press the business
to a successful conclusion; nervous of dissent, he simply lectured the
chiefs on the 'advantages' to be derived from the flag, giving them no
chance to reply or to raise questions before the voting. 14 The final vote
was split and two chiefs abstained because, according to an observer, they
were 'apprehensive lest under this ceremony lay hid some sinister design'. 15
Other chiefs, excluded from voting apparently because Busby considered
their rank too inferior, expressed 'no small discontent'; and one group
remained after the voting to engage in 'warlike' and 'wordy' debate,

12 Colonial Secretary Van Dieman's Land to Busby, 23 October 1834,
NA, Brit.Res. 1/1; copy of certificate of registration of the Trent,
23 January 1838, NA, Brit.Res. 1/2, 96; McNab, Old Whaling Days, p.101;
for other decisions on the matter of duties see Tapp, Ch.3, and J. Ward,
Ch.3.

13 Busby to Col.Sec., New South Wales, 22 March 1834; Busby Dispatches,
qMS, ATL; cf. Marshall, pp.107-12, for an alternative description
of the event; also Busby to Hay, 3 April 1834, CO 209/1, 121-4, 213-36.
14 Busby's address in English and Maori is in NA, Brit.Res. 1/1.
15 For the voting, the three flags were raised on short poles. Busby and
Marshall give different voting figures, with Busby making no reference
to any abstentions: Busby 12,10,3; Marshall: 12,10,8 and 2 abstaining.
preferring to abstain from Busby's feast which celebrated the event. This was served apart from the 'collation' for Europeans, whereas an equality of treatment might have been seen by the chiefs as more in keeping with the spirit of the occasion; it would also have matched the tenor of Busby's inaugural speech the previous May which had stressed Maori equality with the British.  

The inadequacies of Busby's dealings with the situation may have been part of the heated debate that day, but if so it went unrecorded. Only one chief, Pomare, succeeded in drawing European attention to the inconsistencies of European attitudes by insisting that he be accorded the respect due to a chief. Affronted by not receiving an invitation before the other chiefs, he deliberately arrived late and waited to be fittingly received in the traditional manner (just as later he would take his time in signing the treaty). He also objected to his followers being disarmed: it was a New Zealand custom, akin to the right of the Alligator's officers ('rangatira') to wear swords, the chief argued. There was no doubt a competitive element in this behaviour, but his actions nevertheless pointed up the shortcomings in European dealings with a Maori New Zealand.

Although the flag was given a somewhat mixed reception in 1834, its significance in the long term lay in Maori understanding of the event. It conveyed to the Maori people the belief that the mana of New Zealand,

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16 Marshall, pp.108-9, noted that the Maori feast consisted of pork, potatoes and 'korori', a paste or porridge made from flour, sugar and water. In this instance, Busby recorded that the consumption totalled 484lbs 'Seconds' flour and 100lbs sugar, for which the Resident claimed from the New South Wales government. Blankets were distributed also. Busby to Col.Sec., New South Wales, 22 March 1834, Busby Dispatches, qMS, ATL.

17 See below, p.196.

18 Marshall, pp.23, 108-12. Pomare, accustomed to charging anchorage fees for vessels using the harbour precincts off his pa at Otuihu, was experienced in dealings with Europeans. On another occasion he had won a similar point when he had boarded a warship and insisted on being given the 'complimentary salute' with which he usually greeted the British flag.
which was closely associated with the personal mana of chiefs, had been recognised by the British Crown. That New Zealand-built ships carried the national flag was tangible evidence of this. Moreover, the duty-free reception of New Zealand produce and cargo at Australian ports was a point that trade-seasoned northern Maori would hardly overlook.

The prestige of the flag was assuredly increased by its use on shore too. When FitzRoy saw it in 1835, it was flying before a European house at the Bay of Islands. A year or so later, an early European traveller, John Bright, noted that along with the flag of Saint George at Busby's Waitangi and the Union Jack on Kororareka Beach, the New Zealand flag flew on a 'rocky outcrop', somewhere on the Waitangi side of the Bay. This display of the flag identified the country as separate and different from other territories, yet at the same time it associated New Zealand with Britain, known by Maori to be the world's most powerful nation state. Maori of the north, where the flag was used most in this period, absorbed

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19 See e.g., Heke's references to the flag, pp.330 below.

20 The development of New Zealand as a kind of duty-free zone tends to have been overlooked by historians. It had become customary from an early period for New South Wales customs to admit New Zealand goods free of duty, a system that was not queried until trade increased in the 1830s. It was then pointed out to London customs authorities that if New Zealand produce were charged duties, New South Wales would stand a 'great loss'; and that because of the 'peculiar footing so similar to that of a British Possession' on which New Zealand was placed, for some years New Zealand spars and flax had been admitted to England duty-free. Controllers of Customs, New South Wales, to London Customs Officers, 22 December 1835, in McNab, Old Whaling Days, pp.264-7. Although London informed New South Wales that New Zealand was independent and that duties should be charged, New South Wales customs apparently chose to disregard the information.

21 FitzRoy, Narrative, II, p.566. This was possibly the establishment of Gilbert Mair, a trader on Te Wahapu point further up the Waikare inlet past Kororareka. The Union Jack was flying at Busby's Waitangi residence.

22 J. Bright, Handbook for emigrants and others, London, 1841, pp.15-16. For a sketch of the flag and other references, see E.H. McCormick, ed., New Zealand or recollections of it, by Edward Markham, Wellington, 1963, pp.79, 100, n.145; and see Markham's sketch reproduced facing p.57.
it into their oral tradition, possibly regarding it as akin to a special rahui or protection; but the national flag was probably not without significance in some other areas too, at least in the 1830s as New Zealand ships developed a thriving coastal trade. Thus it assumed a far greater importance than was intended initially when it simply provided a solution to what was essentially a European shipping problem.

Busby hoped that the conference of chiefs, brought together to choose the flag, might be reconvened from time to time to form an established government, but this did not eventuate. That the creation of such a body, which necessitated unified Maori action, could only evolve when the stimulus of a common interest or threat existed, had been indicated by the events leading to both the 1831 petition and the adoption of the flag. But fortunately for Busby, a suitable opportunity to further his plans presented itself in October 1835, when it became known that a Frenchman, Baron de Thierry, was planning to arrive in New Zealand to establish a 'sovereign and independent state' on some Hokianga land which he claimed to have purchased many years before. While Busby thought that Thierry was probably a madman, he could not entirely dismiss information, part rumour, part truth, that suggested that the Frenchman might perhaps be capable of establishing a power base in New Zealand, possibly in cooperation with one or other Maori tribal area, from which Thierry would

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23 A rahui was usually a post or peculiar feature in a landscape. It served to identify a protected object or area. On 5 February 1981, the national flag was recalled by Mr Rei Tana on the Waitangi marae, one instance of many that could be noted.

24 Ramsden, pp.91, 93. The chiefs concerned with the purchase were Patuone, Nene and Muriwai. The last had died in the 1820s. Thierry was of French parentage but he had been educated in England. S.M. Lange, 'Baron Charles de Thierry, Utopian coloniser', unpublished M.A. research paper, University of Auckland, 1976, pp.3-9.
expand his influence with the aid of local Maori. It would lead to tribal unrest, at the very least; at worst, to a major inter-tribal war with Europeans complicating matters. In an official dispatch, Busby expressed his confidence that the British government would not want him to remain 'neutral' in view of the rapidly expanding importance of British interests in the country.

The Resident acted quickly. Having alerted British subjects to the potential danger, he persuaded a meeting of thirty-four chiefs to sign a Declaration of Independence (He whakaputanga o te Rangatiratanga o Nu Tirene) asking William IV 'to be the parent of their infant state ... its protector from all attempts upon its independence'. The signatories designated themselves the United Tribes of New Zealand, and pledged to assemble at an annual Waitangi congress where they would frame laws for the promotion of peace, justice and trade. An invitation was extended to the southern tribes to join the Confederation too.

This Declaration of Maori Independence was acknowledged by the Colonial Office with the assurance that the King would protect the Maori people as long as it was 'consistent with a due regard to the just rights of others and to the interests of His Majesty's subjects'. The reply

25 Ibid., p.51; Ramsden, pp.90, 94. Thierry had resurrected Tasman's discovery of New Zealand, a point that cast some doubt on British rights deriving from Cook's later discovery. Busby probably also had in mind a northern Maori war expedition that was about to leave for the Bay of Plenty. Thierry had been training a small group of Maori in Tahiti to act as a kind of bodyguard for him.

26 The original document is held at National Archives, Wellington. A Facsimile was printed in 1877: Facsimiles of the Declaration of Independence and the Treaty of Waitangi, Wellington, 1877.

27 Glenelg to Bourke, 25 May 1836, CO 209/1, 268-70, A memo on the correspondence which encloses the Declaration simply asks for it to be acknowledged. CO 209/1, 264-6.
was given apparently without much thought for the legal consequences, for the official acknowledgement of a Maori independence, as vested in a defined body, was a far more explicit step than the granting of a national flag. If Britain chose to intervene more formally in New Zealand, for instance, the recognised independent status of the country would either have to be qualified or nullified. On the other hand, the Colonial Office may well have agreed with Busby's reasoning that rather than compromising Britain's position, the 1835 moves gave Britain a prior advantage in the country, 'that the establishment of the independence of the country under the protection of the British Government would be the most effectual mode of making the country a dependency of the British Empire in everything but the name'. With the backing of a military force, Britain could orchestrate Maori government and law-making, according to Busby's thinking. On this foundation a British Protectorate would evolve.28

Across the Tasman, Bourke and his council commended Busby for his initiative in using the Thierry threat to create an 'approach' to a regular form of government; the action was exactly what Bourke had suggested originally to Busby.29 But Busby was reprimanded for one aspect of his dealings: the antagonism that he had shown towards his newly-appointed deputy, Thomas McDonnell. The governor, like later historians, was probably correct in suspecting that the 1835 Declaration was in part a move by which Busby could keep McDonnell under his thumb.30

28 Busby to Col.Sec., New South Wales, 31 October 1835, Busby Dispatches, qMS, ATL.
29 See above, p.60.
Busby had suspended a prohibition law introduced in the Hokianga by McDonnell on his own initiative; he reasoned that the legislation was invalid since only the chiefs 'in their collective capacity' could enact such a law, as the Declaration had made clear. Though this promotion of Maori authority was partly aimed at asserting Busby's mana, subsequent problems of enforcing McDonnell's law proved that Busby did have a point; without the collective support of all chiefs such laws were not only invalid but inoperable, especially when Europeans refused to co-operate. 31 There were also jealous divisions between northern hapu which the localised Hokianga law might have inflamed. 32 Busby's aim was not 'divide and rule' but indirect rule through the unified Maori body. Privately he enthused about the 1835 moves - the Declaration was the 'Magna Charta of New Zealand', 33 - a comment that seems to belie the argument that the move was essentially anti-McDonnell. Like Thierry, McDonnell threatened to disrupt Busby's designs for New Zealand; thus the two birds could be killed with the one stone - a Maori confederation that declared its independence and exerted authority; while Britain's position might be improved at the same time.

Since Thierry did not arrive in New Zealand until late October 1837, concern about him ebbed quickly. With little incentive to co-operate, the ever-present inter-hapu and inter-tribal tensions took precedence. In January 1836 fighting broke out amongst Maori at the Bay; elsewhere there was renewed tribal conflict. Hence Busby abandoned his original

32 Ramsden, pp.89, 90, 101, speaks of pro-missionary and anti-missionary factions in the Bay and Hokianga; see also Busby to Col.Sec., New South Wales, 26 January 1836, Busby Dispatches, qMS, ATL.
33 Ramsden, pp.95-96.
plan of seeking a country-wide adherence of chiefs, such as Hobson later attempted with the treaty; the winter of 1836 made travel difficult anyway and no permission had been received from Bourke. By the time Glenelg's acceptance of the Declaration arrived, the north was disturbed by another of the intermittent flare-ups of tribal warfare and Busby thought it untimely to call a meeting of chiefs. The Confederation's weakness would immediately be demonstrated; chiefs who were well-disposed would not attend for fear of fighting, and those who did attend would possibly resort to force if discussion did not resolve business to their liking. Hence Busby proposed an alternative of sending the 'King's message' to each of the chiefs by circular letter, to which Bourke agreed. While it was a far more effective way of spreading knowledge about the Confederation and its official acceptance, it took Busby no closer to putting the real Confederation proposal into operation. Timber set aside for a parliament house lay unused.

Yet the Confederation was not completely abandoned. Busby continued to collect signatures right up to July 1839 when the total number of signatories stood at fifty-two. Most of the adherents to the Declaration were chiefs from north of the Thames with the Ngapuhi most fully represented, but Te Hapuku from Hawkes Bay appeared on the list and

34 ibid., p.114.
35 ibid., p.166; Busby, 'Occupation ...', p.8; Busby to Col.Sec., New South Wales, 22 March 1837, Busby Dispatches, qMS, ATL.
36 Ramsden, p.97.
Te Wherewhero, the major Waikato chief, also. Moreover, the Declaration was twice printed, presumably to encourage its circulation, and there is some evidence that a 'constitution' was drawn up. Why then was there no further Busby initiative? Very likely for the same reason that Maori interest lapsed; the real threat had passed. The confederation of tribes had been engineered in the first instance to preclude foreign intervention, specifically that of Thierry. In that sense it was no different from similar tactics being used with certain indigenous

37 Hawkins, p.8, notes that Thomas Bateman (of the Bay of Islands), who had established a whaling station on the Hawkes Bay coast in 1837, was experiencing difficulties there with a chief 'Wapuka' or 'A Bauka', NA, Brit. Res. papers 1/2 indicate that the chief may have been Hapuku, and that he was possibly a visitor to the Bay in 1838. On the Declaration, his sign is dated 25 September 1838. 'Te Werewero' of Ngati Mahuta was added by Kahawai, the scribe, dated 22 July 1839, which suggests that this chief may also have visited the Bay at this later date. It seems more likely, however, that Kahawai appended the name without Te Wherewhero's consent. Since Te Wherewhero refused altogether to sign the Treaty of Waitangi less than 12 months later, the origin of the tradition that the chief did sign the Treaty and then asked to have his adherence nullified may arise from confusion relating to the two documents. The facts appear to relate to the Declaration, but tradition has ascribed them to the Treaty. For other late Declaration signatories, see Facsimiles and below, p.

38 Williams, Bibliography, no.21 and 21a. Colenso's 'Day Book', AML, records that 100 copies of No.21 were printed on 26 April 1837, to the order of the British Resident. Both printings are held by Auckland Public Library. (The 1877 Facsimiles have been reprinted several times; see fn. above.) No. 21 varies from 21a only in certain spelling alterations. There are discrepancies, however, between the original list of signatories and the printings which remain unexplained; e.g. Waikato, Hone Heke and Te Peha signed the original copy, evidently before the first printing, but do not appear on the printed copies. Ramsden, pp.142ff. discusses Waikato's role in the northern factionalism that developed after the Declaration. From January 1836, when he was involved in fighting at Waitangi, Waikato adopted an anti-missionary stance. He was also associated with Papahuruhia, the 'adjustment cult'. In the circumstances, it is likely that Colenso withdrew Waikato's name, or Waikato asked for it to be withdrawn.

39 Thomson, I, p.277, notes that a 'constitution' was held in the Native Secretary's office in 1857, but National Archives can find no trace of it. Thomson may have been referring to the Declaration itself.
peoples in the Pacific. Thierry had been cleared as harmless even before his arrival; but there remained the substantial increase in French and United States activity in New Zealand waters which Busby was wary of. He sustained sufficient interest, therefore, to add new chiefs to his list, possibly hoping that this might inhibit the intrusion 'on a legitimate basis' of any political power other than Britain. Uncertain of New Zealand's future in relation to British policy, he was not prepared to rush ahead with the scheme of persuading a large body of chiefs to work in concert; it was enough to have a small committee of Bay chiefs, representative of the Confederation, meeting on the odd occasion. This and the gradual collection of signatures would keep the Confederation idea alive. But given time and clearer policy directives, there was still a chance that something akin to a Maori government could be created.

In the course of time, the Maori people used the British recognition of their independence in 1835 as a basis for claiming autonomy or a separate identity within a European-dominated New Zealand. A closer look at the Maori view of the 1835 events indicates some of the reasons for this. First, it is clear that the chiefs believed what Busby wanted them to believe, that there was a French threat from which they could save themselves and their land by uniting in the Confederation. To stimulate this response, Busby presented an exaggerated picture of the Frenchman. Having told the Maori that Thierry desired to be 'King of the Maori people', he

40 J. Ward, Ch.8, e.g., notes Tahiti and Hawaii.
41 cit. Ramsden, pp.90-91.
42 Busby to Col.Sec., New South Wales, 3 July 1837, Busby Dispatches, qMS, ATL. A committee of chiefs, elected by the Confederation, is noted by Busby in 1837. They were Heke, Wharerahi, Te Kemara, and possibly Pamuka and Marupo also.
asked, 'Shall the land be handed over to him, and all you be slaves, or not?' This was irresponsible scare-mongering, raising spectres to create Maori anxieties. Busby had already dealt with such Maori fears in regard to British motives and Hobson would later do likewise. But in Thierry's absence such suggestions could effectively work upon Maori apprehensions. That a Frenchman was involved was sufficient alone to rouse Maori opposition; had he been a national of a different country, Maori opinion may not have been so united. For the same reason, it was possible to make a single appeal to the predominantly British non-Maori group in the north to lend their weight to influencing Maori to accede to the Declaration. Even the alienated McDonnell was prepared to co-operate with Busby to secure Hokianga signatures. And most importantly, missionary attitudes, both C.M.S. and W.M.S., reinforced Busby's moves, for both groups were genuinely suspicious of French plans and antagonistic towards French Catholic inroads into mission fields in the Pacific. In Thierry's case, the C.M.S. also had a personal interest in opposing him. They were embarrassed by his pretensions to land which he claimed to have purchased with the assistance of one of their own members, Kendall, who had subsequently fallen from grace on a moral offence. Such cohesion of British attitudes against Thierry was undoubtedly a decisive factor in persuading chiefs to consolidate against the presumed external threat - even if only temporarily.

43 cit. Ramsden, p.95; the letter of invitation which used this language is enclosed at pp.291-2 of Busby's 'Occupation ...' (Maori and English).

44 Busby to Col.Sec., New South Wales, 17 May 1833, Busby Dispatches, qMS, ATL, wrote that some Maori suggested that his appointment was preparatory to Maori enslavement; that the British government would pay the missionaries for those Maori brought into European contact and that warships would take Maori away as slaves.

45 Ramsden, p.91; McDonnell to Busby, 24 October 1835, NA, Brit.Res. 1/1, 37.
Yet aside from the vested European interests committed to producing a show of Maori unity and independence, it is very likely that chiefs were shrewd enough to see for themselves the possible advantages to be gained by forming some sort of alliance or front. Indigenous societies in Tahiti, Hawaii, Tonga and Samoa, for example, were similarly adjusting to accommodate challenges accompanying European intrusion. Laws were being developed to regulate port and harbour dues in various Pacific ports and were a matter for discussion in New Zealand too. Maori appreciation of the need to look to their interests had already been demonstrated in the 1831 petition which had set some sort of precedent for acting as a body. Indeed most of the 1831 signatories committed themselves to the 1835 document also.\(^46\) What was remarkable about the Declaration of Independence, however, was that Busby secured the accession of all the major northern chiefs, including Pomare and Kawiti, Panakareao of Rarawa, and Tirarau of Kaipara, whereas the 1831 petition had not been agreed to by such a representative group.\(^47\) Thus Christian and non-Christian

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\(^46\) Of the 1831 signatories, Hara and Ripe did not sign the 1835 document, unless under a different name. Te Morenga may have died in the interval. His death is mentioned by Busby in his correspondence: NA, Brit.Res., 1/2.

\(^47\) According to William Williams, the first group of Declaration signatories was fairly representative of the north, although the Hokianga chiefs signed later because in most instances invitations to the 28 October meeting had arrived too late and in some cases chiefs were absent from home. Busby to Col.Sec., New South Wales, 31 October 1835, Busby Dispatches, qMS, ATL. The Facsimiles show all the confederation adherents and the dates of signing whereas the two earlier printings of the confederation document naturally comprise signatures or moko (signs) up to the date of printing only. Signatures were appended by Hare Hongi, Kekeao, Te Peha, Hone Heke, Nene and Parore, though others may have used moko by choice: M. King, 'Some Maori Attitudes to Documents', in M. King, ed., The Mauri Ora, Wellington, 1978, p.14, notes the belief, held by some Maori, that even literate chiefs were inclined to use moko in preference to a signature because it increased the tapu of a document.
friend and enemy, were now brought together in one object. This was no small achievement in view of the continuity of tribal tensions that was long capable of causing deep rifts in Maori society. But did it indicate more than just a reaction to a French threat? Did it reveal a national Maori awareness, as Maori came to believe? In embryonic form, certainly a sense of Maori identity was evident, but this needs some clarification.

For more than twenty years there had been opportunities for Maori to see themselves as being different from other races. Comparisons had been made between Maori poverty and British wealth, for instance; between Maori prowess and Aborigine helplessness. A commonality of experience had increasingly drawn the Maori people together - trade, travel, Christianity, and finally, increasing problems of dealing with Europeans. Even the escalation of inter-tribal wars had been responsible to some extent for breaking down some of the traditional antagonism dividing tribes, for few tribes had remained isolated from the infusion of new blood through inter-marriage. While the word 'Maori' does not seem to have been commonly used to identify the people as a whole until the mid-nineteenth century, there was, nevertheless, a certain sense of 'Maoriness'

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48 See e.g. Cruise, p.24; also Marsden to Pratt, 24 February 1819, Elder, p.231, where he notes the comparisons drawn by Maori between the 'civilized' state of the British and the 'savage' state of the Maori. Nicholas, II, pp.222-4, observed that Maori 'expressed both pity and contempt' for the Aborigines on account of their 'wretched mode of living'. Apart from comparisons between the Maori and Aboriginal state, Maori saw other races during their travels and while serving on ships. There were also non-Europeans in New Zealand itself. Marion du Fresne and Furneaux both had negro slaves; in 1794 the Fanny was guarded by Sepoys while at Thames; and there are a number of early references to a Tahitian ('Jem') and a native of India, both settled amongst northern Maori. McNab, Tasman to Marsden, pp.59ff.; Polack, New Zealand, I, p.39; Nicholas, I, pp.92-96; Dieffenbach, I, p.37.
by 1835. This did not supplant tribal identity any more than the
growing use by Maori from the 1820s of 'Nui Tiri nei' supplanted the use
of Maori names for the three main islands of the country. Nonetheless,
just as a territorial concept called New Zealand was evolving
amongst the Maori, so too was there development of a specific Maori
identity that made indigenous New Zealanders aware that they were
different. This was certainly recognised by non-Maori, who record-
ed much Maori speculation about racial differences in the 1830s. This
awareness of a Maoriness was still a long way from the creation of a
nation state in the European sense, with its central polity from which
authority and power derived; but it was sufficient in 1835 and
thereafter to draw individual chiefs, who were often mutually

49 The indigenous people of New Zealand were usually referred to by
Europeans as New Zealanders, natives, savages or Indians. Maori,
however, used 'tangata maori' in reference to themselves, meaning
the native or local people as opposed to foreigners or tangata
ware, people of low birth. In 1827 d'Urville observed that Maori
called Europeans either Pakeha or Uropi (Europeans), and did not
use any special term to denote the English. H.W. Williams, A
Dictionary, p.208, states that the usage of 'Maori' in reference
to non-Europeans, began about 1850 and originated with the Maori
themselves. While the above evidence indicates that the latter
point may be true, the term 'Maori' can be found in use in the
1840s, e.g. the government Maori Gazette was known as the Maori
Messenger (Te Karere Maori), and from that time there is an occa-
sional press use of the word. Polack, Manners, II, pp.79, 123;
Wright, pp.102-3, 108; 124, 244, n.7; H.M. Wright, New Zealand,
1769-1840; Early Years of Western Contact, Cambridge (Mass.),
1959, p.116 and fn.1 for use of term. The earliest use found by
this researcher is Johnson Journal, 28 April 1840, APL, where W.
Puckey's translation of a speech by Kupa uses 'Mauris' to which
Johnson adds '(Natives)'.

50 McNab, Tasman to Marsden, p.53, notes that an old Maori told Cook
that New Zealand consisted of three main islands. See Wright, pp.107,
124. In 1827 d'Urville recites Maori reference to individual place
names, but he also discusses the term 'New Zealand' which was in use
at Tolaga Bay: 'only instead of Noui Tirenui as the natives call it
in the Bay of Islands, these say Noui Tirangui, which gives it a
still more characteristically native form to the word'. The term
Aotearoa, or the contraction, Aotea, however, is still commonly used
by Maori in reference to the country. (Matenga Baker, Otaki, 1981.)
antagonistic, into acts of union of a strictly limited sort. This fact would be enough to encourage future Maori generations to believe that the north in 1835 had demonstrated an ability to combine. It would also form the foundation of the belief that a Maori sovereignty had been fully recognised by Britain.

The Declaration document itself has also had an important construction put upon it in a Maori view of early history because it specified the independence or sovereignty of the country. It is certainly true that official acknowledgement of the document in English confirmed New Zealand's independence, at least as far as the territory of the Confederation chiefs was concerned. The sovereign power and authority ('kingitanga' and 'mana') of such lands were credited to the chiefs who had the sole right of government ('kawanatanga'). But in the Maori language, the Declaration asserted more than just a Maori independence; it proclaimed the sovereignty of the country, the chieftainship or 'rangatiratanga'. In as much as Maori sovereignty resided in the individual chiefs, the document thus recognised a distinctively Maori type of sovereignty; Britain was confirming the status quo. And if chiefs looked for further reassurance that their power was affirmed, they no doubt found it in the contemporary Christian use of rangatiratanga which referred to a kingdom in both the temporal and the spiritual sense. Moreover, the King was appealed to in the personal sense as a loving parent assists offspring in childhood, with the expectation that the child would reach maturity and retain its identity.

51 For fuller discussion, see below pp.145-8.
It is clear from the above comparison of British and Maori understandings of the 1835 events that they were perceived quite differently by those involved. It was impossible for the Maori chiefs to discern the ambiguity of official attitudes though they were rightly suspicious. On the face of it, the 1835 document seemed to offer much and ask for little. But it was a different matter for Busby and Bourke for whom it served two purposes: first, the appeal to the Crown partially ensured Britain's preferential place in New Zealand against foreign challenge; and second, a basis was established for a gradual improvement in Maori government which, if successful, would defer the need for outright intervention. 52 Behind a façade of Maori government, the Crown would exercise real control - a situation not unlike the indirect British rule of Malaya some forty years later.

The Colonial Office did not quibble over the Confederation. It was expedient to recognise an independent New Zealand in 1835, even if it involved corresponding legal complications. But in contemporary practice of international affairs, the independence of Maori New Zealand was strictly limited. To be accepted as a member of the international family of nations certain essentials were expected which were not evident in New Zealand's case. The territory, for instance, had no recognisable central political entity. Authority and power, the attributes of sovereignty, were acknowledged at tribal level only, although effective leadership was not always obvious to the European observer even then.

Europeans also expected that a sovereign state should display a degree of 'civilisation' of a European kind. In this respect, the Maori people could not be considered part of the 'civilised' world, because the

52 J. Ward, pp.72-73, 132, discusses the function of official recognition and cultivation of native sovereignty in order to further British foreign and colonial policy.
adoption of Western notions of civilisation and Christianity was still not widespread. Yet because some 'advance' had been made by the Maori since Cook's time, the state of New Zealand was not seen in the 1830s as 'savage', as it had once been, but as 'half-civilised'. Humanitarians hoped for further signs of change in the Maori, given the right opportunities which included contact with respectable British settlers. Some of these ideas on the development of indigenous peoples reflected the thinking of European jurists, like Emerich Vattel, who argued that the rights of any people to territorial occupancy were related to the expenditure of labour on the soil. By this standard, the Maori, a race of cultivators as opposed to mere wandering herdsmen, qualified as being more civilised than almost any other native race. They were also thought to have a claim to territorial sovereignty or land ownership that was superior to most other indigenous people. Yet this still did not qualify them for the exercise of full rights as an independent sovereign nation state. It was an anomalous situation for New Zealand Maori.

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53 Emerich de Vattel, The Law of Nations ..., Washington, 1916 (trans. of 1758 edition by Charles G. Fenwick); P.D. Curtin, ed., Imperialism, New York, 1971, p. 42, notes: 'Emer de Vattel (1714-67) was perhaps the most widely read of all eighteenth-century authorities on international law. He was not a lawyer by training, but a free-ranging philosophe of the Enlightenment. Though he was born and educated in what is now Switzerland, he was a subject of Prussia, and served for a time as Privy Councilor to the King of Saxony. In spite of the royal connection, his political views were close to those that were to emerge in the American and French revolutions. This fact may account for his later influence in the United States.' Curtin points out that Vattel's chapter on the occupation of territory is 'chiefly interesting in contrast to the natural-rights philosophy which pervades the work as a whole, since it denies the right of sovereignty to "wandering tribes" of hunters and gatherers'.
British visitors to New Zealand in the years following the 1835 Declaration of Independence were pessimistic about the immediate chances of a central Maori government working. Their assessment may have been correct. New Zealand lacked an indigenous political foundation on which to build such a structure. By the 1830s no religious-political organisation comparable to the sultanate river states of the Malay peninsula had emerged in New Zealand. Nor did the geography of the country lend itself to the growth of strong centralised authority in any given area such as developed within the contained limits of some islands of the Pacific in the first half of the nineteenth-century. In New Zealand, experiments such as the Confederation, to have any chance of success, needed time for Maori to appreciate that their interests could best be served by sustaining some kind of union. The Maori people were not to be given this. From 1836 on, events were to lead Britain into agreeing to the demise of Maori independence. Pressures in New Zealand and London combined to achieve this.

Early in 1837, a serious outbreak of tribal fighting began in the Bay of Islands. The leading opponents were Titore and Pomare; it was a struggle for territorial dominance although there were other immediate take (causes). (Pomare had ceded Kororareka to Titore after the 1830 'Girls war'.) Fighting involved local European transients who were willing enough to get enticed into the fracas, but the more law-abiding saw reason for an appeal to the Crown. A petition, promoted by the C.M.S.,

54 e.g., FitzRoy, Narrative, II, p.590; [Darwin], III, pp.501-2; W.R. Wade, A Journey in the Northern Island of New Zealand, Hobart, 1842, pp.83-86.

55 Brown Journal, I, 24, 29 March and various entries in April and May of 1837, AUL; Ramsden, pp.167ff; Carleton, I, pp.200ff.
with W.M.S. support, sought vaguely for 'that relief which may appear most expedient to your Majesty'. Over two hundred British nationals signed the document. It referred to the 'threatened usurpation of power' in New Zealand by Thierry, but this was merely a calculated bid to secure the maximum European support. The Frenchman was no problem; nor was the tribal warfare a danger to those not implicated; the real heart of the matter was that Europeans wanted more than the half-hearted official commitment represented by Busby. The petitioners asserted that no protection could be expected from the Confederation, even the chiefs admitting that any immediate law-making was 'impracticable'; redress in the near future was not expected, for 'considerable time must elapse before the chiefs of this land can be capable of exercising the duties of an independent government'.

The missionaries had a vested interest in sponsoring this appeal. To hold the advances they had made amongst the Maori people, and to ensure their mission future, they were convinced that further government action was essential. Apart from the disorder of Maori conflict virtually on their doorstep, a bitter judgement on their long-term efforts to engineer a new Maori society, the increased European presence in the north was disturbing. The influence and activity of larger numbers of unruly settlers and transients made the missionaries apprehensive for the steadfastness of their converts and fearful of the detrimental influence on non-

56 Bourke to Glenelg, 20 April 1837, encl. petition, CO 209/2, 318-24. The petition was printed in Polack, New Zealand, II, pp.431-7. Busby wrote that he had wanted the Maori to appeal also but the missionaries had not supported the idea: Busby to Bourke, 16 June 1837, GBPP, 1840, [238].

57 It is difficult to be persuaded that the petitioners had any real fear of Thierry by this date. In December 1835, FitzRoy had brought news to the Bay direct from Tahiti where he had assessed Thierry as an imposter. By 1837, Thierry's 'legions' - a motley group of supporters - had dwindled and were unlikely to present a serious threat to northern New Zealand. There is always a possibility, of course, that the missionaries were still anxious; e.g. Marsden warned Charles Baker of Thierry's impending arrival in August 1837. Marsden to Baker, 6 August 1837, Marsden Family Papers 453, f.3, ATL.
Christian Maori. Another unsettling aspect was the continuance of the 'adjustment cult' of Papahuruhia which had first made its appearance in the early thirties. There was also uncertainty in 1837 about how a re-alignment of Maori power might affect British interests following the death of Titore, long-time friend of the British. Northern missionaries had much cause to be uneasy. To the south, there were disappointing signs too; the first flush of conversion had been cooled by inter-tribal fighting in the Bay of Plenty and Rotorua districts and in August 1836 the C.M.S. station at Matamata was forced to close.

No one was more aware of the absence of effective government than Busby himself. He followed up a lengthy review of the dilemma in January 1836 with further letters in February and May when he sought leave to put a case personally before the Colonial Office, but Bourke deterred him. As the 1837 fighting boiled up at the Bay, Busby requested a 'ship of war' or an armed force so that British subjects could receive protection. In this instance, Bourke dispatched H.M.S. Rattlesnake under the command of William Hobson, but Bay of Islands Maori declined Hobson's offers of mediation and the affair was finally settled without British involvement.

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58 See e.g. J. Coleman, *A Memoir of the Rev. Richard Davis*, London, 1865, pp.202ff. Although there is no specific mention of Papahuruhia in Coleman, Davis may well have been concerned about the cult which was particularly active 1835 onwards. Busby to Col.Sec., New South Wales, 28 March 1837, Busby Dispatches, qMS, ATL, notes that Papahuruhia had been active for about two years prior to this, and involved Kaitoke and Waikato, both Hikutu. See J. Binney, 'Papahuruhia: some thoughts on interpretation', *Journal of the Polynesian Society*, LXXV, 3 (1966), pp.321-31.

59 Busby to Bourke, 16 June 1837, GBPP, 1840,[238], notes the uncertainty at Titore's death; see also Coleman, p.202; Adams, p.82.

60 Busby to Col.Sec., New South Wales, 26 January, 20 February, 18 May 1836, Busby Dispatches, qMS, ATL.

61 Busby to Col.Sec., New South Wales, 25, 30 January, 28 March 1837, Busby Dispatches, qMS, ATL; Hobson to Bourke, 8 August 1837, GBPP, 1840,[238].
Hobson's visit was not without result however. From May to July 1837, he gleaned information on the New Zealand situation which he presented in a report requested by Bourke.\(^{62}\) Hobson suggested that 'factories' could be set up in New Zealand along the lines of the early British trading factories in India. Initially, two or three sites - the Bay of Islands, Hokianga or Cloudy Bay - could be purchased and placed under British jurisdiction. A treaty with the chiefs would confirm this. Legislative and judicial needs would be met by Act of Parliament and administrative costs by port and customs duties, supplemented by a registration fee for all British subjects. A factory head would be accredited to the united chiefs as political agent and consul. Hobson reasoned that his plan had several advantages: it was unlikely to arouse Maori or foreign power jealousy, it would restrain frontier lawlessness (prisons were allowed for), provide a 'safe retreat' for Europeans in times of Maori war, and hopefully be the means of introducing civil government to the country at large.

Bourke recommended this plan to the Colonial Office.\(^{63}\) Apart from absolute non-interference in New Zealand affairs which he thought quite unfeasible for Britain, the governor appraised the scheme in much the same way as Hobson; it fitted the need for something to be done but with minimal cost and intrusion. With an eye on English humanitarian sensitivity and on the possible reaction of other nations, he ventured no criticisms, although the scheme was quite unsuited to the dispersed

\(^{62}\) Ramsden, pp.169-70; Hobson to Bourke, 8 August 1837, CO 209/2, 30-37; and cf. Hobson to Liz, 25 August 1837, Hobson MS Papers 46, ATL. Hobson visited the Bay of Islands; Puriri, Whakatiwai, and Waiheke in the Hauraki Gulf; and Cloudy Bay. Weather thwarted his plans to call at Kapiti and Mana Island.

\(^{63}\) Bourke to Glenelg, 9 September 1837, CO 209/2, 24-28.
European settlement and commercial activity in New Zealand. Even the term 'factory' had unfortunate Australian associations with the female penal 'factory' at Paramatta.

Another report on New Zealand was also sent to the Colonial Office; Bourke had requested it from Busby. The Resident had long since dismissed a factory-type plan as irrelevant to the need. His proposal was a British protectorate with the Crown administering affairs in trust for all inhabitants, a relationship for which precedents existed in the Ionian Islands and in states bordering on Britain's Indian possessions. Chiefs would assist in this scheme during a period of tutelage, with the protectorate gradually being extended over the entire country. The greater part of the report went on to describe in considerable detail the 'miserable condition' of the Maori people. Emphasis was placed on the high Maori mortality rate which promised 'at no very distant period, to leave the country destitute of a single aboriginal inhabitant'. While Busby admitted that there were various contributing factors such as infanticide, disease and war, he placed a share of the blame on European impact in general, for even amongst mission Maori there was population decline. Hence, he concluded, the Maori had 'some claim of justice upon the protection of the British Government', and a claim that certainly could not be overlooked in view of the 'present humane policy' towards native peoples of British colonies. Essentially this was an appeal calculated to draw a humanitarian response, although Busby did not overlook

64 Busby to Bourke, 16 June 1837, GBPP, 1840,[238].

65 Busby, 'Memoir ...', CO 209/1, 197-9. There had been talk of establishing trading factories in New Zealand from the 1820s. R.M. McNab, ed., Historical Records of New Zealand, Wellington, 1908-14, I, p.407.
the problems of providing government for Europeans already established in New Zealand for whom a charter of government might be sufficient.

The missionary-inspired petition of 1837, Hobson's report and Busby's dispatch arrived at the Colonial Office in late 1837 and early 1838. Taken together, they painted a dismal picture of a deteriorating situation on a remote imperial frontier. For some time Colonial Office officials had been aware that some change would be necessary in British policy towards New Zealand, but there were other imperial priorities. Moreover, by the time the dispatches arrived, the crises that had sparked off such gloomy reports had passed by. The Colonial Office was unlikely to make any precipitate change of policy unless another crisis developed. But a crisis did occur, and this time in the metropolis itself; plans were being formulated in 1837 for the private colonisation of New Zealand. The three communications on New Zealand thus coincided with, and in themselves contributed to a quickening interest in the country. Information on New Zealand now assumed new significance in official decision-making as groups interested in the colonisation of the country lobbied for official attention.

Proposals or schemes to colonise New Zealand with British subjects were by no means a new thing. Before 1820 there had been talk of launching settlement from New South Wales; in the 1820s an early New Zealand Company scheme had been abandoned; and in the early thirties there was renewed interest. But more ambitious plans began to evolve under the

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66 See J. Ward, Ch.10, for changes in policy after 1837. The three official documents were the central matter for commentary by the following publications: S. Hinds, The Latest Official Documents relating to New Zealand, London, 1838; J. Beecham, Remarks upon the latest official documents relating to New Zealand, London, 1838; W. White, Important Information relative to New Zealand, Sydney, 1839.

auspices of the New Zealand Association which held its inaugural meeting in May 1837. Shunning the practice of haphazard settlement of British subjects on imperial borders, the Association aimed to establish a New Zealand colony on the systematic principles of Edward Gibbon Wakefield, whose organisational and inspirational talents were backing the venture. Parliamentary approval was sought as a first step to making an agreement with the Maori. To this end, a Bill was drawn up and submitted for perusal in various official quarters.

At the Colonial Office, the scheme received a cool reception. Glenelg found fault with the business details: the proposal lacked the built-in security that was needed for a venture in which individuals were assuming what was 'in effect a public trust'. He was also unsympathetic because of a reluctance to admit that colonisation in any form at all was desirable for New Zealand. As an evangelical humanitarian who had at one time been vice-president of the C.M.S., he considered that an injustice would be done the Maori if any rights in New Zealand were granted by the British government before Maori consent was obtained. Moreover, he was not convinced that colonisation was an answer to New Zealand's frontier problems. These had confronted him when he had first taken office in 1835. It was likely at that time that Busby would be removed, for the Resident appointment was not meeting the demands of the situation, but Glenelg was still procrastinating when the scheme to colonise New Zealand was put forward.

68 Adams, pp.94ff., discusses the Association's dealings with the Colonial Office; for other comment on the Association (later the Company), see J. Miller, Early Victorian New Zealand, London, 1958, Ch.1; M. Turnbull, The New Zealand Bubble, Wellington, 1959.

The New Zealand Association's plan had barely been mooted when the C.M.S. in London, under its lay secretary, Dandeson Coates, launched an attack on it. Coates argued that colonisation was always inimical to native rights and welfare, and cited the reports from many areas of missionary activity to prove it. James Beecham of the W.M.S. London was equally pessimistic. Both men thought that it would be sufficient to give Busby enough support to further his plans for advancing Maori government and sustaining the country's independence; perhaps a consul with magisterial powers might suffice. In the latter half of 1837 Coates spear-headed a sustained C.M.S. opposition to the Association through pamphlets, lobbying in official circles and finally, by direct deputation to government. The moves paralleled and were a response to the Association's own campaign to promote its plans: a number of pamphlets and publications publicising the scheme for a colony in New Zealand appeared through 1837. A firm reply was expected from the government. In December, both the Association and the C.M.S. had deputations ready to wait on government. The W.M.S. was also in line to support the C.M.S. against the Association.  

Glenelg was being forced to make a decision. He would personally have preferred to see missionary work continue its task of civilising the Maori, possibly with a measure of increased government support. But the Melbourne government was under pressure to accede to the request of the

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70 Coates's evidence in GBPP, 1837-8, (680), pp.268-72. (Adams, pp.84, 91, comments on Coates being out of date on the New Zealand situation.) Beecham, Remarks; J. Beecham, Colonization; being Remarks on Colonization in general, with an Examination of the Proposals of the Association which has been formed for colonizing New Zealand, London, 1838. The latter is filed at CO 209/4, 209.

71 This and the following section have drawn on the conclusions of Adams, pp.94-102 and Ch.4, where this period is discussed in detail.
New Zealand Association which had influential government connections.  

Added weight was also given to the Association's case by a memorial from forty London ship-owners and merchants in the South Seas trade. Deliberately got up to influence the December decision-making, the petition requested British colonisation as a security against foreign intervention and for the establishment of law and order in New Zealand. Almost simultaneously, Glenelg received Busby's June 1837 report on northern New Zealand. Busby's emphasis on the rapidly expanding un-governed settler community and on the deteriorating Maori condition, even in areas of mission influence, undermined Glenelg's anti-colonisation, pro-missionary stance. Faced by awkward demands in London, the government weakened and offered the Association a Crown charter. It was a victory for the colonisers because official policy, previously anti-colonisation, now accepted British colonisation in principle. But the charter was seen as a compromise and was finally refused by the Association. After an unsuccessful bid in mid-1838 to obtain parliamentary provision, the Association lapsed into a period of quiescence.

The Colonial Office now had a breathing space in which to consider what to do about its commitment in New Zealand. When a House of Lords select committee was appointed in 1838 to examine the New Zealand case, Glenelg was encouraged to temporise. No longer hastened to action by any crisis or pressure, he reverted to his anti-colonisation position. In this, the 1838 committee report supported him by coming out against interference in New Zealand by private enterprise. His resolve was also

72 See Adams, pp.105-6.

73 Enderby to Glenelg, 18 December 1837, encl. the petition of merchants, etc. to Melbourne, 16 December 1837, CO 209/2, 444.

74 Report from the Select Committee of the House of Lords, GBPP, 1837-8, (580).
strengthened by the weighty report of a House of Commons select committee that had been hearing evidence since 1835 on the state of aborigines in British colonies. The report emphasised that the effect of European contact on indigenous people had been generally a calamity, but the remedy it proposed for New Zealand - that Busby be invested with consular powers and judicial authority, with the backing of periodic naval visits - was outdated by 1838 and of little help in official decision-making.

On the other hand, the Aborigines Report did serve some useful function in relation to New Zealand. For the first time, the extent of the European impact and its consequences for indigenous peoples was documented. The Report, an indictment of the British record in dealing with the problem, highlighted the need for government to exercise a greater degree of responsibility on expanding frontiers of empire. This endorsement of the humanitarian trusteeship principle was not without some influence on official thinking in the thirties and early forties. Moreover, the founding of the Aborigines Protection Society by several members of the committee, including its chairman, Thomas Fowell Buxton, set up a body whose primary purpose was to act as a permanent 'watch-dog' of aborigines' rights. Through the Society's head office, relevant information was to be continually collected, collated and published in the Society's periodical, the Aborigines' Friend, or in special publications.

75 Commons Committee on Aborigines (British Settlements), GBPP, 1836, (538); GBPP, 1837, (425); K. Sinclair, 'The Aborigines Protection Society and New Zealand - a Study in nineteenth-century opinion', unpub. M.A. Thesis, University of Auckland, 1946. The papers of the society were also consulted for this thesis at Rhodes House, Oxford. For sections of the Aborigines Report of particular interest to New Zealand, see GBPP, 1837 (425), pp.76-81, 85-6. New Zealand was dealt with as part of the 'South Sea Islands' when suggestions were made.

76 See Sinclair, 'The Aborigines Protection Society ...'.

77 The publication continued through the nineteenth century with some variation of title, though usually known as The Colonial Intelligence or Aborigines' Friend. Extracts from Society papers, proceedings and annual reports were sometimes published too. See bibliography in Sinclair, 'The Aborigines Protection Society ...'.
The Society kept a special brief on New Zealand developments, and one that by no means flagged when New Zealand became a Crown colony in 1840, but there was little but talk through 1838.

A factor in common to all parties who expressed an interest in New Zealand that year was the conviction that British influence or intrusion was necessary and desirable. Opinions only differed in regard to the extent of that intrusion and in relation to the role that the Maori people were to play. The issues resolved themselves into two main questions: whose interests were to come first? Maori or British? Or alternatively, since British colonisation seemed to be inevitable, could the interests of the two be reconciled?

Those groups or individuals whose interest in New Zealand centred primarily in the Maori people naturally favoured a British intervention in which the Crown would have an essentially trustee role. The London missionary bodies were the main proponents of this line of action. In New Zealand, the C.M.S. and W.M.S. missionaries also viewed further Crown intervention in the light of Maori needs, especially protection against Europeans. They differed from their London brethren, however, in recommending a more extensive British intervention. Whereas Coates and Beecham were still thinking in terms of a small step forward in building up the Resident position (with Beecham willing to concede one advantage of Hobson's plan, that it did not seem to favour increased colonisation), the New Zealand missionaries favoured something akin to Busby's comprehensive protectorate plan which would respect Maori independence, incorporate Maori chiefs into government in some way, yet provide the authority of an English governor and the protection of a military force. While there were some individual differences of opinion, the missionaries were virtually unanimous in their opposition to organised colonisation
and, in particular, to the New Zealand Association's plans which first became known in New Zealand in 1838.78 It was not that they opposed all British settlement for they believed that the Maori would benefit by contact with respectable Europeans. It was more that they felt that the main hope for the Maori lay in government controlling the already existing irregular English settlement and restraining a settler influx that might be overwhelming. Organised schemes to expand settlement rapidly were understandably anathema.

On the other hand, those connected with the colonisation companies in England were vitally concerned with projected colonial development for British subjects, and the part the government would play in it. They could not ignore Maori rights totally, for they needed the goodwill of the British government which had recognised an independent Maori New Zealand, both in principle and in practice. It was also unwise publicity to call forth the wrath of the humanitarian lobby against planned colonisation. Missionary opposition in New Zealand could well encourage the Maori people to block settlement.79 Some degree of accommodation of Maori rights was, therefore, absolutely necessary.80 Even without these pressures, Wakefield and other prospective colonisers would probably have

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78 Adams, pp.84-86, outlines the individual missionary opinions.

79 See, e.g., W. White, Colonization of New Zealand, London, 1838, where White writes to E.G. Wakefield attacking his methods and threatening to make difficulties with the Maori so that Wakefield would not be able to get a footing in New Zealand. White actually left his mission position in disgrace, but Wakefield may indeed have feared mission influence generally.

80 e.g., Torrens to Glenelg, 6 November 1839, CO 209/4, 297: a plan for the government of New Zealand which pledged a willingness to negotiate with the Confederation and to recognise that the sovereignty of New Zealand rested with that body. The plan incorporated a provisional council of government of the United Tribes with the British Resident as 'President'. Another plan incorporating Maori was proposed in New Zealand by Thierry. Lange, pp.40-41.
made some concession to contemporary thinking on indigenous races, admitting their rights in varying degrees. But whether native rights were acknowledged through political expediency or moral conviction, the colonising groups retained a first commitment to British settler interests. For this reason alone, even if colonisation schemes incorporated Maori as participants in a new colonial society (which Wakefield did under Aborigines Protection Society pressure) their motives were suspect. 81 Individuals involved in colonisation in any way were in much the same position in regard to Maori rights as the planned colonisers. As long as colonial development with British expertise was the objective, there would naturally be a disposition to prefer settler welfare against Maori rights. If British government intervention in New Zealand were necessary, then colonists expected their interests to be the government's primary concern.

Between the two poles of anti-colonisation and pro-colonisation supporters stood groups such as the Aborigines Protection Society which was developing theories of reconciling what had previously proved to be irreconcilable - settler and native rights. 82 With ample proof before them of previous failure, and indeed ongoing failure in various parts of the empire, the Society nevertheless hoped that, on the basis of that

81 Miller, pp.8-9; [E.G. Wakefield and J. Ward], The British Colonization of New Zealand ..., London, 1837 [appendix by M. Hawtrey]; letter of the Rev. M. Hawtrey to Lord John Russell, December 1840, in Extracts from the papers and proceedings of the Aborigines Protection Society, February 1841, II, no.2, pp.49-57; and Beecham, Colonization, where he pointed out that the philanthropic part of the Association's early plans was not to be carried out by themselves, nor were Association funds to be used. Philanthropy was to be left to the well-disposed of England.

82 e.g., S. Motte, Outline of a System of Legislation for Securing Protection to the Aboriginal Inhabitants of all Countries Colonized by Great Britain, London, 1840. The scheme was originally drawn up by Saxe Bannister (at one time Attorney-General, New South Wales), two or three years earlier. It appears in CO 209/8, 426-37.
experience, coherent new policies could be carefully worked out and implemented under the Society's watchful guardianship. In most areas of empire, patterns of racial interaction were considered to be so far established to the detriment of the indigenous people that only remedial action was possible. But if British settlement went ahead in New Zealand, there was a chance for a new start. The British record of destructive colonisation might yet be redeemed by establishing a New Zealand colony where the Maori would ultimately be full participants and one people with the Europeans. Nowhere was there a native race, according to the Society, more deserving of better treatment or more capable of complete amalgamation than the Maori, although some influential Society members were not so optimistic about settler attitudes to indigenous races.\(^\text{83}\)

By the end of 1838, the British government also took its official stand somewhere in the middle ground between protection of settler and Maori interests, although the drift of events within a year would carry it towards the establishment of a settler colony in New Zealand. The critical change had occurred in December 1837 when Glenelg had admitted the possibility of official acceptance of private colonisation. The way was opened for a subtle erosion of the recognition of Maori sovereign rights; and with it, the possibility that British interests might be preferred at the expense of the Maori. This was not at first apparent because Glenelg's humanitarian convictions, his procrastination and the distraction of other business\(^\text{84}\) carried the Colonial Office through 1838

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\(^{83}\) e.g., Extracts ... Aborigines Protection Society, London, May 1839, no. 1, Article 6: Hodgkin to Hawes, 27 November 1837. Hodgkin had the Canadian experience of amalgamation to draw upon. The Indians had not fared well.

\(^{84}\) Adams, pp. 130, 134-5, lists imperial problem areas - Malta, the Ionian Islands, Gibraltar, the Cape, Ceylon, India and the Australian Colonies; and also notes foreign policy 'pre-occupation' in 1839 with France in the Middle East and Persian Gulf.
without any decision being made. During 1838, however, there was a marked shift in British attitudes towards New Zealand.

It is not easy to trace precisely a pattern of changing public attitudes. Perhaps it could best be summed up as simply a fatalistic or defeatist acceptance of the inevitable - that the tide of British colonisation could not be held back from New Zealand forever, that the Maori world was changing and that the initiative in New Zealand should pass by right to the British. To some extent this was the cumulative result of reports on New Zealand. By 1838, Busby, Bourke, Hobson, missionaries and settlers in New Zealand, had all conveyed their impression that the Maori people were not coping, either with the changes in their own society or with European intrusion. Spokesmen for both the London missionary bodies and the New Zealand Association publicised this fact. It was further confirmed and given extensive coverage in the 1837 Aborigines Report and the 1838 Lords' Report on New Zealand. From this belittlement of Maori capacity to exercise control over New Zealand affairs, it was an easy progression to the conclusion that an unencumbered Maori sovereignty was no longer worth holding on to, particularly when the additional factors of a well-attested Maori population decline and potential foreign threats were added to the case.

Maori themselves innocently contributed to the sense of the inevitable by giving the impression to Europeans that they were careless of their sovereign rights. Periodically a Maori would be quoted as expressing a desire for British law and government. The comment of the individual Maori was thus interpreted in England as an indication that the people generally would welcome the benefits of British sovereignty in exchange for the shortcomings of Maori independence. Even in the matter of land, which Europeans knew was jealously guarded, events seemed to be
pointing to a Maori surrender of the kind that writers likened to the
experience that had occurred with indigenous peoples in areas such as
America. Maori, for instance, were inexplicably acquiescing in the
wishes of speculative land dealers from New South Wales who began to
operate in New Zealand in the last year or so before 1840. If evidence
were needed to justify a British intrusion on Maori independence, this,
above all, seemed to confirm the necessity of the move.

According to Adams, the Colonial Office was not unduly influenced
by the publicity and lobbying of groups interested in New Zealand.\(^{85}\)
Yet it was also not ignorant of current thinking on the situation. In
December 1838, Glenelg took the first step of seeking the appointment of
a consul to New Zealand. He had in mind Hobson’s 1837 Report which he
hoped would meet ‘existing circumstances’.\(^{86}\) The consul would negotiate
for certain districts before establishing a Crown colony under a governor.
Glenelg could see that this might compromise Maori independence somewhat,
though essentially it would be left intact. Humanitarian wrath would
not be aroused; the government would not be over-committ; but frontier
problems might be improved as a result. In February 1839 Hobson accepted
the post of consul.\(^{87}\) The progressive whittling away of the independent
and sovereign status of New Zealand now became evident in the decisions
and events that followed.

\(^{85}\) ibid., pp.89-91, 101-2.

\(^{86}\) ibid., p.131, and see pp.126-8 for these decisions.

\(^{87}\) Hobson was offered the position since he had first-hand experience
of New Zealand and also enjoyed the patronage of Lord Auckland.
Although Glenelg's proposal was essentially the 1837 'factory'-type plan of Hobson, when Hobson himself was asked to give his opinion to the Colonial Office in early 1839, he expressed doubts about his earlier proposal. He asserted that his suggestion had been made on the understanding that the British government's policy was not to take formal possession of New Zealand but to preserve the country's independence. His factory plan, therefore, constituted only a minimum step to meet the requirements. From 1837 he had really been convinced that the increased flow of British trade and settlement would ultimately force British intervention. In that circumstance, he preferred that sovereignty be acquired over all New Zealand, because a partial sovereignty would leave large areas of the country exposed to the intrusion of other nations and, consequently, British subjects and Maori open to aggression of other nationals over whom Britain had no legal power. Moreover, vast tracts of land would be bought and sold without title, creating the kind of 'confusions and strife' which would ultimately baffle the British government. The most effective solution, Hobson believed, lay in the establishment of British sovereignty over the whole country and in a 'transplanting to its shores the nucleus of a moral and industrious population'.

While it was true that Hobson had not revealed these opinions in his official report of 1837, he had indeed admitted privately to his wife at that time that there was so much British labour and capital invested in fisheries in New Zealand that British intervention was called for to preclude other powers, to protect settlers and to restrain their aggression.


89 Hobson to Liz, 25 August 1837, Hobson MS Papers 46, ATL.
As for the Maori, he recognised certain 'usages' amongst them but he
could not discern any 'form of government whatsoever'; in fact, indivi-
dual Maori were expressing a great need for laws. In Hobson's opinion
the Maori race was diminishing so fast that it would not be long before
New Zealand would be occupied entirely by Europeans anyway. Such a
pessimistic view of the Maori future on the part of the man who was to
become New Zealand's first governor some two years later, boded ill for
Maori rights since it suggested a degree of defeatism that might event-
ually sap official British determination to sustain a balanced responsibil-
ity to British subjects and Maori alike. It also indicated a dis-
concerting acceptance of the inevitability of a Maori decline. Hobson,
on the basis of his limited experience of those areas of New Zealand where
European impact was greatest, had come to the conclusion that New Zealand
would prove to be no exception in the history of race contact. Moreover,
by 1839, it was clear that he favoured British colonisation.

Glenelg refused to be moved by Hobson's reasoning and when he
relinquished his seals of office to the incoming Lord Normanby in February
1839, he still preferred a limited government intrusion in New Zealand. 90
Normanby, accepting the general outlines of Glenelg's policy, was rather
better disposed to colonisation than Glenelg. Nevertheless, he was
determined to follow the proper procedures of seeking first an arrangement
with the Maori regarding their sovereignty before planned colonisation
got under way. The Colonial Office was aware of several colonisation schemes
in various stages of planning in the first half of 1839, including a
revitalised New Zealand Association which became known as the New Zealand

90 Adams, pp.135, 138, 142, notes the transfer from Glenelg to
Normanby.
Company. To keep the initiative in government hands, the Colonial Office might have wisely expedited its New Zealand business; but its slowness in this respect encouraged the New Zealand Company to force the issue on colonisation.

From an interview at the Colonial Office, the Company had learnt that the government intended to send Hobson to negotiate a cession of sovereignty from the Maori, to set up a government, and to investigate land titles. The news was unwelcome to the Company's directors because their colonisation scheme ideally required exclusive control over land transactions; cheap land was to be acquired for sale at a high price in order to fund the scheme. Government moves now threatened to upset this. Moreover, choice locations might be taken up by the government or by other private buyers. Thus, even if a Charter were given to the Company, as Glenelg had initially suggested, the Company had lost its chance of having a free hand in New Zealand through the government decision to intervene. In the hope of pre-empting government action, the Company's directors sent off the Tory preparatory expedition on 12 May 1839 to make the first Company land purchase in New Zealand. The first emigrants followed in September. The success of the venture hung on the Company forcing the British government to accept the Company's land claims as a fait accompli. Such claims would be contingent on Maori agreement of course, although apparently the Company now considered this

91 Ibid., pp. 124-5, 136ff., discussed the various groups, their negotiations with government, and the Company decision to force the issue on colonisation. In August 1838 a private joint-stock body, the New Zealand Colonization Association, was formed. Adams, p. 124, n., observes that it was also referred to as a Company, 'Association' and 'Company' being used 'almost interchangeably'.

92 The Wakefield scheme of colonisation, so-called, embraced various ideas on colonisation that had been circulating for some time. E.G. Wakefield synthesised these ideas into a proposal on colonisation which was calculated to have popular appeal. His various published writings greatly assisted in publicising his ideas.
of little account, in spite of a prior acknowledgement of Maori independence. Had the Tory failed to acquire land from the Maori, the Company was presumably prepared to occupy land sites forcibly.

If the Colonial Office had required proof of the wisdom in hurrying their decisions along, they certainly received it when the Tory's projected departure became known in late April. The pace of government decision-making on New Zealand had not appreciably quickened during 1839, even after Normanby's appointment. In March, James Stephen, the permanent under-secretary at the Colonial Office, had drawn up a minute which had summed up the government's position on New Zealand. 93 Like Glenelg, Stephen was concerned that Britain should maintain a responsibility for both British subjects and the Maori. But whereas Glenelg, up to his resignation in February, had shown reluctance to accept that the flow of British emigration to New Zealand once started would continue, Stephen had already accepted that the colonisation of the country was an 'inevitable measure'. Taking this as an 'established principle', his March minute noted that two cardinal points were to be kept in view: protection of the Maori and the introduction among the colonists of the principle of self-government. The latter point was evident in several alternative proposals that were then outlined.

No action seems to have been taken on Stephen's March minute, and when the Colonial Office heard of the Tory's planned May departure, it was still no closer to making a final decision on New Zealand. The news at least prompted Stephen to outline the business that would have to be attended to if Hobson were to be sent to New Zealand. Another review was made of the situation too. 94 As a basic principle, it was recognised

93 Stephen to Labouchere, 15 March 1839, CO 209/4, 326-31; Adams, pp.147ff.
94 Stephen minute to Labouchere, 18 May 1839, CO 209/4, 243-4; draft instructions, n.d. (May?) 1839, CO 209/4, pp.221ff. Adams, pp.148-9, believes that these were drawn up in May but there is no positive evidence to confirm this. Since they do not favour colonisation, they could have been a version drawn up when Glenelg was still in office. By mid March, both Stephen and Hobson were convinced that colonisation should be allowed for. Either Adams's date is incorrect or Normanby was still wavering on the matter.
that any decisions would have to admit, in justice, British acknowledge-
ment both in fact and in theory of the 'independent national character' of the Maori, albeit qualified by the lack of a unified Maori political body and in the absence of a 'lawful dominion in that full and absolute sense' ascribed to the world's civilised nation states. A complete annexation of New Zealand was still rejected as an unnecessary invasion of Maori rights, as well as an undesirable cost and responsibility for government; though it might be required eventually. For the present, the most efficient manner of fulfilling the government's duty to British subjects and to the Maori people was to obtain cession of only part of New Zealand. Over this area a Crown Colony would be established, with extra-territorial jurisdiction over the rest. All land purchases from the Maori were to be made by the Crown.

The alternative possibility of a Maori governing body - a Confederation of chiefs legislating for both races under British protection - was briefly considered, but then rejected because Stephen thought that the idea was 'impracticable' and 'inadequate'. Under such a scheme all authority would really rest in the British Governor and Stephen was apprehensive of how the Maori chiefs would perform in their new role. He surmised that on the slightest provocation or caprice they would disown all connection with what had been done in their name and would refuse all submission or support to enactments ostensibly clothed with their authority. Stephen, therefore, saw no alternative to the British government getting full power. On the other hand, he did concede that in areas outside Crown Colony territory a Confederation of chiefs might serve some useful purpose: it could prevent unauthorised settlement outside of ceded territory, bring a stop to the acquisition of land by individuals
and give preferential treatment to British trade and religion. In this case, if Maori ceded some territory and sovereign rights, in return recognition could be given to the 'national character' of the Maori race and to their flag.

In discussing the proposal of partial intervention, Stephen continued to stress that the move was directed only partly at protecting settler interests in New Zealand; its chief purpose was to avert the 'calamities' threatening the Maori and to lead them towards the 'blessings' of a civilised life. No encouragement was to be given to colonisation by British subjects or to sales of Maori land. In essence, this was no more than Hobson's old factory proposal of 1837. It made no allowance for schemes of organised colonisation, although Stephen and Hobson had been convinced for some months that colonisation had to be allowed for; the New Zealand Association project had already been launched on its way to New Zealand. It was obvious that against its stated inclinations the Colonial Office would soon have to take British colonisation seriously. Some time in June or July this must have been realised, although it only became apparent in August when final instructions were drawn up for Hobson.

Hobson's instructions revealed that the Colonial Office had shifted from a 'no colonisation' stance to a policy favouring colonisation, a 'remarkable change', as Adams comments, since it 'appears to have been made without any discussion, either of the reasons behind it or of the implications for the future of the Maori and New Zealand'. Adams makes no suggestion as to why this happened. One can only suppose that government wrangling over a touchy decision, as so often is the case, went unrecorded.

95 ibid., p.155.
At the end of August 1839, Hobson left for New Zealand. He held the appointment of consul with the usual instructions from the Foreign Office. In quite a separate capacity he was to act under Colonial Office supervision, for which he was armed with final instructions from Normanby together with a supplementary explanation covering various policy points that he had queried.96 It was left to Hobson's discretion to acquire sovereignty over either 'the whole or any parts' of New Zealand that the Maori wished to cede. By Letters Patent, British authority would be immediately assumed, New Zealand becoming a Crown Colony temporarily under the jurisdiction of New South Wales, with a small official staff recruited from that colony.97 The Governor (for the time being Lieutenant Governor) with the assistance of a nominated Legislative Council would make laws and, since no British troops were immediately available, Hobson was advised to form a local militia or armed police. The government was to handle all land transactions and to hold all waste lands that might be acquired; by applying the same system as in New South Wales, a land fund could be set up to cover costs of administration and colonial development, with the surplus financing further British emigration. Thus, the land fund, supplemented by import duties, would rapidly make the colony financially self-sufficient.

Incorporated also in Hobson's instructions were provisions for Maori welfare. A Protector would be appointed with a special responsibility to safeguard Maori interests in land negotiations, ensuring that

96 Normanby to Hobson, 14, 15 August 1839, CO 209/4, 251-82, 157-63. Normanby made the distinction clear at the commencement of his instructions. The consular appointment was intended to be temporary of course, as was the rank of Lieutenant Governor which would later be supplanted by that of Governor. As Consul, Hobson was prepared for all contingencies. He was also provided with the usual volume of rules and regulations for the colonial service.

97 The penal nature of New South Wales was explicitly excluded from New Zealand by the instructions: 'it is to be understood as a fundamental principle of the new colony, that no convict is ever to be sent thither to undergo his punishment'.
essential lands were not alienated; Maori mission work would receive
the moral and financial support of government,\textsuperscript{98} and schools would be
established; with the exception of 'savage practices' such as human
sacrifice and cannibalism which were to be forcibly suppressed, Maori
custom was to be tolerated until the Maori could be 'brought within the
pale of civilized life, and trained to the adoption of its habits'.

In simple terms, these were directions for the setting up of a
British colony, with allowance made for further colonisation and for the
welfare of the Maori. As an introduction to them, Normanby wrote a
lengthy dissertation which really amounted to an apology for British
intervention in New Zealand. It needs to be understood in this sense
and to be set apart from the more straightforward administrative direc-
tions. Somewhat confusingly, the dissertation reflects Colonial Office
difficulty in reconciling conflicting principles and in accommodating
the interests of opposing pressure groups when making decisions on New
Zealand. Normanby, for instance, had to recognise Maori independence,
even a sovereignty of sorts, but also had to negate it; he had to allow
for British colonisation and investment in New Zealand yet regret its
inevitability; and he had to show that justice was being done the Maori
people by British intervention, even while admitting that such inter-
vention was nevertheless unjust. Not surprisingly, the resulting apology
is rather contradictory and even exaggerated.

The main barrier to the assertion of British sovereignty was the
official recognition of Maori sovereignty. As various government sources
had previously noted, a move to nullify it or infringe upon it had to
make allowance for the sensitivities of foreign powers, humanitarians,

\textsuperscript{98} The instructions, however, directed that the missionaries should
make time available for ministration to settler needs.
missionaries, and the Maori themselves. In discussing this problem, Normanby now cast grave doubt on the substance of a Maori sovereignty. He stated what he considered to be the real facts of the case. New Zealand had been officially acknowledged as a 'sovereign and independent state', but only 'so far at least as it is possible to make that acknowledgment in favour of a people composed of numerous dispersed, and petty tribes, who possess few political relations to each other, and are incompetent to act, or even deliberate in concert'. But, since the admission of Maori rights had been made, it was 'binding on the faith of the British Crown'. Consequently, the Crown would make no claim on New Zealand, 'unless the free and intelligent consent of the Natives, expressed according to their established usages', was first obtained.

The instructions, acknowledging Hobson's experience with New Zealand, briefly discussed the factors that had shaped British decision-making. About two thousand British subjects had already settled in New Zealand beyond the limits of any European government authority. A further 'extensive settlement' of British subjects was now immediately anticipated. The government feared that the experience of disastrous European impact on indigenous races would be repeated in New Zealand, unless an official check were put on it through the establishment of British law. But this decision to intervene was made with 'extreme reluctance'. It did not alter the official attitude, which corresponded with the Aborigines Report, that such a measure was 'essentially unjust, and but too certainly fraught with calamity to a numerous and inoffensive people, whose title to the soil and to the Sovereignty of New Zealand is indisputable'. It was the

99 e.g., Bourke to Glenelg, 9 September 1837, GBPP, 1840,[238].
inevitably of British colonisation that had changed the circumstances and justified the intervention. Colonisation was the threat to Maori welfare which could best be cared for by a 'surrender to Her Majesty of a right now so precarious and little more than nominal ... a national independence which they are no longer able to maintain'. In exchange, the Maori would receive British protection and law.

Much of this discussion was an exaggeration. Anticipations had become realities. An impression was given of an enfeebled Maori race and of a secured British ascendancy - a dangerously distorted picture of New Zealand. For even after 1840, for some years New Zealand would be British in name but continue to be largely Maori in fact. Had the Maori been presented as more capable however, British intervention could scarcely have been justified. Even Normanby admitted that British colonisation was still limited to only two thousand individuals. Decisions had been made upon the expectation of a rapid growth in British settlement and its effects on the Maori, rather than upon the current situation. There was also a measure of fallacious reasoning in presenting British intervention as a means of avoiding the effects that British intrusion was already producing; although it was reasoned that somehow a regularised law-giving intrusion could obviate these, or at least ameliorate the situation created by irregular settlement.

While Normanby's apology tried to argue that a balance was being sustained in fulfilling Britain's duty towards the Maori as well as to her own subjects, the official insistence on the upholding of Maori rights is deceptive, for along the trail of decision-making those rights had been severely restricted. Hobson's instructions, for example, did not provide for the incorporation of Maori within the colony's administrative structure nor allow for the development of Maori government of any sort - options
which had come before the government earlier. It was as if the perception of Maori capacity in this respect had diminished in degree as government moved towards final acceptance that New Zealand was destined to be a British settler colony. With this acceptance, the focus of official measures shifted from Maori to settler.

Until the Colonial Office decision of mid-1839 to accept colonisation in New Zealand, official policy upheld the independent status of the country. Hence, a charter, though temporarily suggested by Glenelg to authorise British settlement, was subsequently found to be unacceptable officially, because it was realised that it constituted an assumption by Britain of rights in New Zealand that belonged to the Maori. On the other hand, Busby's plan of a British protectorate over a Maori government, although a façade, catered specifically for a Maori New Zealand in which a place had to be found for British intruders. By the time Stephen considered what seems to be a version of that idea, however, the plan was no longer relevant, for the Colonial Office was facing the likelihood of a settler New Zealand in which a place had to be found for the Maori.
CHAPTER THREE

THE TREATY AT WAITANGI

"Hei iwi tahi tatou." ("We are [now] one people.")

- Hobson at the treaty-signing,
  6 February 1840, William Colenso,
  The Authentic and Genuine History
  of the Signing of the Treaty of
  Waitangi, Wellington, 1890, p. 35.
Once the Colonial Office had taken the decision to intervene in New Zealand, then Hobson's primary task was to secure the sovereignty of the country for Britain, by treaty if possible, but nevertheless in a peaceful manner. In reviewing this acquisition of sovereignty, three factors of concern to Hobson can be identified: the legal status of New Zealand, the British humanitarian concern for Maori welfare, and the need for diplomatic skill in convincing New Zealand's Maori population that further British intrusion should be accepted. Because these three aspects were interwoven inextricably in the process of treaty-making, the negotiations were regarded at the time with some degree of confusion; and for the same reason, the 1840 events still present confusing contradictions that require brief clarification.

The legal difficulty of Crown recognition of New Zealand's independence, arising from several statutes and from official acknowledgement of the 1835 Declaration of Independence, was one of Hobson's first concerns. Before 1840, Britain had made no move to alter New Zealand's status by asserting any claim whatsoever, in spite of Cook's 'discovery' of the country in 1769 on which the British Crown might have rested a prior claim. Any right deriving from this had not been confirmed by official declaration of intent to exercise exclusive control, nor secured by occupation - factors which had been increasingly considered necessary by contemporary international legal experts to validate territorial claims.¹

¹ M.F. Lindley, The Acquisition and Government of Backward Territory in International Law, London, 1928, especially Chs. 18, 19; see also J. Ward, p.31, fn.11, where he notes that in spite of Cook's 1770 act of taking possession of Australian territory for the Crown, the action was repeated by Captain Arthur Phillip at Sydney Cove eighteen years later. Both Lindley and Ward conclude that occupation and government administration were necessary to validate acts of 'discovery' which gave nations merely an 'inchoate' title.
Moreover, the various ways in which New Zealand's independence had been officially recognised by Britain had been duly noticed by other nations, as well as by British nationals. From an official viewpoint, therefore, it was deemed wise to alter New Zealand's status formally by treaty. The treaty, however, would not be considered a legal document in itself, something of a contradiction perhaps but nevertheless a factor understood in British official usage of the 1840 period.

Related to the legal aspect but subordinate to it was the British official acknowledgement of humanitarian concern for Maori interests. On this ground, it was officially considered only just for Britain to recognise certain rights vested in an indigenous people and to confirm those rights. This would be done in the Waitangi treaty which, furthermore, would promise the Maori the status usually accorded to British subjects - a formal commitment which would be referred to as an unusual step in British colonial practice of that period. Yet apart from the humanitarian element in extending these privileges, an analysis of the treaty-making shows that such moves were essential to secure Maori and missionary co-operation. Expediency as well as justice are reflected in the moves.

The third aspect which Hobson had to attend to was a diplomatic one. Success might depend on a variety of factors: on the solemnity of a treaty meeting and the significance accorded to it by accompanying celebrations, on the perceived status as well as the ability of negotiators, and most importantly, on the understanding of the negotiation that was conveyed to the participants. In the review of negotiations that follows, it becomes

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2 Coates's evidence before the 1838 Lords Committee, GBPP, 1837-38, 580), 243-6. There had also been reference to the fact in various British publications, e.g., FitzRoy's Narrative, p.590.
obvious that the treaty was presented in a rather misleading manner in order to secure Maori agreement. As a result, the real transfer of power that would occur once New Zealand became a British colony was played down. Maori suspicions of British motives were lulled by official recognition of what was termed Maori independence, by what seemed to be the confirmation of a degree of that independence under British sovereignty and by the extension of a much exaggerated Crown protection and other rights. Maori were appealed to with the argument that the Crown needed their agreement in order to establish effective law and order - primarily for controlling Europeans. Finally, the benefits to be gained from agreement to the treaty were stressed and not the restrictions that would inevitably follow.

Hobson, in assessing some of these requirements relating to the New Zealand situation before arriving in the country, was able to draw on the knowledge of others. Before leaving London, he took the opportunity of breakfasting with Bourke, whose experience as past governor of New South Wales he wanted to tap. More up-to-date information was obtained in Sydney from Gipps who had held the governorship since 1837. Hobson arrived there on Christmas Eve 1839 in H.M.S. Druid, but was delayed for three weeks until H.M.S. Herald, under Captain Joseph Nias, was ready to leave for New Zealand. The change of ship bothered Hobson because he knew that the grander the ship the better the impression he was likely to make with the Maori who were accustomed to the visits of some very fine French naval vessels. During the Sydney stop-over,

3 The impression on Maori, created by warships, was well known. Hobson probably knew of the visit to New Zealand of the French frigate Venus in November 1838. A vessel of 2,000 tons, she usually carried 28-60 guns in comparison to a corvette like the Herald which normally sported a single tier of guns.
Hobson was provided with an ill-chosen assortment of local men who were to form the nucleus of a New Zealand civil service. A small guard of a sergeant and three troopers of the New South Wales mounted police was added.4

When Hobson's arrival confirmed that there were plans afoot to create a British colony in New Zealand, the question of the validity of previous New Zealand land purchases immediately arose. In 1839, some of the leading Sydney settlers and businessmen were laying claim to purchases which embraced almost all of the South Island and parts of the east coast of the North Island. In the north, large land blocks on the east and west coasts were said to have been alienated. In some instances, land had been sold several times over.5 The New Zealand Company's Tory expedition, arriving in New Zealand in August 1839, was also known to be seeking land in the Cook Strait area and elsewhere.6 Within a few days of Hobson's arrival in Sydney, Gipps, anxious to preclude any further land transactions, peremptorily halted a Sydney auction of some 2,000 acres of Bay of Islands land. The ensuing uncertainty of Sydney claimants to New Zealand land was only partially eased by Hobson's pleasant reception of a delegation of their representatives.7

4 Scholefield, Hobson, pp.80-81; Gipps to Russell, 9 February 1840, GBPP, 1840, (560), p.4. Bright, p.137, explains that the police were actually 'dismounted police (resembling the light dragoons)'. The staff assigned were George Cooper, treasurer, Felton Mathew, surveyor-general, Willoughby Shortland, Police Magistrate, and James Freeman, chief clerk.

5 E. Sweetman, The Unsigned New Zealand Treaty, Ch.2; W. Williams to Colonial Secretary, 8 May 1840, GBPP, 1841, (311), p.101; Alexander Busby evidence, GBPP, 1840, (582), pp.129ff.; Extracts ... Aborigines Protection Society, II, January 1841, pp.17-18, where a letter from New Zealand (anom.) dated 19 December 1839 is published; see also J.R. Lee, 'Historical Maps of the Bay of Islands', typescript, 1972, AUL. Lee provides an excellent graphic illustration of the degree of alienation at the Bay although there is a possibility that his maps may not indicate the actual extent of land initially purportedly sold to Europeans but only that awarded when claims investigation was concluded.

6 J. Miller, Ch.2.

7 Sweetman, pp.55-59.
Official concern about the land situation now led to a series of pre-emptive measures which anticipated the assumption of British sovereignty in New Zealand. Gipps first swore Hobson in as Lieutenant Governor of any territory which might be acquired in New Zealand, though only after Hobson's departure on 18 January did he announce this, together with the necessary extension of New South Wales jurisdiction to cover New Zealand. At the same time, a third proclamation declared that title to New Zealand land would be valid only if derived from or confirmed by the Crown, that commissioners would be appointed to investigate lands purchased and that any further purchases in New Zealand would be null and void. Across the Tasman at Kororareka, on 30 January, the day after H.M.S. Herald had anchored in the Bay, Hobson announced to a public meeting of Europeans that he was assuming his duties as Lieutenant Governor and, on that authority, he then proclaimed the land restrictions as they had been issued in New South Wales. Neither Gipps nor Hobson was acting outside the limits of his authority. On the contrary, Normanby's instructions to Hobson had directed him to issue such a proclamation 'immediately' on his arrival in New Zealand. At Hobson's request, a draft had been supplied which Gipps and Hobson were at liberty to alter. The extent of New Zealand land-holding by New South Wales settlers made it imperative that Gipps issue the proclamation in Sydney almost simultaneously with its release in New Zealand.

This series of actions placed the British government in the rather ambiguous position of asserting an authority that would subsequently be

8 Gipps to Hobson, 15 January 1840, encl. in Gipps to Russell, 9 February 1840, CO 209/6, 24-27; Hobson to Gipps, 4 February 1840, with Hobson's proclamations, encl. in Gipps to Russell, 19 February 1840, GBPP, 1840, (560), pp.6-9.

9 GBPP, 1840, [238], nos. 16,17,18, cover Normanby's instructions, Hobson's queries and his supplementary instructions in reply.
formally requested from Maori chiefs a few days later at the Waitangi meeting. While Hobson made this first assumption of authority dependent on the Maori cession of the country to the Crown, the sequence of procedures did not indicate scrupulous care for legal niceties. Within two months, W.C. Wentworth and other New South Wales purchasers of New Zealand land were challenging the legality of the situation. Later in the year E.G. Wakefield strongly criticised the action before an 1840 Commons Committee hearing on New Zealand. Even on arrival at the Bay of Islands, Nias had jibbed at Hobson's course of action by refusing to land him to the 15-gun salute of a Lieutenant Governor, according him alternatively the strictly correct 11-gun salute of a Consul. According to one historian, Busby also advised Hobson to act in his capacity as a British Consul until such time as an agreement with the Maori allowed him to assume the position of Lieutenant Governor.

In retrospect, Busby defended the actions, thus taken out of sequence, arguing that the urgency of the land situation had demanded haste.

This seems to have been the case. Expectation of Hobson's arrival in late 1839 had prompted a noticeable rush of new settlers, in the north at least. In the south, the New Zealand Company and others had already been making vast 'purchases'. Without an embargo, sales would have

10 Sweetman, pp.59-60; and see below, p.261.
11 For Wakefield's criticisms, see GBPP, 1840, (582), paras 256-75.
12 Scholefield, Hobson, pp.82-83; cf., Buick, Treaty, p.105, who states that a Lieutenant Governor was entitled to a 13-gun salute.
13 ibid., pp.103-5.
14 Busby, 'Occupation ...', p.84.
15 The influx was noticed at Hokianga and at the Bay: J. Buller Journal, 3 February 1840, MS Papers 180, ATL; J. Hobbs Diary, 25 January 1840, typescript, MSS 144, AML, notes the 'extreme scarcity' of casual Maori labour, usually readily available, owing to the fact that Europeans had become 'so numerous'. News had reached the Bay of Islands in early 1839 that there would be a new appointment to New Zealand but no one knew when this would occur nor the plans of the British government.
escalated, causing even greater confusion of title. Hence these January 1840 measures, putting aside the question of their legality, effectively halted European land acquisition. Not surprisingly, British land owners in the north turned in anger to provoke local Maori, telling them that the land had 'gone to the Queen' and that the Maori people were now 'taurekareka' (slaves).\textsuperscript{16} Even before Hobson had come to terms with the Maori chiefs, therefore, a Maori opposition was created to question the motives and actions of the Crown.

Hobson, having asserted Crown authority over British subjects, now had more time to treat with the Maori for sovereignty. Normanby's final instructions had allowed him discretion to secure sovereignty of the whole country or only parts of it. By early 1839, Hobson was convinced that a complete sovereignty would be preferable.\textsuperscript{17} Developments in New Zealand during 1839 strengthened this conviction. On arriving in the country, he evidently hoped to 'circumnavigate' the coast by the end of February; he also planned a quick trip to Hokiang a after the 30 January ceremonies,\textsuperscript{18} but it soon became obvious that such plans would have to be revised. The organisation of the Kororareka business and the distraction of various visitors, including the Catholic Bishop, J.B.F. Pompallier, and two priests, absorbed all of 30 January. By the following day, the proposed Hokiang a trip had been abandoned. Deteriorating weather, followed by several days of unsettled conditions and heavy rain, would have made travel uncomfortable. In addition, Hobson was showing signs of stress, occasioned partly by his responsibilities, but aggravated

\textsuperscript{16} Carleton, II, p.11; R. Taylor Journal, 30 January 1840, GNZ MSS, APL; and other sources mention this.

\textsuperscript{17} See above, p.113.

\textsuperscript{18} R. Taylor Journal, 30 January 1840, GNZ MSS, APL; F. Mathew Journal, 3 February 1840, NZ MSS, APL.
by friction between Nias and himself. A month later Hobson had a stroke. Above all other considerations, priority had to be given to arranging a satisfactory first meeting with northern chiefs.

Busby, now relieved of his official position, pledged his assistance ‘as a private individual’ to organise a formal assembly of chiefs. On Wednesday afternoon 29 January, it was decided that a gathering should be held the following week on 5 February, at Busby’s home at Waitangi. Since earlier meetings had been held there – to choose the national flag in 1834, to sign the 1835 Declaration and to settle various disputes – the Resident’s site was associated with the British government and with consultation over Maori-European problems generally. The precedents so established made it an ideal setting.

Busby took it on himself to prepare invitations to the meeting. He immediately asked the Church Mission printer, William Colenso, to print 100 circulars ‘as soon as possible’. Haste was urged by Hobson too. Colenso produced the circulars early on Thursday morning, 30 January. In Busby’s name, the invitations asked the recipient, as a chief of the Confederation, to attend a meeting of Confederation chiefs (at the appointed time and place) in order to meet the ‘chief of the Queen’ who had arrived on the man of war to be a governor for everyone.

On Busby’s instruction, Colenso was supposed to have altered ‘about twenty’ of the invitations so that representatives of chiefs who had

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19 Mathew Journal, 30 January, 1 February 1840, NZ MSS, APL. Mathew’s entry of 1 February spoke of that day ending in ‘considerable rows’ between the two men, with Nias behaving ‘very ill indeed’ to Hobson. For other discussions of the tensions between these two men, see Scholefield, Hobson, pp.81-82,101, 104-7.

20 See below, p.197.

21 The Herald anchored off Kororareka about 11 a.m. on 29 January. Baker and Busby boarded the ship almost immediately. Colenso Journal, 29 January 1840, Hawkes Bay Museum.

22 Hobson to Baker, 29 January 1840 in Buick, Treaty, p.100. The original letter has not been traced.
died could be asked. He also took the opportunity, it seems, to tidy up Busby's Maori. 23

Hobson evidently favoured negotiations in the north being directed specifically at the Confederation, for it was the official acknowledgement of Maori independence in 1835 that constituted one obstacle to the free assertion of British sovereignty. He had raised this matter before leaving England, pointing out that British recognition of New Zealand's independence extended, strictly speaking, only to the Confederation in the north of the North Island; and that such recognition weakened the official position especially in relation to British settlers who might claim land title on the basis of the country's independent status. Elsewhere in the country, Hobson argued, the Crown might well exercise, with greater freedom, all the rights 'usually assumed by first discoverers'. He further believed (erroneously it proved) that the disparity between the Confederation area and the rest of New Zealand would be accentuated by the inability of Maori, especially the 'wild savages' of the South Island, 'to observe even the form of a treaty'. Normanby, however, admitting his 'inevitable ignorance of the real state of the case', simply referred Hobson to Gipps for advice and counselled Hobson to use his discretion which he indeed proceeded to do. 24

23 Colenso, History, p.11; Colenso, 'Day and Waste Book', AML; Busby to Colenso, 29 January 1840, encl. draft invitation, Colenso Papers, typescript, IV, MS, ATL, and cf., Waka Nene's invitation in facsimile, Buick, Treaty, facing p.112. Busby emphasised that his request was a strictly private one. The invitation in the Maori language made it clear that Hobson was to be a governor for all, by using the correct and precise term 'tatou': 'hei Kawana mo tatou'. Busby's draft invitation conveyed its message well enough but it reads as a literal translation from the English, whereas the version that Waka Nene received is cast in accurate Maori - the work either of Colenso or perhaps of Baker, both at Paihia at the time. In both versions the word used for the Confederation is 'wakaminenga' and for gathering or meeting 'huahuanga'. The Busby draft indicates that Busby had at least some knowledge of the Maori language. After his seven-year residence in the country this would be very likely.

24 For Hobson's queries to the Undersecretary, Colonial Office, and Normanby's reply, see GBPP, 1840, [239], nos. 17,18.
Hobson had been apprised of the ineffectiveness of the Confederation on his 1837 visit to New Zealand. Yet there were certain advantages in negotiating with a defined body. A formal transfer of Confederation rights to Britain would strengthen Britain's position before the world as well as in regard to her own subjects in New Zealand. Rather than a hindrance, the Confederation could be turned to advantage, as Busby had foreseen in 1835. In a practical sense, the body also gave a semblance of unity to a situation where independent Maori leadership might lead to serious disunity of purpose. Both Hobson and Busby might have hoped that Maori leaders would look on the Confederation as a body with some degree of authority in negotiating with the Crown. Apart from anything else, it was a helpful check-list of the major northern chiefs, and since Hobson was anxious to confirm this area in particular to Britain, it was reasonable that invitations should be directed in the first instance to Confederation chiefs. Initially, invitations were to be extended only to them, but a few days before the Waitangi meeting invitations were also sent to those 'high chiefs who had not yet signed the declaration'.

Before the planned assembly on 5 February, Hobson's most urgent task was to draw up suitable terms of agreement to lay before the meeting. While he held Normanby's authority to enter into a treaty with the Maori,

25 Gipps also spoke of the Declaration of Independence as 'a silly as well as an unauthorised act - a paper pellet fired off at the Baron de Thierry'. Cit. Buick, Treaty, p.27. fn. But Gipps was not even in New South Wales at the time of the Declaration.

26 See above, p.85.

27 See the second set of draft treaty notes in Facsimiles; Ross, 'Te Tiriti ...', pp.132-3, and fn.24, identifies these notes as being in Freeman's handwriting. They may have been written at Hobson's direction of course.

28 Hobson to Gipps, 5 February 1840, GBPP, 1841, (311), p.8. Colenso records the printing of the invitation to the Confederation chiefs, but there is no evidence of any other invitation being printed. Hobson's exact words are that he 'circulated notices'. It is possible that some invitations were hand-written. See also Busby to Colenso, 'Friday morning' [31 January?]: Colenso Papers, typescript, IV, MS, ATL; J.B.F. Pomplallier, Early History of the Catholic Church in Oceania, Auckland, 1888, p.62.
there is no evidence that either the Colonial Office or Gipps provided any draft treaty from which he might work. Hobson, however, knew well enough what the British government required - a cession of sovereignty, absolute control over all land matters, and authority to impose law and order for both Maori and European. With the assistance of his secretary, J.S. Freeman, he drafted some preliminary notes as the basis of a treaty. By Busby's account, Hobson then became too unwell to leave the Herald and the draft notes were delivered to the ex-Resident by two officers. Busby considered these notes were inadequate 'to accomplish the object'; he would prepare a draft treaty himself. This was submitted to Hobson on 3 February. Busby later claimed that his draft became the English text of the treaty as it is known today, the only exception being 'a transposition of certain sentences which did not in any degree affect the sense'. Referring to the treaty on another occasion, he mentioned that the transposition involved just two sentences.29

The notes that Busby received from Hobson, together with Busby's draft, have survived and are reproduced in the Facsimiles of the ... Treaty of Waitangi. Busby received two sets of notes.30 The first, in Hobson's hand-writing, is the draft of a preamble only. In sentiment and phrasing, it owes something to Hobson's instructions from Normanby. Both 'confederated' and 'independent' chiefs are included. This preamble became the introduction to the treaty. The second set of notes, in Freeman's hand-writing, consists of a differently worded draft preamble

29 J. Busby, Remarks upon a Pamphlet, Auckland, 1860, pp.3-4; Busby, 'Occupation ...', p.87.

30 See Ross, 'Te Tiriti ...', pp.132-3 and fn.24, where she identifies the writers. In all discussions of the treaty and its various copies, reference has been made to the Facsimile edition. The original treaty sheets are held by National Archives. For discussion see Appendix 3.
which is briefer than Hobson's version and refers only to the confederated chiefs. There were also three articles: in the first, the 'united chiefs' cede the sovereignty of an area to be specified in degrees of latitude and longitude; in the second, they yield to the Queen the exclusive right of pre-emption over any waste lands they might wish to alienate; and in the third, the Queen extends her protection to the 'Natives of New Zealand' and imparts to them 'all the rights and privileges of British subjects'.

Busby's draft consisted of three articles and a lengthy postscript. These articles, with no alteration, were accepted for the treaty. Lengthier and more precise than Freeman's articles, they differed significantly in article two by including a Crown guarantee to Maori, collectively and individually, of the 'full exclusive and undisturbed possession of their lands and estates forest fisheries and other properties' as long as they wished to retain them. With some seven years' experience of New Zealand, Busby knew very well that the entire land mass of the country was claimed in some way by Maori and that they would need some assurance that this would be respected by the British government. His draft postscript also became part of the final treaty but there were two changes. The first was the deletion of a wordy conclusion, which tended to be unnecessarily repetitive, to make assertions that Maori may have chosen to debate - Maori weakness and the need for British protection

31 Another copy of the draft, evidently a first effort but identical in wording, has survived; it has an annotation on it, 'draft of the Articles of a Treaty with the Native chiefs submitted to Capt Hobson. 3rd Fbly. 1840'. Busby Papers, MSS 46, f.6, AML.

32 See, for example, Busby to Col.Sec., New South Wales, 31 October 1835, Busby Dispatches, qMS, ATL: 'As far as has been ascertained every acre of land in this country is appropriated among the different tribes; and every individual in the tribe has a distinct interest in the property; although his possession may not always be separately defined'. The British government had ample evidence of this fact; see also, FitzRoy, Narrative, II, p.585.
and authority - and which allowed for cession by specific degrees, as Freeman's draft had done. The second change was the shifting of a final statement of intent that the independent chiefs would adhere to the treaty terms so that the statement applied both to confederated and separate, independent chiefs. This was probably the 'transposition' which Busby later referred to.  

In brief then, the treaty as it came to be known in its final English form, comprised the preamble of Hobson, the articles developed by Busby upon the skeletal versions penned by Freeman together with the most important addition of the guarantee of Maori land and other possessions, and finally, the amended postscript of Busby. On this analysis, it becomes clear that Busby's claim that he 'drew' the treaty is not altogether the exaggeration that a previous analysis of the treaty by Ruth Ross has assumed it to be. True, Busby had the notes presented to him to use as guidelines, but the final wording of the articles, which have come to be regarded as the essentials of the treaty, was Busby's own. Moreover, the guarantee to Maori of possession of land and other property appears to have been added entirely on Busby's own initiative, as was the postscript. Only Hobson's preamble stood unchanged. Perhaps Busby should be forgiven, therefore, for the proprietary pride with which he sometimes discussed the treaty in later years. The English form of the treaty owed a good deal to him.  

33 See above, p.135.
34 cf., Ross, 'Te Tiriti ...', p.132, for a different opinion.
The alterations that were made to the three sets of notes to produce the treaty in its final form reflect the decisions forced upon Hobson by circumstances found in New Zealand. The changes mainly applied to the extent of sovereignty to be acquired and to the land question. To some degree the two factors were related. It seems, for example, that on 3 or 4 February after Busby had submitted his draft to Hobson, discussions on the Herald resulted in the broadening of the treaty terms so that the one treaty would apply to all New Zealand Maori whether under the Confederation or not, and wherever they might be resident. Hence, the progressive acquisition of sovereignty allowed for by the specification of degrees of latitude and longitude was abandoned and tribal or hapu affiliation used as an alternative (although tribe or hapu was not always recorded when the treaty came to be signed). The deletion of the precise geographical requirement may also have been desirable to avoid confusion where chiefs had affiliations with more than one hapu, and/or territorial interests in several districts of the country, often separated by considerable distances. An exact definition would also have been impracticable in many areas where different Maori groups lived in close proximity. Moreover, if areas were too clearly excluded, by some chiefs refusing to adhere to the treaty, then those parts of the country would be left open to the intrusion of other foreign interests - a danger that the Colonial Office had been aware of during discussions on New Zealand. Hence geographical specifications were better dropped.

The final form of the treaty also indicated Hobson's resolving of a problem that the Colonial Office had left unanswered: did the Maori understand the distinction between proprietary land rights and sovereign rights? When the Colonial Office had discussed this question in May 1839, it was suggested that Maori might consider that they relinquished
'dominion' along with ownership when they sold land; and that if such were the case, any negotiation for cession might scarcely be necessary, for the British government could immediately assert authority over those lands that had already passed out of Maori hands. While this official speculation regarding the advantages that could be had from Maori ignorance was set aside at the time as being unjust, the idea appeared once more in Hobson's August draft instructions before finally being deleted. Hobson was then directed to have the 'most frank and open dealings' with the Maori, although it was still doubted that Maori would grasp the real meaning of the sovereignty that Hobson would seek from them.  

In the New Zealand context, however, Hobson's advisers can have left him in little doubt about Maori jealousy over their territorial claims and their suspicion of any potential infringement on such rights. The land guarantee catered for these sensitivities and its insertion by Busby ensured that there would be a differentiation between sovereignty and territorial rights. Indeed, without the land guarantee, the treaty proposal would almost certainly have been rejected. In later years, this factor would be overlooked too easily by European settlers and the guarantee attacked as an unnecessary measure of justice, expressive only of the humanitarian conscience of the treaty period. The fact is that it was an expedient response to the New Zealand situation besides being a just policy.

Contemporary accounts of the crucial few days of early February 1840 do not positively identify the participants in the meetings where the final wording of the treaty was decided upon. There are some clues

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35 Draft instructions, [May?] 1839, CO 209/4, 238; cf. Draft instructions, August 1839 at pp.260-1, where these comments are deleted with a marginal note by W.L. [Labouchere?].
however. Hobson certainly had the advice of Busby, Freeman and possibly other officials on the Herald. And Normanby had assured Hobson that he could also expect to 'find powerful auxiliaries amongst the missionaries' — referring of course to the English Protestant missionaries and particularly to the Anglicans. Immediately on the Herald's arrival, then, Hobson sought out Henry Williams, the head of the C.M.S. in New Zealand. Williams and his other Church colleagues had already been asked by Bishop Broughton of Sydney to lend their influence to persuade the Maori to surrender sovereignty to the British government. But when Hobson arrived, Williams was at Waimate, not long returned from a southern journey to Cook Strait. In his absence from Paihia, the missionaries, Charles Baker and William Colenso, had been the first to board the Herald in company with Busby. They left Busby in consultation with Hobson, although Baker was asked to return the following day. When word of Hobson's arrival reached Waimate late on 29 January, Henry Williams returned to the Bay where he saw Hobson, probably on 30 or 31 January, and perhaps in company with Busby. Certainly on Sunday 2 February,

36 Normanby to Hobson, 14 August 1839, GBPP, 1840, [238]. Normanby also recommended that he consult amongst the 'older British residents who have studied their [Maori] character, and acquired their language'.

37 Hobson to Baker, 29 January 1840, in Buick, Treaty, p.100; Williams, 'Early Recollections', in Carleton, II, p.11, is not clear on this point: 'On the night of the 30th of January, I was called up by a messenger from the Bay, to say that Captain Hobson ... wished to see me as early as possible. In the afternoon, I went on board H.M.S. "Herald" ...'. Waimate knew the news on the 29th, however.

38 Buick, Treaty, p.112.

39 ibid., pp.98-100; Colenso Journal, 29 January 1840, Hawkes Bay Museum; Mathew Journal, 30 January 1840, NZ MSS, APL.

40 Taylor Journal, 29, 30 January 1840, GNZ MSS, APL; Mathew Journal, 30 January 1840, NZ MSS, APL.
Williams was at Paihia where he preached at services. The next day, when Richard Taylor and George Clarke from the Waimate mission visited the Bay, they found Henry Williams on the Herald where they all stayed to tea. About this time, the Wesleyan missionary, James Buller, stopping briefly at the Bay on his return from a southern mission tour, was also given the opportunity of meeting Hobson before passing across to his west coast station. It is more than likely that news of Hobson's arrival had drawn other missionaries to the Bay too; but by the evening of 3 February when Hobson held the several sets of notes from which a final draft had to be selected, he had certainly met at least six New Zealand men - Henry Williams, Baker, Clarke, Colenso, Taylor and Buller - any or all of whom may have influenced the treaty's wording.

Since Hobson had been directed to seek missionary support and was also disposed by temperament (according to one of his staff), to seek the opinion of others, it would be surprising if he had refrained from confiding something of the nature of the treaty to these missionaries, particularly to those present on the evening of 3 February - Williams, Clarke and Taylor. Williams and Clarke, in fact, were the longest serving Churchmen in the country, Williams having arrived in 1823 and Clarke in 1824; they were also the most senior in age, Williams approaching sixty, and Clarke over forty. But it was Williams's presence

41 Fedarb Diary, 2 February 1840, NZ MSS 375, APL. The text was suitable to the times: John I.5: 'And the light shineth in darkness; and the darkness comprehended it not.' J.E. Andersen, and G.C. Petersen, The Mair Family, Wellington, 1956, pp.44–45, seems to confirm that Hobson was not at this service, possibly because he was unwell.

42 Taylor Journal, 3 February 1840, GNZ MSS, APL.

43 Buller Journal, 3 February 1840; MS Papers 180, ATL; J. Buller, Forty Years in New Zealand, London, 1878, p.78. Buller arrived at the Bay on 3 February, but because of his anxiety to return home he missed the meeting at Waitangi later in the week. His station, under Tirarau's patronage, was at Tangiteroria on the Kaipara.

44 Baker had arrived in 1829, Colenso in December 1834, Buller in 1836, and Taylor only in March 1839.
on the Herald that Hobson had first requested. Had Hobson sought advice on the final treaty wording, therefore, it was to Williams that he was most likely to refer.

The role that Williams played in final decisions on the English draft of the treaty will probably always remain unknown. Nor can any trace be found of the final English draft put together on the Herald. But Williams has left his own testimony of the events that followed:

'On the 4th of February, about 4 o'clock p.m., Captain Hobson came to me with the Treaty of Waitangi in English, for me to translate into Maori, saying that he would meet me in the morning at the house of the British Resident, Mr Busby; when it must be read to the chiefs assembled at 10 o'clock.' According to Hugh Carleton, Williams's son-in-law and biographer, Williams made the translation with 'the assistance of his son Edward, facile princeps, among Maori scholars, in regard to the Ngapuhi dialect - generally admitted, except in Waikato, to be the Attic of New Zealand'. This was something of an exaggeration. While the 21-year-old Edward probably had a facility with spoken Maori that one would have expected from a person who had spent most of his youth in New Zealand, he was not an experienced translator. Nor was Henry

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45 See Ross, 'Te Tiriti ..', p.133 and fn.27, where she notes that a search of the Williams papers at the Auckland Institute and Museum Library and at the Alexander Turnbull Library failed to reveal the draft. There is a strong likelihood that there may have been several 'final drafts' from which one was chosen for Williams to make a translation in Maori, but none has been found.

46 Williams, 'Early Recollections', in Carleton, II, p.12.

47 loc.cit., footnote. Slight differences in usage were recognised around the country, although the language was substantially universally understood.

48 Edward Marsh Williams, 1818-1909, was the eldest son of Henry Williams. Born in London, Edward arrived at the Bay of Islands with his parents in 1823. As a young man he studied medicine in England, but returned to New Zealand because of ill-health in June 1838. While working on the translation of the treaty he may well have been suffering toothache since Taylor's Journal entry several days later records that Taylor was extracting one of Edward's teeth for which Edward 'wanted nerve'. Taylor Journal, 10 February 1840, APL; Carleton, I, p.207.
Williams an acknowledged expert in that field. Those Anglicans who had that skill - William Williams, Robert Maunsell and William Puckey, together with the Wesleyan, John Hobbs - were not available at the Bay.\(^ {49}\) The young mission printer, Colenso, does not seem to have been asked to help, Taylor was otherwise engaged and there is no evidence of Maori assistance.\(^ {50}\)

The task facing Henry Williams and Edward was no easy one. In a few brief evening hours the English draft of the treaty had to be drawn up in the Maori language as it would be presented to the Waitangi meeting on the following day, Wednesday 5 February. (In fact, this Maori text would become the treaty document signed by almost all chiefs throughout New Zealand.) The two men would have been fully aware that their work was of vital importance to the future of the country - to the British, to the Maori and not least to the missionaries' own prospects. They were certainly cognisant of some of the translation problems. As Henry Williams explained: 'In this translation it was necessary to avoid all expressions of the English for which there was no expressive term in the Maori, preserving entire the spirit and tenor of the treaty'.\(^ {51}\) The comment suggests that Williams may have decided to recast the English draft, to use different wording. There is no way of verifying this although most people dealing with translation tend to approach their work in this way. It is also very likely that Williams carefully chose certain words so that Maori would not take fright at the transfer of power that

\(^{49}\) ibid., pp.viii-xiv, discusses the translation of scripture and those who participated. James Hamlin and James Shepherd are also noted.

\(^{50}\) Colenso Journal has no entry for 4 February 1840, but Colenso had an opportunity of recording any assistance that he might have given in his history of the signing. Colenso was a 28-year-old at the time.

\(^{51}\) cit., Carleton, II, p.12.
was being requested of them, so that they would believe instead that a sharing of power was Britain's objective. A comparison of the English and Maori texts of the treaty would seem to confirm this view of events.

The preamble drafted by Hobson was a convoluted expression of the Queen's desire to protect the Maori people from the worst effects of British settlement and to provide for her own subjects, by appointing Hobson to obtain 'sovereign authority', and to establish a 'settled form of Civil Government'. In translation, the whole was somewhat simplified and there were certain omissions. To translate 'sovereign authority' and 'civil government', for example, Williams resorted to the single word, 'kawanatanga', in both instances.

In article one, the chiefs of the Confederation and the separate and independent chiefs were said to 'cede to Her Majesty, the Queen of England, absolutely and without reservation all the rights and powers of Sovereignty' which they exercised or possessed over their respective territories. In the Maori, this became 'ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu te Kawanatanga katoa o o ratou wenua'. The emphasis given by this choice of Maori to an absolute and lasting yielding up seems to be conveyed fairly clearly. But the rendering of 'sovereignty' is not such a happy one. As with 'sovereign authority' and 'civil government' in the preamble, kawanatanga was chosen once more. This time, however, it was intended to equate with the European concept of sovereignty which included the authority and government noted in the preamble. Such economy of usage in the Maori for English wording that involved significant differences of meaning was scarcely likely to convey to Maori a precise definition of sovereignty.

52 For the sake of clarity, the text is given as it was at the time. It was usual to render the 'wh', as in whenua, as 'w' only.
Article two introduced yet another factor which was likely to lead to further confusion - a Crown guarantee to Maori of their territorial rights: The Queen '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'. When this was translated into Maori, the condition of collective and individual possession was omitted altogether, and the guarantee of possession - expressed as 'te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa' - covered only lands, dwelling places and property of all kinds. It has been suggested that the absence of forests and fisheries from the Maori translation can be explained by a similar absence from the English draft given to Williams. While there might be other possibilities, such as Williams's general tendency to simplify the text, this is a likely explanation.

But it was the guarantee of te tino rangatiratanga that was to lead to considerable confusion of understanding and misinterpretation of the treaty by both Maori and European, for the word rangatiratanga (chieftainship) was a better approximation to sovereignty than kawanatanga which Williams had chosen in the first article. Although both words implied an exercise of power, authority and jurisdiction, rangatiratanga was of Maori derivation, with connotations of chiefly power that were familiar to Maori. Kawanatanga, on the other hand, derived from kawana (governor) and had associations with Pontius Pilate, Roman governor in the Bible, or with governors of New South Wales. It tended to imply authority

53 Ross, 'Te Tiriti ...', p.142.
in an abstract rather than a concrete sense. This assessment is supported by the contemporary use of the two words in scripture and liturgy. Translations made by the Anglicans and Wesleyans were widely used by the end of the thirties. Rangatiratanga, for example, expressed God's 'kingdom' in translations of the Lord's Prayer, daily evening prayers, in the burial prayers and in the gospels. Kawanatanga most often was used to speak of rulership or principality in a vaguer sense. The shades of difference were not great but they were significant to Maori understanding, or lack of it, particularly because Maori literacy and the dispersion of thousands of biblical texts in the several years prior to 1840 had familiarised so many Maori with the nuances of meaning.

It has been suggested that if Williams had used the word mana with kawanatanga then there would have been no doubt about the transfer of

54 A hypothetical translation which might clarify this would be Pilate holding the governorship (kawanatanga) in the Roman Empire (rangatiratanga).

55 H.W. Williams, Bibliography, indicates the various pieces of scripture that were printed, including the Lord's Prayer; early publications were checked at APL and Bishop's House Library, Ponsonby, Auckland. With one or two exceptions, the translations available before 1840 were made by the Anglican and Wesleyan missionaries.

56 e.g., 'far above all principality, and power, and might, and dominion ...', was rendered as: 'I runga, i te kawanatanga katoa, i te mana, i te kaha, i te rangatiratanga'. The text appeared in Paul to the Ephesians, I:21. Williams, Bibliography, no.15 shows 2,000 copies printed in 1835 and no.20 shows 5,000 in 1837. No.15 was the first work to come off the Paihia press. No.20 was Ko te Kavenata Hou, (The New Testament). Ephesians was popular it seems for Williams notes that a run of it was printed separately a little later.

57 Ross, 'Te Tiriti ...', p.137 and fn.48; Terry, p.181; and Yate, An Account, pp.228-31, who notes that the 'explanations of terms are carried from one to another, and are universally circulated; and with no degree of apparent sagacity, their merits are canvassed, and their probable derivation sought out'. Christian conversion or the 'mihanere' behaviour that often preceded Church membership was demonstrated in various ways, e.g. by 'sitting' on Sundays, by reading the prayers of the catechism or the biblical texts and by engaging in discussions on the same. Many Maori were quite capable of quoting scripture although they might not necessarily be Christians: Te Kemara, the Waitangi chief, for example, noted in Carleton, II, p.132.
power that Maori were being asked to agree to, but this is not quite accurate. The contemporary use of mana indicates that it usually was used to convey authority, just as kaha was used for power. These were the attributes which might derive from or be ascribed to a certain state—such as rangatiratanga or kawanatanga—each having its own mana. Mana was not exclusive to one source alone; several sources of mana could co-exist—chief, governor or Queen, for example. Later events seem to confirm this. At the 1860 Kohimarama conference, for instance, chiefs saw no conflict in accepting both chiefly mana and the mana of the Queen. At the time, John Hobbs (a participant in the 1840 events), dismissed an argument then raging that regretted Williams's omission of mana in the treaty. It would have been superfluous, he argued, because a chief's mana was his rangatiratanga. Since this was guaranteed in the treaty in return for the apparently less important concession of kawanatanga, it is clear that the weakness of the translation lies in those two words.

It is possible that Williams may have deliberately chosen rangatiratanga not only because of its biblical reference but also because of its use in the 1835 Declaration of Independence. In that document the word had referred to New Zealand's 'independence' which the British government

58 See e.g., Ross, 'Te Tiriti ...', p.141.
59 See below, p.393.
60 J. Hobbs to the editor, Southern Cross, 5 June 1860. It was Hobbs's emphasis. Carleton, I, p.244, writing in 1877 concerning mana noted that the meaning of mana had altered over the years. The change in meaning or use, especially with regard to the land, has been noted also by A.R. Parsonson, 'He Whenua Te Utu', unpub. Ph.D. thesis, University of Canterbury, 1978, p.70 and fn.23. Mana has largely been adopted into common usage in contemporary New Zealand speech, perhaps because it still defies an exact translation.
had acknowledged. The Declaration also spoke of the 'sovereign power and authority within the territories of the United Tribes' as 'ko te kingitanga, ko te mana o te wenua o te wakaminenga' which also might have conveyed a better notion of sovereignty than the word kawanatanga. Williams might not have had a copy of the Declaration at Paihia, of course, but there would be a chance to alter the translation before the meeting at Busby's when the 1835 Declaration was to hand. 61 That no effort was made in this respect suggests that the treaty translation was deliberately made obscure and ambiguous in order to achieve the desired end of securing British sovereignty.

In other sections of the treaty there were further translation and interpretation difficulties. By the second section of article two, the chiefs were said to yield to the Queen the 'exclusive right of pre-emption 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'. The intention of Normanby, Gipps and Hobson was to secure to the Crown exclusive control over all transactions dealing with Maori land. 62 This was later confirmed by Busby. 63 Ross argues that the true legal and etymological meaning of the word pre-emption indicates only a priority to purchase over all other parties, not an exclusive right; 64 but this was not the understanding that the framers of the treaty wished to convey. 65 When Williams came to translating this

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61 See below, p.151-2.
62 Normanby to Hobson, 14 August 1839, and supplementary instructions, 15 August 1839, CO 209/4, 251-81, and see text of a treaty drawn up by Gipps, February 1840, in Sweetman, p.64.
63 Southern Cross, 25 June 1858.
64 Ross, 'Te Tiriti ...', pp.144ff.
65 The word 'pre-emption' appears to have found its way into the treaty from Freeman's first draft. See Facsimiles; also Busby, 'Occupation ...', p.97 for his comments.
section, the word 'pre-emption' was rendered as hokonga, a word commonly used for buying and selling, for barter or exchange - a familiar concept to Maori with their long experience of such dealing. Since the British government would be involved in the selling of land once they had purchased it from the Maori, hokonga seems to be a reasonable choice. On the other hand, Williams's translation did not stress the absolute and exclusive right granted to the Crown. Much depended, then, on the explanation of this section and on Maori comprehension of its full import.

The third article probably presented Williams with the least difficulty of translation. It stated that the Queen extended her protection to the Maori people and granted them 'all the rights and privileges of British subjects' - 'nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani' - a reasonable equivalent of the English. While the article appears, at first sight, to confer an unusual benefit on the Maori (and has often been construed in this way), it is somewhat deceptive. Elsewhere in the British Empire, native races were supposed to enjoy the status of British subject too, although in practice they were not always treated accordingly. In New Zealand, it was only remarkable that Maori should be treated as British subjects in that this was explicitly stated in this treaty clause which was thus seen as an expression of humanitarian idealism. On the other hand, the implications of accepting the 'rights and privileges' of a British subject - that Maori would be subject to British law and committed to certain responsibilities - were not made clear in the Maori translation. For that matter, they were not mentioned in the English either, but there was no necessity because implicit to an understanding of the status of British subject was the acceptance of British authority. For Maori, however, article three made no reference to this. Once again, as with the pre-emption clause, explanation of the article and Maori understanding would be crucial.
While the final form of the treaty was being decided, other preparations for the meeting were in progress. On the lawn in front of Busby's house, officers of the Herald saw to the erection of a spacious tent. Made of sails, the marquee stretched 120-150 feet in length, its side-ropes and poles decorated with the flags of all nations. Food for the invited chiefs was collected together—a half-ton of flour, five tons of potatoes, thirty pigs and other goods. An air of excitement hung over the Bay, with a great deal of shipping lying at anchor and considerable business being transacted. After several days of summer showers, the weather began to clear on Tuesday 4 February as Maori began gathering in preparation for the fifth. Wednesday dawned 'particularly fine'. From early in the morning, groups of Maori began to move off towards Waitangi. The Bay came alive with canoes paddling from all quarters, each with thirty to forty rowers keeping time to the call and gesture of the kaituki (the stroke), who stood to the centre of every canoe. The boats of settlers living round the shores of the Bay slipped into the stream too, together with those from vessels at anchor. Most ships were decorated with the flags of their respective nations.

66 Apart from particular references that are noted, the account of the Waitangi proceedings that follows has drawn upon the records of several participants or onlookers at Waitangi: Colenso, History; Mathew Journal, 5, 6 February 1840, NZ MSS, APL; Taylor Journal, 5, 6 February 1840, GNZ MSS, APL; Bright, pp.136-42; Hobson to Gipps, 5, 6 February 1840, GBPP, 1841, (311), pp.8-9; Carleton, II, pp.11-15. Colenso's account was checked by Busby seven weeks after the events of early February and several small notes added. Colenso considered that this made his account 'doubly valuable as a historical reminiscence of what then really took place'. Where possible, Colenso has been checked against the other accounts. The latter are valuable additions to the record, sometimes mentioning incidents that were not noted by Colenso.

67 Buller Journal, 3 February 1840, MS Papers 180, ATL.

68 J.W. Fedarb Diary, NZ MSS 375, APL; entries for January-February 1840 invariably begin with the day's wind and weather reports in the Bay of Islands. On 5 February it was fine with moderate N.N.W. wind.
The Waitangi lawn, a verdant contrast to the surrounding sombre bush, rapidly assumed a gala atmosphere. The Sydney police, in their brilliant uniforms, paraded the lawn where Europeans were 'comfortably walking up and down in different little parties, socially chatting with each other'. Numbers of Maori, squatting in groups according to their tribes, sat smoking and talking. Many had come from some distance and carried guns. Outside Busby's grounds, vendors plied Europeans with refreshments - stout, ale, brandy and rum; pork, cold roast, pies and baskets of bread. It seemed to Colenso, as he arrived for the ceremony, that 'even the cicadæ, those little gallant monotonous-toned summer gentlemen, sang livelier than usual. Everything, in fact, wore the appearance of cheerfulness and activity'. 69

The final touches were still to be added to the treaty. Hobson arrived at Waitangi about 9 a.m. accompanied by Nias. For the next hour, Hobson, Busby and Henry Williams were closeted in Busby's house with a police guard at the door. According to Colenso, they were 'translating the treaty, and arranging other preliminary matters for the meeting'; but this exaggerated somewhat. Williams, who had already prepared a translation, later explained that 'on a careful examination of the translation of the treaty, by Mr Busby, he proposed to substitute the word whakaminenga for huīhuīnga, which was done and approved of.' 70 Whakaminenga was the word used to refer to the Confederation of the United Tribes, whereas huīhuīnga was any meeting or assembly. Since this distinction had been made in the invitations to the Waitangi gathering, Busby obviously thought it important to be consistent. The change

70 Carleton, II, p.12.
necessitated five corrections to the translation where the word appeared. While Busby's careful attention to this detail was not of great significance, it does suggest that Henry Williams was perhaps not entirely familiar with the Maori wording of the 1835 Declaration. 71 At this stage, however, with the Confederation document to hand at Busby's, 72 changes in the translation could have been made to clarify the Maori text of the treaty, to indicate for instance the real transfer of power that Hobson was seeking; but the opportunity was allowed to pass.

In the meantime, a large crowd was gathering - the officers of the Herald, the Governor's suite, all the Church missionaries living in or near the Bay, settlers and old residents, new arrivals, and visiting sailors. About 10.30 a.m., the French Bishop, Pompallier, together with a priest, moved confidently into the Residency. Hobson now held a levee, inviting anyone who wished to be presented to file through the Residency. Nias supported Hobson on his right, and to the left stood Williams, Richard Taylor and the French missionaries; Freeman acted as Hobson's aide-de-camp with other members of his suite standing around. These formalities quickly over, the group broke up and about 11 a.m. moved off towards the marquee, with the police leading Hobson, Nias and Pompallier, the rest following in an 'irregular procession'. The Union Jack, which had been floating over Busby's lawn since the arrival of the Herald, was lowered before proceedings commenced, 73 apparently a careful adherence to protocol, an indication to the public at large that the sovereignty of New Zealand had yet to be negotiated.

71 See above, p.148.
72 Busby to Hobson, 19 February 1840, transmitting the original Declaration, NA, IA, 40/42.
73 Mathew Journal, 29 January 1840, NZ MSS, APL, notes that on the Herald's arrival at the Bay, the Union Jack was flying at Busby's home, the French tricolour at Kororareka, and the Stars and Stripes at the home of Clendon, American consul.
The scene at the marquee was impressive. A narrow raised platform had been placed at one end, together with a table covered by the Union Jack. Hobson and Nias both in full dress uniform now took central seats on the dias, Busby to the left of Hobson, and immediately to the right, Taylor, and Williams appointed as interpreter. The Church missionaries in their plain black cloth ranged themselves behind Williams. To Busby’s left sat the two Frenchmen, Pompallier especially impressive in his long purple cassock, gold episcopal cross and ruby ring. The Wesleyans, who had arrived late, found a place next to Pompallier. Officers in full dress and Hobson’s suite stationed themselves wherever they could, some on the dias, others just in front of it. Willoughby Shortland, who was to take up the position of New Zealand’s first Colonial Secretary, acted as Master of Ceremonies.

The tent filled rapidly. The Europeans, mostly ‘respectably’ dressed, formed an outer circle, standing against the sides of the marquee. The Maori moved into the remaining space and were seated on the ground:

In front of the platform, in the foreground, were the principal Native chiefs of several tribes, some clothed with dogskin mats made of alternate longitudinal stripes of black and white hair; others habited in splendid-looking new woollen cloaks of foreign manufacture, of crimson, blue, brown, and plaid, and, indeed, of every shade of striking colour ... while some were dressed in plain European and some in common Native dresses .... here and there a ... taiaha, a chief’s staff of rank, was seen erected, adorned with the long flowing white hair of the tails of the New Zealand dog and crimson cloth and red feathers.

74 Colenso, History, pp.15-16.
Amongst the chiefs, there were also many ladies, 'their ears adorned with white feathers or the entire wing of a bird' - a 'striking contrast' against the black gloss of a head. And over the whole, bright sunlight picked out the vivid colours of the flags of many nations. To the eye of European observers - Colenso, Taylor and Felton Mathew - the effect was very good; Mathew thought he would never forget the scene to the day of his death.

The business of the day opened with Hobson very briefly explaining to the Europeans the purpose of the meeting - to inform the chiefs of the Queen's intentions and to seek their consent to a treaty. Turning to the Maori he began, with Williams translating, by explaining that, because of the Queen's concern for the welfare of Maori and of British subjects in New Zealand, he had been sent as Governor. But, since the country was outside the Queen's dominion, he lacked the authority that was essential if he were to be of any benefit in controlling British subjects. The Maori could give Hobson that authority if they signed the treaty laid before them. Moreover, the treaty was also an offer of Crown protection which Maori had 'often' asked for. The treaty was then read by Hobson in English, followed by Williams who read the Maori text 'in the midst of profound silence'.

When Williams gave his translation of the treaty, by his own account, he amplified by way of explanation (presumably following the lead given by Hobson in English): 'I told them all to listen with care, explaining clause by clause to the chiefs; giving them caution not to be in a hurry,

75 Mathew Journal, 5 February 1840, NZ MSS, APL. Colenso also noted the feathers worn by men and women, taken either from sea-birds or the white crane [kotuku?].

76 The account that Colenso wrote of this in his History, pp.15-17, is almost verbatim from notes that he took in pencil, evidently during the meeting. For these, see Colenso's 'notebook', in Colenso Papers, X, Hawkes Bay Museum.
but telling them that we, the missionaries, fully approved of the treaty, that it was an act of love towards them on the part of the Queen, who desired to secure to them their property, rights, and privileges. That this treaty was as a fortress for them against any foreign power which might desire to take possession of their country, as the French had taken possession of Otaiai'i [Tahiti], he concluded with some exaggeration.  

While Williams does not record his 'clause by clause' explanation, his comments above clearly indicate his concern to emphasise the protective nature of the Crown, to stress the benefits that would derive from the treaty. Most significant and persuasive, for Christian Maori especially, was the missionary endorsement of the document under consideration. It would appear, therefore, that in assisting Hobson with his explanations, just as in his translation of the treaty text, Williams chose to follow the cautious path of presenting the treaty to the Maori in a way that was most likely to secure their agreement.  

When Hobson reported these proceedings to the Colonial Office, he asserted that efforts had been made to explain to the chiefs 'in the fullest manner' the effect that might result from the treaty. On the basis of the above explanations at Waitangi, together with the Maori text of the treaty, it is difficult to see how he could honestly claim this. The treaty, as it was presented, seemed to be directed in its effect mainly at Europeans. The chiefs, confirmed in their own rangatiratanga (chieftainship and independence) were being asked to give the

77 Carleton, II, p.12; Hobson to Gipps, 5 February 1840, GBPP, 1841, (311), p.8. The French had not taken possession at this date but had certainly put pressure on Tahiti. Shipping contacts would have carried this news to northern New Zealand.
Crown kawanatanga (authority) for the better control of British subjects. Clearly this might be to the advantage of the Maori people, even though it would necessitate the acceptance of an increased British authority and a sharing of the ruling power of the land. But apart from this, other predictable changes that would affect Maori life do not appear to have been touched on. Most importantly, there is an absence of any explanation that Maori agreement to kawanatanga (sovereignty) would mean a substantial transfer of power to Britain, a loss of Maori independence or sovereign rights. The real import of this was also softened by both Williams and Hobson presenting the Crown in the person of the monarch, the Queen, who wished to create a close, familiar tie with the Maori people. The impersonal nature of Crown authority and the potentially restrictive effect of British law were thereby diminished. The emphasis on the Crown as a personality also perpetuated and developed the tradition of personalised Crown-Maori relationships. And by a brief reference to Maori encouragement of British settlement and to the earlier Maori appeals to Britain, Hobson subtly implied that the Maori themselves were not without some responsibility for the situation which they now faced. All this presented Maori with only part of the truth. They might reasonably have expected that a British protectorate-type arrangement was being offered to them rather than an agreement that would lead to the annexation of the country by Britain.

Freedom was now given the chiefs to question and comment as they pleased. While there was a short lull in proceedings as chiefs greeted Hobson by shaking hands, Busby seized the opportunity to address the gathering on the matter of land which he knew was the most sensitive issue. He assured the assembly that 'the Governor was not come to take away their land, but to secure them in the possession of what they had not
sold; that he (Mr. Busby) had often told them that land not duly acquired from them would not be confirmed to the purchaser, but would be returned to the Natives, to whom it of right belonged; that this the Governor would be prepared to do'. When debate on the treaty commenced, Hobson reiterated this promise, that 'all lands unjustly held would be returned'.

These were crucial explanations of article two of the treaty and would later be significant to Maori understanding of the promises that had been made about land, especially about the matter of 'surplus' lands.

In response to a complaint from Moka, the Kororareka chief, Hobson was also pressed to expand on the pre-emption clause of article two. Moka alleged that local British settlers, Mair and Clendon, were still privately purchasing Maori land, in spite of the proclamation of 30 January prohibiting this. Hence the chief questioned Hobson's ability to enforce Crown control. But Hobson insisted that 'all claims to lands, however purchased, after the date of the Proclamation would not be held to be lawful'.

While the exclusive right that the pre-emption clause gave the Crown was still not explicitly stated, Hobson's assurance went some way to clarifying the point. Moka, who had evidently been the only chief present when the land proclamation had been made public, showed by his queries that he grasped the import of Crown control over all land transactions, but whether this was fully understood by other Maori chiefs at the Waitangi meeting remained to be seen.

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78 Colenso, History, pp. 17, 19.
79 See below, pp.312-3.
80 Colenso, History, p.19. There is no evidence to support Moka's allegation, although it is possible that both Clendon and Mair may have been engaged in purchases when Hobson arrived. Mair does not show up on the list of signatories to the memorial presented to Hobson at Kororareka on 30 January, although Clendon is on the list. From other sources, Clendon's presence in the Bay can be verified.
81 J. Rutherford, ed., The Founding of New Zealand; the Journals of Felton Mathew and his wife, 1840-1847, Auckland, 1940, entry of 30 January 1840; for the Memorial, see encl.2 in Hobson to Gipps, 3 February 1840, GBPP, 1840, (560), pp.6-9.
The chiefs debated the treaty proposal for about five hours. As senior chief and tohunga of the Waitangi locality, first right of speech was assigned to the elderly Te Kemara. The customary procedure of Maori debate was followed, each chief rising to speak, sometimes grasping a taiaha or paddle, and usually moving up and down in a cleared space before the dias. To watching Europeans, some lacking experience of Maori custom, the intensity of the Maori oratory that ensued was often disconcerting and alarming, yet at the same time the flow of language and Maori ability to command attention impressed onlookers.

In the first half of the meeting, a number of Maori speakers launched a vociferous attack on the proposed change in their situation. This articulate group comprised the Kororareka chiefs, Rewa, Moka, Hakiro and Tareha, Te Kemara of Te Tii (Waitangi), Kawiti from Waiomio on the Kawakawa River, Whai and another chief from the Waikare arm of the Bay. Most of these were experienced in dealing with Europeans for trade purposes; some had made extensive land sales in the previous ten years. These factors clearly influenced their attitudes. Te Kemara, Rewa and Moka, for instance, challenged the purchasers of their lands - Busby, and the missionaries Williams, Davis, Clarke and Baker - to return the lands to their original owners. Since the challenge was directed in

82 Colenso, History, p.24, notes that Hakiro was Tareha’s son, but that on this occasion he appeared and spoke on behalf of Titore who had died in 1837. In his report, Hobson referred to some of these speakers by name - 'Reellowh', 'Jakahra' and 'Kitigi': Hobson to Gipps, 5 February 1840, GBPP, 1841, (311), p.8. These were probably Rewa, Hakiro and Te Kemara, the last being also known as Kaitieke.

83 Busby held the greater part of the Waitangi peninsula from Te Kemara and other chiefs; Williams lived on the Church Mission land at Paihia which had originally been referred to as Waitangi, perhaps because the claim extended along towards the southern point of the Waitangi River mouth; Davis and Clarke had bought at Wainate where Rewa had held land; and Baker had land holdings on the Waikare River.
a very personal manner at these Europeans present in the assembly, it created considerable embarrassment. This increased when several Europeans (Kororareka traders Johnson, Jones and an unidentified third man), complained that Williams was not conveying an adequate translation of these speeches, inferring that he was protecting himself. Williams and Busby, particularly disadvantaged because of their central role in proceedings, felt compelled to call a temporary halt to Maori speeches while each presented, in English, a brief defence of their land transactions. It is difficult to know whether these chiefs who were so outspoken about the land situation genuinely believed that an injustice had been done in the transactions, or whether they were simply seizing the opportunity to draw attention to Maori loss of land. On the basis of their evidence given later to validate land sales, it was probably the latter. Whatever their motives, the protest was undoubtedly a shrewd debating tactic for it effectively highlighted European eagerness to grasp the land.

In spite of this apparent resentment over the land sales situation, almost all the main speakers in this part of the meeting nevertheless voiced a preference to retain the services of the missionaries and Busby whom they argued were sufficient to Maori needs. In rejecting the alternative of the new governor and his authority, they expressed their fear that acceptance of Hobson would inevitably lead to a diminishing of

84 Colenso, History, p.20, note & p.23 identifies the men as Johnson, 'an old resident (dealer in spirits, etc.) of Kororareka', and Jones 'a hawker and peddler of Kororareka'.

85 See Orton Journal, February 1840, microfilm, MS 90, ATL, where Orton discusses this exchange.

86 Colenso, History, p.18, note, dismisses the protest as 'all mere show', and justifies this by referring to the land claims investigation of Te Kemara's land sales where the chief had confirmed the fairness of the sales.
chiefly status, a submission to a superior authority and the imposition of restrictive controls. The main factor influencing these chiefs in this respect seems to have been the substantial loss of land that each had suffered. Aware that status associated with control over land had also been lost, they now found unacceptable the suggestion that there might be a further loss of mana through a sharing of power with the British government. Various speakers made this clear, Rewa and Tareha speaking directly to the point. Rewa, in particular, revealed a good grasp of the difference between sovereignty and territorial possession, an ability to differentiate which would have forced Hobson and the British government to cast aside previous doubts about Maori capacity to understand this. The chief asserted that the Maori did not need a governor for they were neither 'whites nor foreigners'. True, land had gone, but still 'this country is ours ... we are the Governor - we, the chiefs of this our fathers' land'. If the governor were accepted, New Zealand would suffer the fate of other areas (such as New South Wales), taken by the British.87

Rewa's clear enunciation of the wish to retain Maori authority intact was expressed again by Tareha, an immense man with a 'deep sepulchral voice':88 the governor would be acceptable only if chiefs were given an equal rank. Other arguments in opposition to Hobson were raised by Whai and by a Waikare chief who queried the effectiveness of the proposed new authority to control European behaviour. Whai objected to the lying, cheating and stealing of the Europeans, and also mentioned the Pakeha

87 ibid., pp.18-19.
88 ibid., pp.24-25.
habit of cursing which the Maori found so particularly offensive and threatening. Both chiefs complained about the inequality and injustices of trade deals with Europeans, especially the practice of middle-men who bought up Maori produce at cheap rates to sell the same goods to Europeans at inflated prices.

Neither Hobson nor any of the official party had ready rejoinders to some of these arguments. To those on the dais it was evident that the tide of Maori oratory, set against the Waitangi proposal, was having a marked effect on the whole Maori audience. In addition, Hobson's cause had not been helped by the early exchange covering land between Williams, Busby and certain European onlookers which had interrupted the course of proceedings. The unpleasantness was seen by some as evidence that the 30 January proclamations, coupled with the terms of the treaty just made public, had produced an anti-government faction amongst some disgruntled local traders and settlers. The same group was suspected of inciting Maori opposition. Suspicion of a similar kind fell on the French Catholic Bishop, Pompallier, because the Kororareka opposition group were not Anglican mission converts nor close supporters, but, on the contrary, were rather inclined to the Catholic faith.

While this tide of opposition was running against Hobson, only four speakers had briefly voiced their support, asking that he stay to be a 'father' to the Maori people, to protect their lands and to keep the peace. The four - Tamati Pukututu, Matiu, Pumuka and Wharerahi - were

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99 ibid., p.23, seems to suggest that Whai was directing his remarks at Johnson who claimed that they were 'all lies'.

90 Rewa's daughter and niece were considered to be Catholic converts; and Moka and his supporters had invited a Catholic mission into the Opotiki area. Catholic influence also seems to have been strong in the Waikate district. If the chiefs noted were not Catholic converts, they were certainly well-disposed to Pompallier and his mission.
either mission converts, or old friends of the English missionaries. Their support had been no more than affirmation of Hobson and British authority. In comparison to the speeches in opposition which had so influenced the crowd, these chiefs had not advanced persuasive arguments in Hobson's favour. Nor did a short, well-disposed effort by Rawiri\textsuperscript{91} assist the British government's cause.

At this critical juncture, Heke, Nene and Patuone, all long-time associates of the English missionaries, rose to speak, one after the other, and succeeded in swinging the tenor of the meeting towards Hobson. Heke reasoned that without a governor the Maori people might be subjected to the influence of the French and other unscrupulous Europeans; that good would derive from Hobson remaining in New Zealand to be 'all as one' with the missionaries; that it would be not unlike the benefit brought by the Word of God - Te Kawenata Hou, the New Testament or Covenant, recently printed in the Maori language and widely circulated. Heke admitted, however, that Maori were uncertain of the future and inexperienced, like children; in the circumstances, they had to rely on the direction of their missionaries, their 'fathers'.\textsuperscript{92}

Following this dramatic delivery of Heke, Tamati Waka Nene was even more emphatic. Appealing directly to the assembled Maori, he stressed his belief that the situation in northern New Zealand left the Maori people with no option but to accept Hobson and British authority. In

\textsuperscript{91} This was almost certainly Rawiri Taiwhanga, the Church mission's first convert of any significance. See above, p.57, fn.82.

\textsuperscript{92} Colenso, History, p.26. See Buick, Treaty, p.140, note, for a discussion on Heke and the conflicting accounts of his role at the treaty meetings. Colenso's account has been accepted for this information.
support of this, he pointed out that much land had gone already; that it was filled with numerous Europeans over whom the chiefs had no power; and that the chiefs were losing influence while European power was expanding. If the traders and 'grog-sellers' had been turned away 'in the old time', Nene reasoned, then the chiefs would have been in a position to unanimously reject Hobson's offer. But the time for that choice had passed, as the chief indicated by pointing to the many articles of European apparel being worn by chiefs and to a number of half-caste children, living evidence of the degree to which the two races were mingled. Hence it was fitting, he concluded, that Hobson should remain to be a 'father, a judge, a peace-maker'. The British were not out to enslave the Maori, Nene added; in Australia, no Maori was a slave and many had European friends. These sentiments were endorsed by Patuone, Nene's elder brother, who also associated Hobson with the benefits brought by the missionaries and with the New Covenant, as Heke had.

The more promising disposition towards Hobson and the treaty which these speeches drew from the meeting was not dispelled when Te Kemara made another extreme sally against Hobson. A chiefly remonstrance, together with the information that Te Kemara might expect to have Hobson dwelling under his patronage at Busby's Waitangi home, were sufficient to halt the chief's outpouring and turn him to wildly shaking Hobson's

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93 Felton Mathew had the impression that Nene had 'burst' into the tent before speaking, but Bright, p.141, gives an alternative account of a dignified entry and persuasive delivery. Hobson to Gipps, 5 February 1840, GBPP, 1841, (311), p.8, cites part of Nene's speech: 'You must be our father. You must not allow us to become slaves. You must preserve our customs, and never permit our lands to be wrested from us.

94 Mathew Journal, 5 February 1840, NZ MSS, APL, notes that the day before, 4 February, Hobson had agreed to rent Busby's home for £200 per annum. Hobson did not follow the agreement up, but negotiated for the purchase of Clendon's property at Okiato on the Kororareka side of the Bay.
hand and greeting him repeatedly in English. General amusement over this incident broke the tension of the gathering and the opportunity was taken to bring the meeting to a close. Speech-making had been in progress for some five hours with a break only for a rather disruptive and poorly organised distribution of tobacco amongst the chiefs. Things had not gone too well for the British government and Hobson expressed his fears to Williams that the chiefs might not sign the treaty. Williams, long experienced in negotiating with the Maori, 'cautioned' Hobson against showing any anxiety. He advised him to allow the chiefs time to think over the Waitangi proposal - a request which one of the chiefs had made. Public notice was given that the meeting would reconvene on Friday, 7 February, and the meeting closed with three cheers being given for the governor, in which all 'lustily joined'. The official party then withdrew to Busby's house before returning to dine on the Herald. The various other parties dispersed.

During the evening of 5 February, the treaty was the subject of serious Maori discussion. As Williams recollected: 'There was considerable excitement amongst the people, greatly increased by the irritating language of ill-disposed Europeans, stating to the chiefs, in most insulting language, that their country was gone, and they now were only taurekareka (slaves). Many came to us to speak upon this new state of affairs. We gave them but one version, explaining clause by clause,

95 Rewa, Rawiri and other chiefs had also used greetings in English, somewhat to the surprise of the Europeans present.

96 Tradition amongst Maori of the Waitangi area holds that the place of this discussion was on the flat land of the point on the Paihia side of the Waitangi River where there is still a cairn to commemorate Maori consultation. Although the cairn may have its origins in meetings in that area in the 1880s, it is very likely that Maori attending the Waitangi meeting would have used the same spot.
showing the advantage to them of being taken under the fostering care of the British Government, by which act they would become one people with the English, in the suppression of wars, and of every lawless act; under one Sovereign, and one Law, human and divine.' When many had had their say, Williams urged them to attend the Waitangi meeting when it reconvened, because 'the question was for their own benefit, to preserve them as a people'. Williams was obviously committed to a persuasive line of argument akin to that adopted during that day's meeting, emphasising the beneficial aspects of the treaty and distracting Maori attention from matters to which they might take exception. The treaty, as Williams presented it, was essentially a protective instrument. In short, Maori who sought his advice were not being made fully aware of the consequences of giving their consent to the treaty.

By Thursday morning, 6 February, the chiefs had come to the decision that the treaty business should be concluded immediately so that they could return home. Williams was informed accordingly and by mid-morning between three and four hundred Maori had gathered once more on Busby's lawn. Scattered in small groups, according to their tribes, they waited. But it soon became apparent that there was a hitch in proceedings. Those at Waitangi expected Hobson's arrival in the belief that Hobson knew about the changed date of the meeting. But on the Herald there was no sign of movement. When Shortland, Cooper and Mathew came ashore at Waitangi towards noon to 'see what was going on', they were surprised to find the crowd waiting. On the ship they certainly knew nothing about a meeting. A boat was quickly sent for Hobson who confirmed this fact; he had 'not the least notion' of a meeting being held.98

Since Hobson was anxious to see the treaty signed, there seems to be no cause to doubt his statement. How had the hitch occurred then? Responsibility probably can be attributed to Taylor. The missionary explained that on the evening of 5 February he had sent a message to Hobson requesting permission to give notice that the meeting scheduled for the Friday would be brought forward to the next day, Thursday. Hobson's reply had seemed to Taylor to be in the affirmative. Since Hobson denied any knowledge of this, it is possible that Taylor simply assumed Hobson's agreement. Failure in communication between ship and shore may easily have occurred in the stress at the end of an exhausting day's meeting. Taylor may also have been encouraged in his misapprehension by receiving from Hobson the 'rough copy of the treaty' to be copied afresh. This rough copy was only on paper and contained the alterations that had been made at Busby's suggestion. According to Taylor, he 'sat up late' on the Wednesday, copying the treaty on parchment and keeping the 'original draft' for his pains.

Whatever the cause of the bungling over arranging the second Waitangi meeting, the significant aspect is Taylor's anxiety to hasten the treaty business to a successful conclusion. He feared that the majority of the chiefs would return home because of a shortage of food, thus leaving the treaty unsigned. There was certainly some truth in this. The

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99 See above, pp.151-2; cf. Ross, 'Te Tiriti ...', p.133; in discussing this point, she suggests that the treaty considered at the meeting of 5 February differed from the treaty signed on the 6 February. As evidence, she cites Carleton, Williams's son-in-law, who gave this explanation in NZPD 1864-66, p.292, 'An alteration was made while the draft was under consideration, and Mr. Taylor volunteered to write out the whole afresh.' Colenso confirmed this explanation. But apart from the correction made at Busby's house on the morning of 5 February, there is no evidence to support Ross's line of argument that there may have been another alteration.

100 Taylor Journal, 5 February 1840, GNZ MSS, APL; Ross, 'Te Tiriti ...', p.133, fn.28, records that Williams's 'original draft' has not been found.
several hundred Maori camping in the Waitangi vicinity had brought little or no food with them from their home districts. While the quantity of flour, sugar, pigs and potatoes, collected together and distributed at the conclusion of the Wednesday meeting had seemed to a European to be 'vast', it was little enough to satisfy the appetites of such a large crowd through to the Friday.  

Other supplies were several miles away and situated on the side of the Bay where European influence might adversely affect Maori attitudes to signing the treaty. Taylor, no doubt in consultation with Williams and Busby, probably deemed any movement of chiefs away from Waitangi to be unwise; the sooner the treaty was signed the better. This was certainly how Colenso read the drift of events when surprised by news of the early reconvening at Waitangi. His immediate reflection was that 'perhaps the old proverb was borne in mind, "strike the iron while it is hot"'. He noticed, for example, that Maori had already begun to drift away; the assembly was not as large as on the first day. It was not only the lack of food that might have caused this; additional factors were the 'fierce squabble' over the poorly distributed tobacco on the Wednesday, and memories of a meeting at Waitangi some four years earlier which had resulted in bloodshed.

101 See above, p.150, where Mathew observes the preparation of 5 tons of potatoes, a half-ton of flour and 30 pigs.

102 Taylor is the only source for this explanation of how the day of the meeting came to be changed. It is highly unlikely that he would have made the decision by himself. It seems more than likely that others had a part in it.

103 Colenso Journal, 6 February 1840, Hawkes Bay Museum.

104 loc.cit.; Colenso, History, p.30; Ramsden, pp.143ff., 166. In his Journal, Colenso noted that 'the great body of the Natives had dispersed', but in his History makes reference to 'several' only. These were possibly the chiefs Waikato and Wharepoaka who had been involved in a land dispute at Whananaki some months before; and Kawiti who took exception to the distribution of tobacco in which he had missed out. None of these appear to have signed on 6 February. If they absented themselves, their followers also would have been absent - a possible explanation for the apparent discrepancy in Colenso's accounts. For Kawiti's attitude to the treaty, see N. Taylor, ed., The Journal of Ensign Best 1837-1842, Wellington, 1966, p.221.
After some discussion and hesitation amongst the official party, it was decided to go ahead with the meeting, although it was a day early. But Hobson 'more than once' expressed his concern that it could not be considered a 'regular public meeting', since the proper notice had not been given. In circumstances of such significance where Hobson would certainly want to give no cause for public doubt or criticism of official action, this preference for a strict adherence to the correct form of public meeting was quite understandable. In fact, Hobson suggested that the Friday meeting, for which notice had been given, should still be held; that on the Thursday only signatures would be accepted; no discussion would be allowed.

Events now moved towards the signing of the Waitangi treaty. The official party took their places in the marquee. There was none of the pomp and circumstance of the previous day's meeting. Hobson, surprised by the course of events, had come ashore 'in plain clothes except for his hat' and unaccompanied by any of the officers of the Herald. Apart from Busby and several of the English missionaries, only about a dozen other Europeans were present. Pompallier, accompanied by a priest, arrived just as proceedings were about to begin. The chiefs, who had become 'very impatient' at the morning's delay, now 'with no little difficulty ... were eventually prevailed upon to assemble'. At one estimate there were about five hundred of them 'all seated on the ground with great

105 Normanby's instructions, 14 August 1839, GBPP, 1840, [238]; and Hobson to Gipps, 6 February 1840, GBPP, 1841, (911), p.9. Hobson had been told to treat 'openly' with the Maori; he reported that he had 'courted the utmost publicity'. Mathew Journal, 6 February 1840, NZ MSS, APL, reveals that the official group sensed that there were several parties interested in the events: 'We are working a good deal in the dark; and there are four distinct parties all opposed to each other, but all endeavouring in different ways and for different purposes to throw dust in our eyes, namely the European inhabitants, the Missionaries, Busby and the Roman Catholic Bishop. They are each playing a deep game.'
decorum and regularity'. Some arrangements were made to allow for
the better, more regular signing of names on the treaty. Hobson now
opened proceedings by announcing that, since it was not a regular public
meeting that day, he was restricting business to signing only. The
treaty in the Maori language, which Taylor had copied on parchment, lay
on the table before him. On Hobson's request, it was read once more by
Williams to the assembly. A pause followed before one or two chiefs rose
to speak: the previous day they had not fully understood the matter but
they had made enquiries and considered the business; they were prepared
to sign because they believed it would be to their advantage. But
before anyone could move, there were two important interruptions, one from
Pompallier, the other from Colenso.

Pompallier, fully aware that a British colony was being established,
was concerned that religion should not be interfered with and that 'free
toleration' would be allowed in 'matters of faith'. He asked that a
public guarantee to this effect be given the Maori, to which Hobson agreed.

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106 Colenso's Journal and History (checked by Busby), together with
Taylor's account, all concur in this initial unexplained reluctance of the Maori to assemble. Buick, Treaty, p.116, mentions another 1,500 Maori outside the tent.

107 Mathew is the only observer at Waitangi who recorded this.

108 cf., Colenso, History, pp.31-32, and the Williams account in
Carleton, II, pp.14-15 for this. Pompallier explained later that he introduced the subject of religious freedom because no one seemed to be concerned about it in any way; see J.B.F. Pompallier,
Early History of the Catholic Church in Oceania, Auckland, 1888,
pp.62-63. (Sections of this were written in the early 1840s.)
There is also an abridged version of Williams's account in the
Busby Papers, MS 46, f.6, AML, with the annotation: 'This account
though not perhaps in the same words was sent to the Edition of
the Protestant Magazine and published in that periodical.'
Williams had to interpret that 'all creeds alike' would receive Hobson's protection. The missionary was outraged at the privileged position that this would give the Roman Catholics. Having tried unsuccessfully to dissuade Hobson, he made a calculated attempt to get round the issue with Colenso's help. A carefully written statement was read to the assembly: 'The Governor says the several faiths of England, of the Wesleyans, of Rome, and also the Maori custom, shall be alike protected by him.' This last, Maori 'ritenga', was apparently inserted at Colenso's suggestion to act as a 'correlative' to the clause on Rome. The sectarian sensitive missionaries hoped that the Roman Catholic faith would suffer by association with ritenga (what Busby termed 'heathen practices'), which the English missionaries quite explicitly attacked as decadent and which they aimed to ultimately eliminate from Maori society. Thus the official recognition seemingly given Maori custom should be seen for what it was - an inclusion arising from sectarian jealousy. Furthermore, it ran counter to nineteenth-century Christian sensitivities generally and barely accorded with Normanby's instructions to Hobson to suppress, by force if necessary, the more extreme Maori usages. The promise to protect Maori custom - a verbal commitment given only by chance - thus amounted to very little.

As Pompallier retired from the meeting, his request having been attended to, Colenso was steeling himself to intervene. From that morning when he had first been aware of the haste with which the treaty negotiations were drawing to a conclusion, he had been 'much agitated as to the

109 In the announcement read by Williams at Waitangi the words used were 'te ritenga Maori' which Colenso translated as 'the Maori custom, or usage'. Williams's account spoke of 'Maori practices'. But the contemporary Christian European attitude was probably best captured by Busby's record which spoke of 'heathen practices'.

correctness of the proceeding. It was not merely the failure of proceedings to make Maori fully cognisant of all factors that disturbed him; he was also aware that some chiefs had failed to understand the treaty because they had not been present when explanations had been given. Both Colenso and Mathew noted that there were chiefs arriving during the 5 February meeting and over that evening, even while the 6 February meeting was in progress. Presumably then, the understanding of these late-comers was based on hearsay. Colenso had determined to raise the issue with Hobson but he desperately hoped that someone else might do so first. His own brethren did not want the matter mentioned. Time was running out because at this stage the chiefs were being called on to come forward and sign. A momentary hesitation was overcome by Busby who began to call them by name from a list of his own in which Heke (known to be the most favourably disposed towards the treaty, according to Colenso) happened to be first. As Heke advanced towards the table where the treaty lay, Colenso finally rose and put a question directly to Hobson: Did Hobson think that the Maori understood the articles of the treaty which they were about to sign?

There could be no query more pertinent to the matter in hand and none more significant to the future status of the treaty than the matter of Maori understanding raised by Colenso, but, from the point of view of Hobson and others involved in the negotiations, it was no doubt most unwelcome. As the success or failure of Hobson's mission waited on

110 Colenso in his Journal entry that night expressed doubt with much greater directness than the account in his History might suggest.

111 Colenso, History, p.34; Mathew Journal, 6 February 1840, NZ MSS, APL.

112 Colenso, History, p.32. Heke was the first on the list, at least of those present that day anyway.
the Maori decision, the situation must have been a tense one. Colenso's interruption, therefore, just as success seemed imminent with Heke moving to sign, must have been all the more irritating. Hobson responded testily, asserting that he had expended all means in order to achieve full Maori comprehension of the treaty. But Colenso refused to be so easily dismissed; he claimed that some chiefs had 'no idea whatsoever as to the purport of the Treaty'; that it was imperative that Maori should understand it to 'constitute its legality'. Busby now tried to resolve the issue by reasoning that the Maori in their inexperience would have to trust the missionaries, as Heke had observed the previous day. Colenso could see the weakness in this argument only too well. Unless the treaty was explained 'in all its bearings' so that Maori assent would be 'their own very act and deed', the missionaries would not be free from future reproach. His particular worry, as he confided to his journal that evening, was that Maori had not been made 'fully aware of ... the situation in which they would by their so signing be placed'. But this, it seems, was precisely what Hobson and Williams had wanted to avoid.

Colenso's protest was shrugged off impatiently by Hobson who expressed the hope, almost a threat, that there would be no Maori reaction against the treaty if they signed because the missionaries would keep their Maori converts and associates 'peaceable enough'; and for the rest, 'we must do the best we can with them'. Hobson's response, expedient in the circumstances, thus passed over a serious query raised in good conscience and with good reason. As a result, the issue of full Maori understanding of the treaty clauses was deferred. Hobson had also placed a particular onus on the English missionaries, a responsibility for any shortcomings in Maori relationships with the Crown - a factor that Colenso had specifically tried to avoid.

Colenso's exchange had evidently not perturbed the assembled Maori because the signing now went ahead with Heke again taking the initiative, followed by the other chiefs. Two chiefs, Ruhe and Marupo, meantime kept up a running challenge in the traditional manner. As each Maori signed, he shook hands with Hobson (and with the other members of the official party), the Lieutenant Governor repeating 'He iwi tahi tatou' (We are [now] one people). The ceremony closed with 'three thundering cheers' from the assembled Maori and with Patuone's presentation to Hobson of a mere (club) 'expressly' for Queen Victoria. As Hobson retired to the Herald, taking with him Patuone to dine, Colenso was left to attend to the customary distribution of gifts. In this instance, there were two blankets and a small quantity of tobacco for each signatory to the treaty, a detail which Colenso recorded with the somewhat wry comment: 'Sic transit gloria Nova Zealandia!'.

From an official point of view, the treaty signing had occurred almost by accident on 6 February. That evening, on the Herald, there was still some idea of having a meeting on 7 February for any late arriving chiefs; but the following morning there was a sense of relief that the Waitangi meeting had been concluded early, because bad weather made any meeting, indeed any movement from the ship, quite impossible. It was Saturday, 8 February, therefore, when the Herald hoisted a 'profusion of British colours and fired a Royal salute of twenty-one guns'. There was also a 'great display' on shore at Kororareka. The celebration, said Colenso, was 'in honour of the new British Colony of New Zealand', at face value a rather exaggerated statement when Maori agreement to the treaty was still so limited.

114 Colenso Journal, 6 February 1840, Hawkes Bay Museum. This was Colenso's wording. The correct rendering would have been as follows: *Sic transit gloria Novae Zealandiae.*

115 Colenso, *History*, p.35.
Yet it is obvious from the celebrations immediately following the Waitangi treaty-signing that Hobson attached great significance to this first negotiation, especially to the participation of the Confederation chiefs. The fact that the British government was most concerned to negate the official admission of New Zealand's independent status, as recognised in the 1835 Confederation, tends to be confirmed by Hobson's care to record their adherence to the treaty in his 6 February dispatch to Gipps. Confederation chiefs had numbered twenty-six out of the forty-six 'head chiefs' who signed at Waitangi, he wrote. Later, when other chiefs had signified their agreement, Hobson was able to report that the 'majority' of the Confederation had given their assent. With their adherence secured, a technical hindrance to the assertion of British sovereignty had been removed. Thus he could report that with the acquiescence of other northern chiefs this 'must be deemed a full and clear recognition of the sovereign rights of Her Majesty over the northern parts of this island'. Furthermore, a comment from Mathew suggests that officially it was believed that the treaty, signed at Waitangi, held the key to British acquisition of the whole country: 'We now consider', he said, 'that the first and most difficult part of our undertaking is completed, and do not anticipate any further trouble'. It would appear from these facts, therefore, that the signing at Waitangi, although

116 While it is near impossible to identify precisely those chiefs who signed on 6 February, because the recording of chiefly names and moko on the treaty sheet was so haphazard, a comparison of the 1835 Confederation document and the Waitangi treaty sheet indicates that a substantial number of signatories on 6 February were indeed from the Confederation as Hobson claimed. In this first treaty-signing and in all subsequent ones, Maori agreement was given either by a signature, a moko or a mark, but various expressions have been used in this thesis to indicate Maori assent.

118 Hobson to Gipps, 6 February 1840, GBPP, 1841, (311), p.9.
119 Mathew Journal, 6 February 1840, NZ MSS, APL.
only the first step in a planned series of treaty signings, was regarded officially as virtually a conclusive act. In view of this, just how satisfactory had that signing really been?

First, it is clear that, apart from nullifying the 1835 Declaration of Independence, Hobson had no intention of requiring unanimous Maori assent to the treaty as a prerequisite to his first assertion of British sovereignty. Rather, he was prepared to settle for a counting of heads. The first group of signatories at Waitangi was not widely representative of northern Maori. In Colenso's opinion, the 'greater part of them were from the Bay of Islands and its immediate vicinity' - a point repeated by Henry Williams and confirmed by names on the treaty sheet.\(^{120}\) It seems that the only ones present from any distance beyond the Bay were Nene and Patuone from Hokianga,\(^{121}\) and Kauhata, Wharaau and Ngere from the Whangaruru district. Colenso's critical eye also perceived that 'not many chiefs of the first rank' had signed. It was a shrewd comment; neither Pomare nor Kawiti, two major Bay chiefs, had signed on 6 February;\(^{122}\) nor, it seems, were there any of the senior chiefs from the northern side of the Bay. Thus Hobson was assuming sovereignty over northern New Zealand on the basis of an agreement with a very selective group of northern Maori.

As for understanding of the treaty, it left much to be desired;

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120 Missionary Register, London, November 1840, p.509, cites a letter from Williams dated 13 February 1840.

121 Mathew Journal, 3, 4, 9 February, 1840, NZ MSS, APL. Mathew notes on 3 February that he had a feeling that the missionaries were stalling for time. The following day he observed that they sent off their ship to Thames (Hauraki Gulf) on an unexplained mission. Patuone was normally resident in that area at Whakatiwai.

122 Colenso, History, pp.34-35; and see below, pp.196, 234.
apart from the problem of those chiefs who had not heard or grasped explanations, signatories had not been made fully aware of the real nature of the agreement. In part, Williams's Maori text was the cause of this because it failed to convey the real import of the contract. Yet more adequate oral explanations could have overcome this weakness. The explanations given at Waitangi and immediately after, however, were couched only in terms that might convince chiefs to sign. Such explanations presented an ideal picture. Maori were led to expect that benefits alone would be gained. True, Maori authority might have to be shared under the treaty, but this would mainly ensure better control of troublesome Europeans. Hence Hobson would be a more effective version of Busby. Negotiations had, after all, been directed at the confederation which must have seemed to chiefs an official recognition of Maori independence or sovereignty. It was certainly seen that way in later years. 123 That government administration and the imposition of British law would inevitably deeply affect Maori life and ultimately conflict with the mana of rangatiratanga, guaranteed in the treaty's second article, was not even hinted at in the treaty negotiations. Rather, the emphasis fell on the protective potential of the Crown to secure the land against challenges within New Zealand and to protect it from the designs of other nations. Chiefs were looking, it seems, for a British protectorate that would preserve their chieftainship, not for an arrangement that would diminish it.

In persuading chiefs to agree to the treaty at Waitangi, the tradition of a personalised, caring Crown, an image long cultivated amongst the northern Maori by Europeans, certainly proved helpful. Williams, in his explanation, for example, played on the idea by presenting the treaty as the Queen's 'act of love' towards the Maori people. Furthermore, he

123 e.g., see below, p.495.
perceived that for Maori converted to or associated with Christianity there was the additional spiritual dimension of the Crown: that, under one Sovereign, Maori and British could be linked as one people with the same law, spiritual and temporal. Hobson, prompted perhaps by Williams, also promoted this concept with his greeting as each chief signed, 'He iwi [ko]tahi tatou'. Chiefs had indicated already that they were disposed to think of the treaty in spiritual terms since Heke and Patuone had both likened the agreement to the new covenant. The role of the English missionaries in determining Maori understanding, therefore, was probably more crucial, in terms of the explanations given, than was Henry Williams's Maori text which has been attacked so often as misleading with its so-called 'missionary' Maori. It determined that Ngapuhi, in particular, would understand the treaty as a special kind of covenant with the Queen, a bond with all the spiritual connotations of the biblical convenants: there would be many tribes, including the British, but all would be equal under God.

At the conclusion of the Waitangi meeting, Hobson might have congratulated himself on obtaining the agreement even of those who had opposed him at Waitangi. But it is nevertheless true that a few chiefs had reservations to the very end. Rewa, for instance, still refused when all other chiefs of note had signed. The persuasion of some of his fellow chiefs, as well as the Anglican missionaries, finally weakened his resolve. This Maori opposition to the treaty was attributed by Hobson, Busby and the English missionaries to the influence of Pompallier.

124 While Colenso records these words as 'He iwi tahi tatou', they are often said to be 'He iwi kotahi tatou'.

125 Colenso, History, p.34; Mathew Journal, 6 February 1840, NZ MSS, APL.
While Hobson treated the Bishop in public with courtesy and consideration, inviting him to attend the Waitangi meeting and assuring him that religious tolerance would be observed, he later reported to Gipps that Pompallier had encouraged Maori to oppose the agreement.\*\*\* Suspicions of Pompallier were based on assertions made at the meeting by Rewa and Te Kemara who claimed that the Bishop had told them not to sign the document for they would become slaves as a result.\*\*\* It was also well known that these and other chiefs who spoke in opposition were close associates of the Catholic mission. Rewa had actually arrived from Kororareka in Pompallier's company.\*\*\* Thus it was assumed that the Bishop was behind the Maori opposition.

Suspicions of Pompallier were partially correct. Writing about the event some years later, he admitted that the 'Catholic chiefs' (mainly from the Kororareka district) and 'above all' Rewa had consulted him over the treaty. In his own words, he had told them: 'It was for them to determine what they might desire to do with their national sovereignty, whether to keep it or to transfer it to a foreign nation; they were therefore at liberty to sign or not to sign the treaty which was going to be put before them'; but whatever their decision it would not affect the French mission administering to Maori spiritual needs which were his sole concern. From this, the Bishop concluded that he had kept himself 'entirely aloof from politics'.\*\*\* In a sense only was this true.

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126 Hobson to Gipps, 17 February 1840, GBPP, 1841, (311), p.10.

127 Colenso, History, pp.34; the original manuscript of Colenso's History, held at ATL, cites the Maori phrase that is supposed to have been used to express this point: W. Colenso, 'Memoranda of the arrival of Lieutenant Governor Hobson in New Zealand; and of the subsequent assembling of the Maori chiefs at Waitangi', MS, ATL.

128 Busby, 'Occupation ...', p.91.

129 Pompallier, p.62.
As a Frenchman and a Catholic, Pompallier was undoubtedly able to adopt a position in relation to the British government that was more disinterested than that of the Englishmen who were committed to Crown success in the treaty negotiations. Hence his explanation of the transfer of Maori authority that could be expected and Maori freedom of choice in the decision were blunt and honest appraisals of the treaty agreement. While not exactly opposing the treaty, he was certainly not promoting it as most of his English missionary brethren were doing. His early departure from the Waitangi meeting of 6 February before any chiefs had signed the treaty was probably sufficient in itself to suggest a public dissociation of the Bishop from the business in hand — an impression he no doubt wished to create. Even allowing for Maori exaggeration and national or sectarian jealousies concerning the Frenchman, there was almost certainly some justification for suspecting him. It is not surprising that the Kororareka chiefs, with Pompallier as their adviser, had demonstrated a much shrewder and more accurate grasp of the real nature and effect of the Waitangi treaty.

Yet in the final analysis, Maori expectations of the benefits to be derived from the agreement must have outweighed fears and enabled reluctant chiefs to put aside any reservations. For many Maori, especially Christians, the persuasive reasoning of Hobson, coupled with missionary explanations, was perhaps sufficient. On the other hand, Maori were shrewd judges of affairs, at least in so far as they were provided with the real facts of the case. The alternative of French intrusion in New Zealand, for example, would scarcely have been attractive to most northern Maori, even to those with Catholic sympathies. Although Pompallier’s labours had created a good impression in the north just prior to 1840, France was still referred to in the Bay with a
'twinge of bitterness'. And contemporary French pressure on Pacific Islanders was certainly brought to Maori attention by the English missionaries and possibly confirmed by shipping contacts. Other motives for Maori adherence to the treaty would become apparent later - expectation of increased trade, desire for various material benefits, assistance in handling the changes disturbing Maori life and, not least, a shrewd perception of the possibilities of manipulating British authority in inter-tribal rivalries - to name but a few. Above all, Maori fear that the mana of the land might pass from them if they signed the treaty was eased by the reassurance of the treaty's guarantee of rangatiratanga over all that Maori considered precious. It looked as if the treaty was asking little of them but offering promises, supported moreover by a documentary agreement of the kind that Europeans were known to place much importance on.

Nevertheless, for Maori chiefs, by temperament and training cautious and suspicious of the motives of others, the Waitangi decision required a remarkable degree of trust. This was based primarily on the advice of the English missionaries, both Anglican and Wesleyan, that Maori interests would best be served by agreeing to the treaty. It was advice that was, in a sense, honestly given. The English missionaries had become

130 Jameson, pp.196-7.
131 Pompallier, pp.40-41, notes that the French navy was prepared to support him in New Zealand with similar tactics, Captain Cecile of the Heroine, for example, being ready in mid-1838 to 'employ his artillery and the weapons of his sailors'.
132 Prior to 1840, Maori were becoming increasingly aware of the importance of documentation. They were cautious of signing land sales deeds, for example, because they were aware of the importance attached to them by Europeans. Certificates were sometimes sought by Maori as guarantees for their trustworthiness or to validate a purchase made.
convinced in the two or three years prior to 1840 that a regularisation of English intrusion into the country would be much preferable to the haphazard influx of settlers and transients that was proving increasingly detrimental to Maori welfare. They had also become concerned about the pressure being applied to Maori to sell their land. They had encouraged northern Maori to retain their most fertile land and attempted to hold land in trust for various Maori. But their anxieties had been heightened by news of the New Zealand Company’s colonisation plans and confirmed when Henry Williams returned from the south in January 1840 with tales of dubious Company purchases. Their hopes lay in New Zealand becoming a British Colony whereby a conjunction of Maori and European interests might be served. For these reasons they suppressed their qualms and no doubt exonerated themselves from any sense of guilt that they were deceiving the Maori people over the treaty. It was often stated at the time of the treaty negotiations, with some truth, that Maori could not possibly appreciate the full implications of what they were doing. Hence the missionaries tended to emphasise the fact that the good faith of the Crown to honour the Waitangi agreement was pledged in a unique way. This came to be accepted as the 'spirit' of

133 William Williams in Carleton, II, pp.xliii, xlv, said that this applied to the 'richest portions of the neighbourhood of Waimate, also to the district around Pukenui, to Mawhe, to Kaikohe (Heke's land), to Kawakawa, and particularly to a large district called Okaihau, extending from the beginning of the wood towards Hokianga down to the river Utakura'.

134 Adams, pp.33-35; Carleton, I, pp.224-9; H. Williams to his wife, December 1839 concerning the Wanganui purchase; Hobbs Diary, 7, 16 January 1840, MSS 144, AML.

135 By 1840 this seems to have been the attitude widely held by the English missionaries of both bodies. See e.g., Carleton, I, pp. 232-5 for various Anglican opinion, and Ironside Diary, 10 February 1840, microfilm, MS 474, ATL; also Davis to Coleman, 13 February 1840, in Coleman, pp.250-51; Hobbs Diary, 28 March 1840, MSS 144, AML. Hobson gave a good evaluation of the land sale situation in early 1840: Hobson to Normanby, 20 February 1840, CO 209/7, 27-33.
the treaty which morally bound the Crown to uphold the several guarantees given. Later, when the ambiguities of the agreement and its doubtful legal position became apparent, it would be this 'spirit' of the treaty that would sustain a sense of Maori expectation and European obligation that treaty promises should be kept.
'The Pakehas say the Governor comes to take the land. This is the first time I ever heard the Buka Buka (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 Mathew know what is to become of us, but will not tell us. These are my sayings.'

With the Waitangi meeting concluded, Hobson was bound to attempt further treaty signings. Legal, humanitarian and diplomatic reasons still affected official decisions. The legal aspect of retracting British recognition of Maori independence was less pressing now, although the agreement of some 1835 signatories had still to be obtained and Hobson was aware of this. The more important elements, however, were the humanitarian and diplomatic. Humanitarian considerations had been indicated by Normanby's injunction to Hobson to seek the 'free and intelligent consent' of the Maori people before developing a British colony in New Zealand.1 This had yet to be fulfilled. In a more practical sense, without further treaty adherence, Hobson would not easily secure Maori and missionary agreement to British entry to other parts of the country. There was also the additional element of the potential intervention (or at least continuing interest) of France or the United States in the country - a matter that took on greater importance when a group of French settlers arrived in New Zealand in mid-1840 intending to establish a colony in the South Island.

Although discretion had been given Hobson to acquire sovereignty over the whole or only part of the country, there is no record of how he arrived at the decision to try for complete annexation; nor is there evidence of when that decision was made. It is probable, however, that he had resolved before the Waitangi meeting that the best line of policy was to try for complete sovereignty. Gipps seems to have been of the same opinion. This is revealed by an abortive attempt by the New South Wales governor to contract a treaty with some South Island chiefs visiting Sydney in early February 1840. Gipps's treaty, designed to pre-empt

1 Normanby to Hobson, 14 August 1839, GBPP, 1840, [238].
the activities of a Sydney group who were negotiating with the Maori for
land in New Zealand, was not unlike the Waitangi treaty, although news of
that agreement had not reached Sydney at that time. The failure of Gipps's
move to extend British sovereignty meant that success would depend on
Hobson alone.

The February gathering at Waitangi now became the prelude to a lengthy
series of negotiations that was played out over the next six or seven
months. The extended nature of these negotiations reinforced the impres-
sion given at Waitangi that the Crown was in good faith in its dealings
with the Maori people. The negotiations were also to be influential in
determining various Maori attitudes to the agreement; for over the seven-
month period when treaty signings were in progress a number of negoti-
tors became involved. This allowed for a variety of explanations, inter-
pretations and Maori understandings of the real nature of the Waitangi
agreement.

These negotiations were never considered by Hobson to be as signifi-
cant as the initial signing at Waitangi which he referred to as the 'de
facto' treaty; the later signings he represented merely as acts that
'further ratified and confirmed' the Waitangi agreement. Hence when he
issued a proclamation on 21 May whereby sovereignty was asserted over the
North Island on the ground of cession by treaty, Hobson stated that it was
from the date of the Waitangi signing that 'full sovereignty' was vested
in the Crown.

2 See Sweetman, The Unsigned New Zealand Treaty, p.64 for Gipps's
treaty. There is no record of a copy of the Waitangi treaty reaching
Sydney before Gipps drew his treaty.

It was true that Hobson had been concerned in the first instance to secure a cession from the 1835 Declaration of Independence signatories and, although this had been only partly achieved, the celebration of British sovereignty over the north of New Zealand immediately following the Waitangi signing certainly indicated the significance that he placed on this. But the confident dating in the May proclamation of 'full sovereignty' over the North Island from 6 February owed much to events in the intervening months when a more extensive Maori accession gave his proclamation claim some substance. Even at the completion of the signings, however, Hobson had not secured a unanimous Maori adherence to the terms of Waitangi, but then the Colonial Office had not required this. Hobson's instructions had been suitably general to cover most exigencies, a factor that Hobson, on the far frontier of potential empire, utilised to the full. In the months following Waitangi, the challenge for Hobson was to cope with an increasingly complex situation requiring careful diplomatic skills. As an analysis of the negotiations will indicate, British success depended essentially on the degree to which Maori could be persuaded of the benefits that would accrue to them through adherence to the treaty; and this would inevitably require a continuance of some of the deception and misrepresentation that had occurred at Waitangi.

With the Waitangi signing over, the treaty was next taken to Waimate and the Hokianga. On 10 February, the official party, accompanied by Maori porters, travelled fifteen miles inland to the C.M.S. mission station

4 Discussions on the draft instructions, 24 January 1840, CO 209/4, 208ff. Colonial Office discussions had noted that Maori inability to depute to a few representatives made it almost impossible to secure unanimous assent.
at Waiate where an overnight stop was made. The strong missionary affiliation of Maori in this central area of the north greatly assisted Hobson in his mission. A group of senior Waiate chiefs had accompanied the missionary, Richard Davis, to the Waitangi signing where the invitation for Hobson to visit Waiate had been extended. Several Waiate chiefs had signed immediately at Waitangi - Reweti Atuahaere, Wiremu Hau, Hara and others. Presumably these chiefs had acquainted other Waiate men with the terms of the treaty for there is no record of the treaty being read nor any explanations being given at a Waiate signing. When the official party had rested briefly at the mission residence of Richard Taylor, Hobson received six chiefs who signified their agreement to the treaty. Contrary to what has usually been thought, this appears to have been the only treaty-signing at Waiate.

Early on 11 February, Hobson's party, escorted now by the missionaries, Taylor and Clarke, moved on to the Wesleyan mission station at Mangungu on the Hokianga Harbour. Their arrival was expected; a large crowd of Europeans and Maori had gathered up-river, with a flotilla of gaily decorated boats and canoes, to bear the official group down to the harbour. A meeting with Hokianga chiefs was held the following day at Mangungu, with John Hobbs, a Wesleyan missionary, acting as interpreter

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5 Details of the journey are recorded by Mathew in his journal. Taylor also mentions the visit in his journal, although he runs his entry for 9 February into an undated entry which is evidently 10 February 1840.

6 Davis to Coleman, 8 February 1840, in Coleman, pp.247ff.

7 See Appendix 3.

8 Mangungu had been developed by the Wesleyans as their main mission site in the Hokianga, although by 1840 there were several other stations with resident missionaries at various spots round the harbour.
at Hobson's request. The site chosen for the Hokianga meeting, the mission house itself, was a suitable venue, for several hundred Maori were accustomed to gathering there each Saturday evening to prepare for Sunday services. By 9 a.m. on 12 February between two and three thousand Maori had assembled. According to Hobson, about five hundred of these were chiefs 'of different degrees'. When a table and chairs had been placed on the verandah of the house for the official party, the chiefs were invited to come forward and sit on the lawn. A number of local Europeans were also present. The format of the meeting followed the pattern established at Waitangi with Hobson briefly addressing the Europeans before turning to an explanation of his mission, and a reading of the treaty.

When the meeting was thrown open to discussion, it became apparent that the chiefs were very well prepared to debate the treaty; there had been time and opportunity to become well-informed about its provisions and effects. News of the governor's arrival and his intentions had reached the area more than a week previously creating 'great excitement'. Reports had been circulating that the 'Queen had sent her officers to take the country as they had taken New Holland [Australia], and that the chiefs would thereby lose both their dignity and their country'. As a result,

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9 Hobbs Diary, 28 March 1840, MSS 144, AML; Hobson to Gipps, 17 February 1840, GBPP, 1841, (311), p.11. John Hobbs (1800-1883) came to New Zealand in 1823 and joined the Wesleyan mission at Wesleydale (Kaeo). He acquired a good command of Maori language and mastered the style of Maori oratory. In the 1850s he assisted in revising translations of the Old Testament.

10 Ironside Diary, 27 October 1839, microfilm MSS 474, ATL.

11 There is a tradition amongst northern Maori that Aperahama Tāonui wanted to spread a Maori cloak over the table but was prevented; a Union Jack is said to have been used.

Maori had canvassed missionary opinion and a contingent of Hokianga chiefs, accompanied by the Wesleyan missionaries, Samuel Ironside and John Warren, had crossed to the Bay of Islands to attend the Waitangi meeting. Some Hokianga chiefs had decided to sign at that time, the most notable of these being Nene and Patuone who now came to support the governor's cause at the Hokianga assembly.

As was the case at Waitangi, the first and most articulate speakers at the meeting were chiefs who opposed the treaty. Frankly admitting that they were highly suspicious of the real motives behind the British proposal, they cited the experience of the Australian aboriginal people who had been degraded under British rule; they reasoned that an assumption of authority by Hobson would inevitably place chiefs in a subordinate position in their own country. Their preference, therefore, was to retain their chiefly authority. In relation to this, Taonui, one of the most senior Hokianga chiefs, was quite explicit, explaining to Hobson that 'the land is our father; the land is our chieftainship; we will not give it up'. With shrewd perception he went on to trace the stages by which the British Crown had slowly gained a position of strength in New Zealand, first through the English missionaries; then through Busby, the granting of the national flag and the conciliation of chiefs with gifts; and finally, through Hobson himself who had come to take the process a step further.

13 Speeches at the Hokianga meeting, encl.2 in Shortland to Stanley, 18 January 1845, GBPP, 1845, (108), pp.10-11. Shortland attended the meeting where these notes were apparently recorded. Apart from the treaty sheet and the odd mention of chiefs' names in Hobson's report, these notes are the only source which indicates the speakers at the meeting. Since the speeches lasted many hours, Shortland evidently recorded only part of the meeting or the most significant speeches.

14 Taonui actually cited the amount that the British government had allowed for this; see encl.2 in Shortland to Stanley, 18 January 1845, GBPP, 1845, (108), pp.10-11.
Hobson was convinced that the opposition of Taonui and other chiefs had been created by European agitators, each with his own motives. In his official report, he blamed Pompallier, a 'set of escaped convicts and other low ruffians' in the Hokianga vicinity, and two individuals, Jackie Marmon and Frederick Maning, long-time residents in New Zealand, whom he specifically charged with instigating Maori to obstruct his mission. The charges against Pompallier and Marmon were not proved, but Maning freely admitted that he had advised Maori to resist signing the treaty because he believed that British colonisation would degrade the Maori people; in his opinion, it was also inadvisable to apply British law to Maori. While Hobson was able to record Maning's statement as proof that European influence was significant with some chiefs, for example 'Papa Haiga' [Papahurihia or Papahia?], this too easily dismissed, by implication, the considerable ability of senior chiefs to assess the British proposal for themselves. Taonui, for instance, hotly denied Hobson's suggestion that the chief was merely acting as a mouthpiece of Europeans. A chief with some twenty years' experience of dealing with Europeans, he had visited Sydney on one occasion or more. In his case, if not in others too, the doubts expressed were genuine fears, generated from personal experience and observation.

As the meeting extended through the day, the terms on which Hobson might possibly be made welcome gradually began to evolve from the various speeches. Some expressed a desire that Hobson, as the Queen's representative, would exercise his authority to control Europeans. In particular, it was expected that he would regulate the transfer of land from Maori to European. A query was also made about Hobson's intentions regarding

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15 F.E. Maning, Old New Zealand; A Tale of the Good Old Times; by a Pakeha Maori, Auckland, gives Maning's early New Zealand experiences.
investigation of land already sold. But a number of speakers doubted whether Hobson was capable of settling these matters to Maori satisfaction. Taonui’s doubts were based on Britain’s poor record in Australia; others stressed the inequalities and deceptions practised on Maori by Europeans in New Zealand. In the activities of Pakeha middle-men, the chief Kaitoke noted with bitterness (as had others at Waitangi) that Maori felt ‘cheated’. He also stressed that Maori had given much to Europeans but had received little in return; potatoes were reciprocated with a fish-hook, lands with a pipe.

But with regard to land sale, two other chiefs, Ngaro and Rangatira [Moetara?], took a different line of argument, the first pointing out that land bought by missionaries had actually been fairly paid for; the latter reminding the assembly that they had exercised their own free will in selling; and that it was pointless, therefore, to waste speech when they had already allowed the land to go. Another chief, Hone Kingi, recollected the precedents established for a continuing relationship between Maori people and the British; that trade had been extensive and that his kaumatua (elder), Muriwai, had urged the people to treat the British well. Hence, Hobson was welcome; he would give order and direction to the Maori.

While there was no concensus of opinion on past dealings in land, the discussions did make it clear to Hobson that concern to regulate any future transactions was a factor in common, whether the chiefs were Christian, such as Nene, Moses [Mohi Tawhai?] and Daniel [Raniera Kahika?], or non-Christian like Taonui. But the chiefs’ reservations about their land and how it would be affected under a new treaty situation were not easily resolved. Hobbs, the interpreter at Mangungu, later recalled the nature of the promises given at the meeting and noted that he had
translated the governor's 'repeated assurances ... that the Queen did not want the land, but merely the sovereignty, that she, by her officers, might be able more effectually to govern her subjects who had already settled ... or might ... arrive, and punish those of them who might be guilty of crime'. Hobbs further pledged that land would 'never be forcibly taken' from the Maori, but always purchased by the Queen if it were needed, a statement that he reiterated many times. Hobbs also interpreted what he considered to be Hobson's most solemn assurance [the emphasis was Hobbs's] that if the chiefs signed the treaty, 'truth and justice would always characterize the proceedings of the Queen's Government'. Such explanations, which stressed the solemnity of the engagement being negotiated, undoubtedly shaped the understanding of the Maori participants, as indicated by one chief referring to the treaty that same night as a 'very sacred' deed.

In spite of sustained opposition from many chiefs, most finally resolved to commit themselves. Hobson claimed that the decisive factor had been his skill in rebutting Maning's influence. But Hobbs attributed success to missionary persuasion. As he recalled the situation, speech-making had continued without a break from the morning through to almost six in the evening and no resolution had been reached. One of the principal Christian chiefs turned then to Hobbs and the other missionary brethren, asking them for their opinion on the benefits of the document to the Maori people. When the missionaries stated their conviction that the treaty would be good for the Maori, the signing went ahead.

16 Hobbs to Martin, 22 October 1847, in Martin, England and the New Zealanders, pp.73-74.
17 Taylor Journal, 12 February 1840, GNZ MSS, APL.
18 Hobson to Gipps, 17 February 1840, GBPP, 1841, (311), pp.10-12.
19 Hobbs to Martin, 22 October 1847, in Martin, pp.73-74.
Between six and midnight, 'upwards of 56 signatures were given'. Only two of the major Hokiang a chiefs refused to sign. Hobson, in fact, had to restrain the enthusiasm of some who wished to sign but were considered to be of insufficient rank.20

It is difficult to determine precisely the most significant factor influencing Hokiang a Maori to sign the treaty. The missionaries, at the time and in later years, were convinced that their role had been crucial to Hobson's success. Hobson subsequently acknowledged this too.21 Certainly the majority of Maori who attended the Mangungu meeting were associated in some way with the Wesleyan mission.22 The previous year had been a significant one for the Wesleyans as numbers of conversions increased, especially in the latter months of 1839. For Christian Maori, trust in missionary advice seems to have been sufficient to overcome serious misgivings about the treaty; therefore, by Hobbs's own testimony, Crown promises were not only formally given but were imbued with the authority that derives from the witness of such a distinguished assemblage. In the final decision, however, Maori hope had to be placed in the good faith of the British Crown.

The solemnity of the agreement entered into at Hokiang a was also reinforced, as at Waitangi, by a degree of pomp and circumstance. At the suggestion of various chiefs, Hobson cancelled arrangements that had been made to confirm the cession of sovereignty by raising the Union Jack at the Hokiang a Heads, some thirty miles from Mangungu, so that a local celebration could be held on the day after the signing. This took place

20 Hobson to Gipps, 17 February 1840, GBPF, 1841, (311), pp.10-12. Hobson gives this figure in his report, but on the treaty sheet the number witnessed is forty-three.

21 Letter of acknowledgement to J. Bumby, 29 May 1840, expressing appreciation of W.M.S. efforts in treaty-making. Hobson Letters, MSS Papers 813, ATL.

22 Orton Journal, February 1840 entry, microfilm MSS 90, ATL.
at Horeke, a mile or so up-river from Mangungu, and a well-established
timber-milling site. The celebration, staged at official expense,
occupied the entire day. It began with an impressive haka of fifteen
hundred men, which the official party viewed to good effect from boats
anchored off-shore; three thousand men, women and children then part-
ticipated in the feast of pork, potatoes, rice and sugar; blankets were
distributed and every man received a small portion of tobacco. The
significance of the occasion was given further recognition by a salute
from a small battery of about a dozen guns at Horeke and by a similar
volley from across the river at the home of G.F. Russell at Kohukohu
where Hobson stopped briefly. 23

Although a large number of chiefs had signed the treaty at Hokianga,
support had not been unanimous. Apart from the two chiefs who had
abstained from signing, there was an attempt by others to alter their
previous commitment to the agreement. By one account, just as Hobson
was about to depart from Hokianga, he received a letter, signed by a
chief and fifty of his tribe, asking that their names be dissociated
from the treaty and stating that they were not prepared to acknowledge
the Queen. 24 When Hobson reported this matter to Normanby he asserted
that two tribes were involved. Attributing the act to Catholic influence
and regretting Maori 'credulity', Hobson bluntly refused to make any
alteration to the treaty. Although the Maori about-face annoyed Hobson
at the time, it was obviously the public embarrassment that vexed him
rather than any question of sovereignty. For he concluded his Hokianga

23 The Journals of Taylor and Mathew, and Hobson's official report de-
scribe the events. George Frederick Russell was a witness to the
Hokianga signing. He had arrived in the district before 1830, be-
coming involved in the timber and ship-building trades. He married
a niece or close relative of Waka Nene.

24 Rutherford, The Founding of New Zealand, p.53; and Taylor Journal,
14 February 1840 which also notes a money gift from Hobson that
was returned by one chief.
report to Normanby by reiterating his earlier statement that he deemed the Waitangi signing to be the essential act of cession which had made British sovereignty over the north 'complete', whereas the signing of the Hokianga chiefs was merely an 'adherence' which rendered the question 'beyond dispute'. Since this was to be his attitude to all subsequent treaty signings, Hobson was deliberately misrepresenting the official position by not giving Maori the full picture.

Hobson, returning through Waimate to the Bay of Islands, was keen to expedite the business of securing treaty adherents in other parts of the country. As he proceeded, he planned to proclaim sovereignty by degrees, beginning first with a proclamation which would cover the territory from North Cape to the thirty-sixth degree of latitude, but this suggestion was allowed to drop. Apart from being potentially divisive of the country, it might also have irritated some chiefs who had not given their assent although they fell within the limits to be claimed - Nopera, Kawiti and Tirarau, for instance, quite apart from a number of less senior men. Hobson's plans were also thwarted by Mias's falling ill and by adverse winds, which delayed the Herald's departure for the south.

There was now time to attend to other treaty affairs. At Hobson's request, Colenso printed two hundred copies of the Maori text of the treaty.

25 Hobson to Gipps, 17 February 1840, GBPP, 1841, (311), pp.10-12. Hobson does not identify the chief or the tribes who wished to reverse their decision about the treaty, nor does he state the names of the two chiefs who refused to sign at all. The chiefs who wanted to change their signing could have been either Kaitoke of the Hikutu or Rangatira from Pakanae both of whom had reason for not signing. Ironside Diary, 17 November 1839, microfilm MSS 474, ATL; Buller Journal, 6 February 1840 and Buller to C.M.S., 3 January 1839, MS Papers 180, ATL; Hobbs Diary, 4 May 1840, MSS 144, AML.

26 Hobson to Gipps, 17 February 1840, GBPP, 1841, (311), pp.10-12. The line passed just south of Dargaville on the west coast and Waipu on the east coast.

27 Rutherford, The Founding of New Zealand, p.55; Taylor Journal, entries 14-17, February 1840, GNZ MSS, AFL.
on the C.M.S. press at Paihia.28 About this time, the treaty sheet itself received an important additional signature - that of Pomare.29 Just as this chief had arrived late for the ceremony when a national flag had been selected - evidently as a gesture indicating the respect that he considered to be his due - so he now made a late adherence to the treaty. Since his signature was witnessed by the American consul, J.R. Clendon, it is likely that Clendon was responsible for overcoming any objections the chief may have had. When Charles Wilkes, an American naval commander, called at the Bay of Islands a few weeks later, Clendon certainly conveyed to him the impression of having played a significant role generally in securing chiefly agreement to the Waitangi treaty. Wilkes, however, was critical of Pomare's understanding of the treaty. He suggested that the chief anticipated some special mark of recognition from the Queen, such as an officer's uniform, which would enhance his prestige; more importantly, he was sure that Pomare had not grasped that he might have relinquished any of his authority or rights in regard to land.30 To some extent Wilkes's attitude may have been soured by resentment that an American representative had served British interests, but nevertheless it would appear that in Pomare's case, as with many other signatories, a full understanding of the nature of the contract was considered to be wanting. It was a shortcoming that a later meeting with this chief did not seem to rectify.31

28 Colenso, 'Day and Waste Book', 17 February 1840, APL; Colenso Journal, 17 February 1840, Hawkes Bay Museum. The text printed was the Maori one.
29 Pomare's name appears above that of Hone Heke but Clendon's signature as witness is dated 17 February 1840.
30 Wilkes, pp.375-6.
31 See below, pp.234-5.
On 21 February, the wind finally allowed the Herald to pass out of the Bay of Islands and to head south on a cruise that aimed to circumnavigate the North Island. Hobson was especially concerned to call at Port Nicholson where the New Zealand Company settlers had arrived several weeks before. But the first stop was to be at the Waitemata Harbour where he hoped to collect further adherents to the treaty and to reconnoitre the area with a view to establishing a settlement there. This latter task fell to the official group comprising Mathew, Cooper and Freeman, who accompanied Hobson in exploring the harbour and its adjacent territory for nearly a week. In that time, Henry Williams, who had accompanied the Herald at Hobson's request, had left the ship to arrange for a treaty meeting. However, on 1 March, before Williams had reported back to the Herald, Hobson suddenly suffered a stroke which temporarily paralysed his right side and impaired his speech. His condition seemed to be 'very precarious' at first, although three days later, still 'much shaken', he had begun to improve. 32

Hobson's illness seemed to place in jeopardy the planned series of treaty negotiations; talk of resigning his post certainly cast doubt on the likelihood of British acquisition of complete sovereignty. In particular, a Waitemata signing now appeared very doubtful. In anticipation of a meeting on 2 March, an unsigned sheet had been appended to the original parchment signed by northern chiefs, but by 3 March those on the Herald had heard nothing from Williams. His silence, coupled with Hobson's condition, produced amongst the official party a growing uneasiness which was only relieved when word reached the ship that some chiefs

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32 Mathew Journal entries from 21 February to 4 March 1840, NZ MSS, APL.
were ready to sign. Early on 4 March, Nias, Cooper and Mathew sailed to an appointed 'rendezvous' where the signing was 'soon performed'. Some sixteen chiefs from the western side of the Hauraki Gulf, its hinterland and its islands gave their adherence. 33

From the names of the chiefs and their ability to write, it is clear that mission influence was strong amongst them. 34 Williams, therefore, probably used the kinds of argument that he had put to good effect in the north and which he would later use in the south - reasoning which emphasised the union of British and Maori under one sovereign, and one law, human and divine. The official explanation of the need for the control of law over Europeans would have been acceptable in this district too, for chiefs such as the signatory Ruininga had long had intercourse with timber traders and others. Such contacts were never without some friction.

The most likely attraction of the treaty for all Maori in this area, however, was its potential for providing them with protection. Caught between the major tribal groupings of Waikato to the south and Ngapuhi to the north, Maori from the Gulf and from the narrow isthmus between the east and west coasts had been decimated by inter-tribal fighting in the previous twenty years. Travellers in the district in the 1830s found it remarkable that there should be so little sign of human activity though much old habitation was visible. A peace, negotiated with missionary assistance in 1835–36, was still an uncertain factor when old

33 No indication was given of the exact site of this, but a memorial has been erected at Karaka Bay where a second Waitemata signing was held in July. The chiefs supposed to have signed there on 4 March are listed on the memorial. See Appendix 3.

34 Nine of the signatories signed their names in writing, a high proportion compared with elsewhere; it was more usual to find a moko beside a chief's name.
animosities were so recently remembered. Hence, for these Maori, as for many tribes elsewhere, the treaty offered a Pax Britannica which would protect them from old foes. This, at least, was the reasoning revealed by a local Maori some years later when he recollected the events surrounding the commitment of Waitemata isthmus Maori to the treaty. In fact it was said that, as a result of a meeting of morehu (remnants of tribes) held at Okahu Auckland, seven chiefs of the Waitemata had travelled to the Bay of Islands in February to seek out Hobson and invite him to settle amongst them. Thus the circumstances of the Waitemata isthmus made Maori of that area receptive to the treaty. Moreover, Williams's role as main negotiator had special significance, for he had been the instrument of the peace-making four years earlier.

The adherence of some Waitemata chiefs had not been obtained, but Hobson's condition now forced the Herald to return to the Bay of Islands. The ship's surgeon, Alexander Lane, reported that Hobson was 'rapidly recovering' by 11 March; 'he could walk without any assistance, could use a stick in his right hand, and could sign his name'. Lane, nevertheless, recommended complete rest and Hobson was moved to Waimate where he remained for several weeks. Shortland now took command while the Herald returned to Sydney.

The task of organising further treaty signatures was now taken up by Shortland. Several longhand copies of the text signed at Waitangi were made. One was sent off by Shortland on 13 March to Captain W.C. Symonds requesting him to obtain signatures in the Manukau and adjacent districts.

35 H.J. Ryburn, Te Hemara, James Hamlin, 1803-1865: friend of the Maoris, Dunedin, 1979, p.51. The main Hauraki Gulf tribes were Ngatimaru, Ngatipaoa, Ngatihauaunga and Ngatitanatera. These groups were common enemy to Ngatiawa, Waikato and Ngapuhi.

36 S.P. Smith, Maori Wars of the Nineteenth Century ... prior to the colonization of New Zealand in 1840, 2nd ed., Christchurch, 1910, p.478.

37 Lane to Gipps, 28 March 1840, and Hobson to Secretary of State for Colonies, 25 May 1840, GBPP, 1841, (311), pp.14-15.
on the west coast. Symonds, an unattached British army officer, had been engaged in that area through 1839 on business relating to a proposed Scottish land company settlement. He seems to have rapidly adjusted to New Zealand life, developing an ease in relating to local Maori. When the Herald had visited the Waitemata, Symonds had been a member of the official group. With the intention of arranging for transport to explore the harbours and the Waikato River, he had left the ship a few days after its arrival and remained in the area when circumstances forced the ship's return to the Bay of Islands.

On receiving Shortland's communication, Symonds sought the assistance of James Hamlin, a C.M.S. catechist, resident on the southern shore of the Manukau Harbour, and a man of several years' experience amongst Maori of the north and the Waikato. Symonds and Hamlin immediately assembl ed 'as many of the Maori chiefs as could be collected in a short notice'. The proposals of the British government were explained; but Maori agreement to the treaty was not forthcoming. Symonds attributed this to the presence at the meeting of Rewa; a strenuous opposer of the treaty and a reluctant final signatory at Waitangi, this Kororareka chief had subsequently been dropped off by Pompallier's ship at the Waitemata isthmus where he had close family relations. At the meeting, Rewa

38 Symonds to Colonial Secretary, 12 May 1840, GBPP, 1841, (311), p.101. The sheet that Symonds received was not signed by Hobson. It was endorsed as follows: 'By His Excellency's command Willoughby Shortland Colonial Secretary'. See Appendices 2 and 3 for the treaty copies.
39 Mathew Journal, 4 March 1840, NZ MSS, APL.
40 Symonds to Colonial Secretary, 12 May 1840, GBPP, 1841, (311), pp.101-2. James Hamlin (1803-65), arrived in New Zealand in 1826. In 1835 he began work at the Manukau, having a station at Moeatao and then at Orua Bay. According to Marsden, Hamlin was an excellent Maori linguist.
41 Rewa was related by marriage to Te Wherowhero. His daughter, Mathilda Toha, had married Te Wherowhero's younger brother, Kati, who had been a pupil at the mission school at Kerikeri at one time. The marriage was part of the 1835-36 peace-making engineered by Henry Williams. See H.T. Kemp, Revised Narrative of Incidents in the Early Days of the Colony, from 1840 to 1880, Auckland, 1091, p.4; (information confirmed by Mr R. Kerr, February 1979).
'exerted all his influence' against the treaty, leaving Symonds scope only to correct Rewa's 'misrepresentations' which had already created doubts amongst all the assembled Maori.

On 20 March a second meeting was held. Many Waikato chiefs were present and some from Tauranga and Taupo too, but none would sign, although some promised to commit themselves later. Symonds believed that the problem was a chiefly 'feeling of pique' that they had not been accorded due recognition by an official approach earlier. Amongst this group was the paramount chief of Waikato, Te Wherowhero. It was fortunate for the government that this chief did not oppose the British move outright because, had he exercised a chiefly power of veto on the treaty (as Te Heuheu seems to have done subsequent to this with his tribe), Waikato chiefs would not have committed themselves at all, whereas a number were prepared to give their adherence at various other meetings. Symonds had some success however. Three major Ngatiwhatua chiefs - Te Kawau, Te Tinana and Te Reweti - agreed to sign, apparently for the same reasons of protection which had motivated their fellow chiefs at the earlier Waitemata signing in March.

It was to Waikato and other North Island tribes that official attention was turned during March 1840. By the middle of that month, Hobson had sufficiently recovered to be able to press ahead treaty signings by

42 Symonds gives no indication of where the two meetings were held.

43 Te Wherowhero, also known as Potatau (c.1800-60), held a paramount influence amongst the Waikato tribes both by right of lineage and by his prowess in battle. From the 1840s he lived at Mangere and also had a small cottage in Auckland Domain. In 1858 he was elected first Maori King.

44 See below, pp.218-19.
authorising various missionaries to act as official negotiators. On
the west coast at the Waikato Heads, Maunsell received a copy of the
treaty in English, shakily signed by Hobson;\(^{45}\) at Tauranga in the Bay of
Plenty, A.N. Brown noted that a treaty copy had arrived by 1 April;\(^{46}\)
and by that date, Henry Williams, who had volunteered his services, was
prepared to leave the Bay of Islands to visit the southern districts of
the North Island and even perhaps the South Island.\(^{47}\) At Turanga (now
Gisborne), he was to give his brother, William, a treaty copy for the
East Coast region.\(^ {48}\) In all cases, Hobson's instructions were substantially the same: the missionaries were first to explain the treaty's
'principle and object', which the Maori were to 'clearly understand'
before they would be permitted to sign.

The copy of the treaty sent to Maunsell\(^ {49}\) arrived fortuitously as
large numbers of Maori were assembling for an important annual mission
meeting. Many had travelled from districts four and five days distant
from the mission. The station, sited near the mouth of the Waikato
River, did not have a significant permanent Maori population. Rather,
it had been established in 1838 because it was known to be popularly

\(^{45}\) This was the only known English copy to be circulated.

\(^{46}\) Brown Journal, 1 April 1840, AUL. Since he found it on his return to the
mission it may have arrived at Tauranga prior to this date. Alfred
Nesbitt Brown (1803-1884) arrived in New Zealand in 1829 to work
with the C.M.S. He spent some years at Paihia, made several trips
to the south in the Waikato and Bay of Plenty areas in the 1830s,
and finally resided permanently at Tauranga from 1838.

\(^{47}\) Hobson to H. Williams, 23 March 1840, and note, 23 May 1840, GBPP,
1841, (311), p.17.


\(^{49}\) Robert Maunsell (1810-94) arrived in New Zealand in 1834. He was
appointed to various C.M.S. stations in the Waikato and Bay of
Plenty before establishing the mission at Waikato Heads. This was
later shifted up-river to Kohanga. Maunsell was a scholar of the
Maori language, spending much time in translation and revision of
scripture and a Maori Grammar.
frequented by Maori from the greater Waikato watershed and its tributaries. By common agreement, tribal differences were put aside as Maori from many areas mingled in temporary residence close to the sea with its stores of shell-fish. For several years, Maunsell, with Hamlin's assistance, had worked in this area, moving between the Heads and the Manukau. Hence Maunsell's influence was extensive. In June 1840, he reported that three-quarters of the estimated 7,000 Maori in his district had accepted Christianity. At the March 1840 meeting, about 1,500 were present.  

Maunsell considered that the thirty-two chiefs who signed the treaty at Waikato Heads comprised most of the leading men of the area over which he had some influence although he had to admit failure in the case of two Waikato chiefs (one of them possibly being Te Wherowhero). Of those who signed, the tribal affiliations represented many Waikato-Maniapoto groups, as far south as Mokau on the coast and inland to Taupiri, Matamata, Otawhao and Mangapouri. While there is no record of any explanation of the treaty given at the meeting, one signatory, Wiremu Nera Te Awaitaia, in recollecting the event some four years later, recalled that it was on missionary advice that the chiefs had consented to the treaty, that they had been given to understand that if it were any nation other than Britain the Maori people would be forcibly compelled to give up possession of the country, whereas government by the British could be relied upon to be benevolent. This suggests that Maori signing at the Waikato Heads were

50 Symonds to Colonial Secretary, 12 May 1840, GBPP, 1841, (311), p.101; Ryburn, pp.45ff.
51 Otawhao is near present-day Te Awamutu. Mangapouri was at the junction of the Waipa and Puniu Rivers.
52 FitzRoy to Stanley, 25 May 1844, GBPP, 1845, (247), pp.13-14. Wiremu Nera (or Naera) Te Awaitaia (c.1796-1866) was a Ngatimahanga of the Waikato confederation. He became a Christian in the 1830s and after 1840 a government supporter. He dissociated himself from the King movement possibly because of a disagreement with Te Wherowhero over land.
encouraged mainly by missionary assurance of British 'protection' and that whatever the explanation of 'sovereignty' (if any) it had not been seen as a threat to Maori territorial rights.

Symonds had actually intended to seek treaty signatories down the coast to Taranaki but Maunsell's work had made this unnecessary. He bore Maunsell's treaty copy together with an accompanying report, therefore, back to Manukau, where seven more Waikato chiefs gave their agreement on 26 April. On this occasion, Symonds felt at a disadvantage, for Hamlín's interpreting services were not available. Moreover, Te Wherowhero and 'several others' continued to object to the agreement, although Symonds believed that, in spite of this, they showed no ill-will to the government itself. His failure to secure Maori accession, especially of Te Wherowhero, he attributed in this case, as at the earlier meeting in the area, to the lack of pomp and circumstance which chiefly pride might have expected as a right. Symonds's negotiations, for instance, were in marked contrast to the government efforts made some two months earlier at the Waitangi and Hokianga meetings which Te Wherowhero would undoubtedly have been acquainted with.

Before Symonds left Waikato Heads, he and Maunsell had scrutinised Maunsell's list of signatories. Since there were four or five chiefs at

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53 There were some Ngatiteata from Mangapouri amongst them, e.g. Te Awa'tahi, Awhitu, who had not always been well-disposed to the missionaries. Ryburn, p.55.

54 Symonds to Colonial Secretary, 12 May 1840, GBPP, 1841, (311), pp.101-2. It is sometimes alleged that Te Wherowhero's name was placed on the treaty by Te Kahawai. See e.g., H. Wily and H. Maunsell, Robert Maunsell, L.L.D. A New Zealand Pioneer. His Life and Times, Dunedin, 1938, p.69, where reference is made to Tawhiao, Te Wherowhero's son, recalling Maunsell's visit to Awhitu in 1840, accompanied by Tipene Tahatika, in order to obtain Te Wherowhero's signature. There is, however, no evidence of the chief signing. On the other hand, Te Kahawai did affix the chief's name to the 1835 Declaration of Independence, an action which has probably led to the confusion.
Kawhia and two at Whaingaroa (Raglan) whose signatures it still seemed advisable to obtain, Symonds had sent his own treaty copy (with its three Ngatiwhatua signatures) down to the Wesleyan missionary, John Whiteley, 55 at Kawhia, requesting him to secure the agreement of certain named chiefs and that of any other chiefs of note in the Kawhia and surrounding area 'stretching as far to the southward as possible among the Maniapoto'. 56 This task Whiteley, together with his co-worker, James Wallis, 57 proceeded to carry out over several months. 58 How agreement was obtained is not known. But Symonds directed Whiteley to explain 'perfectly' the 'nature of the cession of rights' and Whiteley later believed that he had done this to the best of his ability. 59 A last signing, on 3 September, made Maori agreement to the treaty almost unanimous on the west coast down to Mokau. 60

55 John Whiteley (1806-69) arrived in New Zealand in 1833. He worked amongst the Maori first at Kawhia and later at Pakanake.

56 Symonds to Whiteley, 8 April 1840, GBPP, 1841, (311), p.102. Whiteley was asked to get the signatures of Taonui, Tariki, Te Wara [Waru?], Te Ao [Acturoa?] and Rawiri, who all agreed; and Te Wakaca [sic] and Wiremu who do not seem to have signed. This Wiremu may have been Maunsell's assistant Wiremu Tamihana (not to be confused with the Matamata chief of the same name).

57 James Wallis (1809-95) came from London, arriving at Hokianga in 1834. Beginning work with the Wesleyans at Mangungu, he later went to Kawhia. In 1838 he began the first mission at Whaingaroa (Raglan) where he remained until 1862.

58 The chiefs signing were mainly from the south side of Kawhia; amongst them were Haupokia and Te Waru who were reputed to have travelled to Australia to seek out a trader to settle amongst their tribe. The Sydney trader, J.B. Montifiore, had established a station at Kawhia as a result.

59 Symonds to Whiteley, 8 April 1840, GBPP, 1841, (311), p.102.

60 This last signing was by 'Warekaua'. Best mentions 'Warre Koura' from Kawhia and H. Williams refers to 'Warekaua' at Whakatiwai, perhaps the same man. N. Taylor, p.334; Rogers, pp.351, 413.
Gathering treaty signatures elsewhere was similarly protracted, the response from different tribes varying considerably. At Tauranga, for example, when the missionary A. Brown received a treaty copy on 1 April, he hesitated to even broach the subject to the local chiefs of rank, for they were in a particularly upset state. For some months, the whole Bay of Plenty district had been disturbed by inter-tribal fighting which had intermittently disrupted the area for years. Moreover, amongst the senior chiefs, Christian influence was not strong. Brown, however, decided that an attempt to get signatures would be made. On 10 April, C.M.S. personnel, who had assembled at Tauranga for a committee meeting, spent the day attempting to procure signatures. On that day, or possibly in the weeks following, twenty-one chiefs of the Tauranga district signed. But the agreement of the major Ngaiterangi chief, Tupaea, at Otumoetai pa, and that of certain other chiefs (mostly associated with Tupaea), was not forthcoming. It was probably for this reason that Brown then put the treaty copy aside, hoping that an opportunity might arise when these chiefs could be persuaded to sign.

At about the time that Brown first saw his treaty copy, Henry Williams was leaving the Bay of Islands on the schooner, Ariel, to carry out treaty negotiations in the south. On 8 April, he delivered a treaty copy to his brother, William Williams, at Turanga where a C.M.S.

61 Brown Journal, 1 April 1840, AUL. Entries from 1839 through the early months of 1840 reveal the kind of disturbances that continued to plague the Bay of Plenty area for many years.

62 ibid., 10 April 1840.

63 There is no indication of the date of signing on the Tauranga treaty sheet.

64 Hobson to H. Williams, 23 March 1840, GBPP, 1841, (311), p.17.
mission had been established earlier in the year. North of Turanga to East Cape, the work of Christian Maori teachers had prepared the way for Williams amongst tribes such as Ngatiporou. But south of Turanga down the coastal strip as far as Ahuriri (Napier) Christian influence was not so widespread. Here Williams found a mixed tribal population made up not only of local groups but of segments of other tribal origin - Ngapuhi, Ngaitahu and Maori from the Wellington and Wairarapa districts. Amongst these people, from East Cape to Ahuriri, Williams was charged with securing agreement to the treaty. On 5 May, almost one month after receiving the treaty, Williams discussed the matter with local chiefs, several leading men agreeing to sign that day. The final count of chiefs who signed at Turanga was twenty-five; according to Williams, this comprised almost the whole leadership of the district. One chief, who was apparently visiting the Turanga area from Wairoa, also signed at Turanga.

In the latter half of May, Williams travelled up to East Cape, combining treaty business with mission work which he found already well advanced by the Maori themselves. Other chiefs agreed to the treaty, two from Uawa [Tolaga Bay] and ten from Waiapu; of these latter, some signed at Whakawhitira, others at Rangitukia. On his return trip to Turanga, four more signatures were gathered at Tokomaru. Williams had informed Hobson on 8 May of his intention to seek treaty adherents south of Turanga at the end of July or in August, but it seems that his plan was not forwarded. Only one Ahuriri chief, Te Tore, signed Williams's treaty copy, probably at Uawa or Waiapu. Thus, an optimistic hope expressed by

65 Porter, entries from 17 February 1840 for several weeks cover a trip that Williams made down the coast. They reveal the varied nature of the tribes encountered.


67 See Appendix 4.
Williams that seventy or eighty signatures would be obtained was not fulfilled, for his treaty sheet shows roughly half that number.\textsuperscript{68} Not surprisingly, the treaty seems to have made little impact on East Coast Maori until events many years later brought it to the fore.

Williams left no record either of his explanation of the treaty or of chiefly discussions, but his anxiety to thwart wholesale European purchases of Maori land indicates that his treaty negotiations probably stressed the agreement's potential to protect the Maori, especially their land. From February, he had been trying to impress upon East Coast chiefs the seriousness of the threats to their land. On 10 February, a large meeting of nearly every principal chief of Turanga had been told that Europeans were everywhere 'buying the whole country' out of the hands of the Maori who would 'soon be left at the mercy of the new proprietors'. Two weeks later, when he had addressed a Maori assembly at Mahia Peninsula, Williams recorded a colourful example of the kind of message he was purveying. He explained the 'object' of Englishmen 'buying up' New Zealand, telling the Maori that 'Europeans being the strongest would give them the head of the pig and the feet and take all the flesh and the fat to themselves'.\textsuperscript{69} And if proof to convince the Maori were wanting, it was provided about this time by the nominal purchase of some one hundred miles of coast from Port Nicholson to Ahuriri by a Captain Rhodes. In February, Williams managed to secure a trust agreement over Turanga land from the local chiefs whose fears were given some substance by news of two vessels that were seeking land at Wairoa. Rumour of seven vessels of settlers, reputed to be arriving from Cook Strait, added further to

\textsuperscript{68} W. Williams to Shortland, 8 May 1840, GBPP, 1841, (311), p.101.

\textsuperscript{69} Porter, pp.85-86, 24 February 1840.
Maori apprehensions. 70 To Maori, whose anxiety to protect their land rights was always acute, such circumstances would surely have ideally predisposed them to accept the protective assurances built into the treaty. An additional assurance to some East Coast Maori was the fact that the treaty was carried by William Williams. At Waiapu, for instance, the missionary was 'almost worshipped' for his part in returning some local people from Ngapuhi captivity some four years previously. Hence, in that area (where William had a congregation of a thousand on one occasion), the treaty was numerously signed. 71 On the other hand, he seems to have failed to persuade the great chief, Te Kani a Takirau at Uawa, to sign, although he used the chief's house as a place of assembly. 72 Nor did Williams obtain the agreement of numerous other chiefs on the coast from Turanga to East Cape. It was a selective list of East Cape signatories; William Williams could make no claim to having successfully secured the full adherence of his district.

By contrast, Henry Williams was able to report that Port Nicholson (Wellington) chiefs had 'unanimously' signed the treaty for him on 29 April. Yet this was achieved only with patience, for the missionary, who had left Turanga on 15 April, was obliged to wait for ten days at Port Nicholson before the chiefs were 'disposed to come forward' - a reluctance

70 ibid., 12, 20 February 1840. Details of the purchases are given at pp.149-50. W. Williams to Shortland, 8 May 1840, GRPP, 1841, (311), p.101, complained that the sale had been made by persons who had no interest in the land, that the proprietors had not fully understood the nature of the transaction, that some had refused payment expressing their disapproval, and that most of the proprietors had not been consulted, the transaction having taken place on board ship off the coast.

71 G. Clarke, Jnr., Notes on Early Life in New Zealand, Hobart, 1903, pp.28-33. Clarke estimated the population of the Waiapu pa as 2-3,000.

72 Porter, 16 May 1840.
he attributed to the influence of the New Zealand Company settlers.\textsuperscript{73}

In the next two weeks, however, further signatures were received, apparently without difficulty, at Queen Charlotte Sound and Rangitoto\textsuperscript{74} (Island) on the south side of Cook Strait; and at Kapiti, the accession of Te Rauparaha was secured.

Te Rauparaha's agreement was most significant because it opened the way to further reception of the treaty in this area of the country where the chief was held to be all-powerful. In fact, Hobson asserted that Henry Williams's 'principal object' in going south had been to win the adherence of Te Rauparaha because this would secure to the Crown the 'undisputed right of sovereignty over all the southern districts'.\textsuperscript{75} Hence Williams, fully cognisant of this, communicated to Hobson almost immediately after the chief's signing that he had succeeded with the treaty to his 'utmost satisfaction' and expected to carry his task through to completion.\textsuperscript{76} This he did in the following weeks, procuring signatures from chiefs of Otaki, Waikanae and Manawatu; travelling to Wanganui where the senior chiefs signed; and finally securing two last signings at Motungarara, a tiny island off the southern tip of Kapiti.\textsuperscript{77}

\textsuperscript{73} Jane Williams in Porter, 13, 15 April 1840; H. Williams to Hobson, 11 June 1840, GBPP, 1841, (311), p.105.

\textsuperscript{74} Rangitoto was the old Maori name for d'Urville Island where Williams was most likely to have obtained the signatures. See O. Baldwin, Story of New Zealand's French Pass and d'Urville Island, Plimmerton, 1979, which has numerous references to the occupants of the island.

\textsuperscript{75} Hobson to Bunbury, 25 April 1840, GBPP, 1841, (311), p.18.

\textsuperscript{76} H. Williams to Hobson, 15 May 1840, Official Correspondence ... Treaty, qMS, ATL.

\textsuperscript{77} Motungarara had a resident Maori population at this time. The island was used as a whaling station for some years. The principal chiefs were Te Ohu and Te Rangihiroa.
By then, Williams's treaty copy listed approximately one hundred and thirty-two chiefs. The main chiefs it seems, in all the areas visited, had consented to the treaty. 78

These west coast negotiations were carried out entirely by Williams. At the signings, Captain Clayton of the Ariel was merely a witness, a role that was taken up on the Kapiti coast and at Wanganui by the missionary, Octavius Hadfield, although Hadfield would have preferred to have had no connection at all with the government. 79 Williams's success, therefore, must be attributed solely to his own persuasion. That he was a man of considerable mana amongst the Maori was undoubtedly significant. Only a few months previously, he had travelled over this southern territory bringing Hadfield, at Te Rauparaha's request, to establish a mission on the coast opposite Kapiti. Most of this coast, from Port Nicholson up to Taranaki, had been disturbed for some years by Maori migrations and by continuing struggles amongst the tribes to adjust their respective rights. By the end of 1839, an additional source of tension was the New Zealand Company negotiations to purchase extensive land tracts on both sides of Cook Strait and up the west coast. This had been apparent to Williams late in 1839 when he had visited Port Nicholson, where Reihana a C.M.S. Maori teacher from the north had already begun mission work. In order to thwart Company designs on Maori land, Williams, returning to the north by way of Wanganui, had managed to secure land in trust in that district. 80 It was natural then that, when he returned in May 1840 to negotiate the treaty, he should emphasise the treaty's ability to protect Maori in their

78 Important exceptions were Whatanui and Rangihaeata, although the latter signed a few weeks later.

79 O. Hadfield to 'My dear George' [?], 6 July 1840, Hadfield Papers, qMS, ATL.

80 Carleton, I, pp.233, 239-40; Rogers, pp.465-6, 16 December 1839.
land rights\textsuperscript{81} - a factor that he had stressed at the initial Waitangi meeting too. In this instance of southern negotiations, however, where tribal migrations were so recent, Crown protection of tribal rights against other Maori claimants was probably as significant as the protection offered to counter unjust European claims.

Henry Williams had considered seeking signatures at Otago also but, on his return from Wanganui to Kapiti at the end of May, he heard that Major Thomas Bunbury had been deputed to promote the treaty in the south.\textsuperscript{82} Bunbury, who had arrived at the Bay of Islands on 16 April with a detachment of eighty troops and officers of the 80th regiment, had been despatched from New South Wales by Gipps when he heard news of Hobson's illness.\textsuperscript{83} Since Gipps had informed Hobson that 'prompt measures' were 'urgently required' to extend Crown authority over the South Island, Hobson sent off Bunbury on the Herald at the end of April to gather treaty signatures in the south and to complete negotiations in North Island areas that had not been covered. It was also deemed advisable to use the opportunity to make a display of Crown 'dignity and importance'.\textsuperscript{84} The interpreter appointed for the trip was the son of Henry Williams, Edward, who had assisted with the translation of the Waitangi draft treaty into Maori.\textsuperscript{85} Bunbury's first treaty meeting was held on 4 May at Coromandel Harbour.\textsuperscript{86} Edward Williams explained the necessity of the treaty, emphasising that the

\begin{itemize}
\item \textsuperscript{81} H. Williams to Hobson, 11 June 1840, GBPP, 1841, (311), p.105.
\item \textsuperscript{82} ibid.; Bunbury was to assume the government if Hobson was still too unwell but this was not considered necessary. He remained in New Zealand until 1844 when the 80th were ordered to India.
\item \textsuperscript{83} Gipps to Russell, 5 April 1840, GBPP, 1841, (311), p.4.
\item \textsuperscript{84} Hobson to Bunbury, 25 April 1840, GBPP, 1841, (311), pp.17-18, outlined Hobson's instructions.
\item \textsuperscript{85} See above, pp.142-3.
\item \textsuperscript{86} The description of this and the other meetings on Bunbury's trip that follow below can be found in Bunbury to Hobson, 6, 15 May, 28 June 1840, GBPP, 1841, (311), pp.100, 103-12; T. Bunbury, Reminiscences of a Veteran, London, 1861, III; E.M. Williams, Journal, entries for April to July 1840, MSS 1840, ATL. The Herald left the Bay of Islands on 28 April and anchored at Coromandel Harbour, 29-30 April.
\end{itemize}
influx of Europeans made it desirable; protection of Maori in their land rights was also mentioned. According to Edward Williams, the meeting was 'rather a long one' with a 'great deal of discussion', but of the six principal chiefs present only four could be persuaded to sign. One of the signatories was the elderly Te Horeta - long accustomed to European contact, reputed to have seen Cook and for some years the patron of a nearby trading station run by an American, William Webster. 87 Te Horeta, apparently delighted by Bunbury's visit, had satisfied himself about the treaty and the new governor some days before. By contrast, Piko (an experienced orator) and another chief firmly refused to sign. 88 Piko declined to relinquish any authority over his tribe (although the British government was free to do as it wished with Europeans); he also insisted that more time was needed for consultation amongst the Thames tribes before a decision could be reached.

The following day Williams and Bunbury, disappointed with their results, made another effort to influence the chiefs this time with the aid of a local C.M.S. missionary James Preece, but still with no success. The negotiators concluded that the chiefs were reluctant to sign for two reasons: local Europeans had used their influence against the agreement; and news of the assertion of British law against a Maori offender had

87 Te Horeta Taniwha (?1760-1853), also known as 'Old Hooknose', was the principal chief of Ngatiwhanaunga. His first extended contact with Europeans came from the taking of ships' spars from the Thames district; e.g., the Coromandel, a British government storeship, from which the area takes its modern name, took a cargo in 1820. Te Horeta's daughter married Webster. Although the chief was not baptised until just before his death, he was well-disposed to Christianity.

88 The unnamed chief may have been Taraia who made a point of his non-signing several years later. See below, p.297. The major tribal group Ngatitamatera from the Thames-Hauraki do not appear to have signed.
already reached Coromandel from the Bay of Islands, thereby demonstrating the practical effect that Maori might expect to follow on the establishment of British authority in New Zealand. Both reasons, if true, indicated to the British the need to conclude the treaty negotiations with as much speed as possible.

The task of obtaining treaty signatures proved a chancy business for Bunbury however; some chiefs gave their accession willingly, others missed the opportunity for various reasons. As the Herald moved south to pick up William Stewart who would act as pilot for the southern voyage, the ship anchored briefly off one of the Mercury Islands. There she was boarded by two chiefs who signed without hesitation. Yet at Mercury Bay itself, no signatures were obtained because the local chiefs happened to have gone inland on business. Accidents of location or absence, therefore, might be as important as any other reason for the adherence or non-adherence of any given chief to the 1840 agreement.

Bunbury had been specially charged by Hobson with procuring treaty adherents at Tauranga for it was believed that little progress had been made in negotiations there because of the local inter-tribal fighting. Consequently, on arriving at Tauranga on 11 May, he was surprised to find that most of the chiefs had already signed Brown's treaty copy the previous month. The significant exceptions were Tupaea and several other chiefs of Otumoetai pa with whom Bunbury arranged a meeting on 12 May at Te Papa, the C.M.S. mission station. The usual procedure was followed with Edward Williams reading the treaty and interpreting for Bunbury.

89 William Stewart (c.1776-1851) originally from Scotland, first became associated with New Zealand in the early years of the nineteenth century through sealing, whaling, and by the 1830s was involved in general trading. Stewart to Bunbury, 3 May 1840, Official Correspondence ... Treaty, qMS, ATL.

90 E.M. Williams Journal, 7, 9 May 1840, MSS 1840, ATL.

91 Hobson to Bunbury, 25 April 1840; Bunbury to Hobson, 15 May 1840, GBPP, 1841, (311), pp.17-18, 103-4; and see above, p.206 for the earlier signing at Tauranga. Bunbury went inshore on the Trent.
Bunbury's explanations at Tauranga reveal another line that official argument had possibly taken to persuade the Maori - that the Waitangi treaty was just one more step in an ongoing relationship with the Crown. In elaborating on the need for a treaty, he noted that the Maori people had been recognised by Britain as an independent nation, but that the 1835 'treaty' had been rendered 'abortive' by Maori fighting and lack of unity. Now the Queen sought the 'spontaneous gift' of Maori consent so that a regular government could be established to assist the Maori people and to control the growing number of Europeans in the country. Assurances were also given that Crown pre-emption would protect Maori land.

In the subsequent discussion, the Otumoetai chiefs were not easily convinced. They revealed a suspicion of Crown intentions and a scepticism of the advantages to be gained from government by the British. By Edward Williams's account, it was not that they did not favour the British government (pre-emption, for example, was just); rather, they could see no purpose in the treaty itself. On one particular issue, the inter-tribal fighting with Rotorua, the chiefs queried the methods of adjustment that would be used if they ceased fighting; would the government, for instance, be prepared to provide adequate protection for them? Bunbury, in response, emphasised that the Crown would play only a mediatory role, although some allowance would be made for compensating any injured party, as Maori custom required.

Resting on these explanations and assurances, neither Bunbury nor Edward Williams was able to secure any further treaty adherents at Tauranga. Bunbury blamed adverse European influence, as at Coromandel, for Maori refusal, and hinted at opposition from Roman Catholicism which had some followers at Otumoetai. It was also suggested that chiefs were waiting

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92 Pompallier, p.62, noted that he visited Tauranga in February 1840 - not long after the signing at Waitangi. He left there for Opotiki on 22 March.
to sign until the Queen's gift of a blanket was produced; but this was largely an excuse advanced by chiefs to play for time or to provide some reason for refusing to sign. 93

The real factors influencing Maori hesitation are not so easy to determine. Very likely several matters were involved - a chiefly reluctance to relinquish an authority that Bunbury had very clearly acknowledged, and a lack of confidence in government ability to deal with such matters as tribal conflicts. But these impediments might have been removed had Bunbury given adequate time to consultation and deliberation which was so necessary in Maori decision-making. As Edward Williams indicates, Bunbury, an army man, became impatient at the "dilatory habits" of Maori in discussion. He left Williams at Otumoetai, and hurried on to the other Tauranga pa at Maungatapu where he was assured by Nuka, 94 the senior chief, that all but two absentee chiefs had already signed Brown's treaty copy. Setting aside a courteous invitation from Nuka to dine, Bunbury returned in haste to the Trent which had to sail to Mercury Bay before the Herald could continue south.

Compared with the several days spent at Coromandel, the rapid work at Tauranga suggests an unseemly haste, dictated apparently by Bunbury's growing impatience to push the task ahead, regardless of the outcome. 95

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93 E.M. Williams Journal reveals a certain puzzle on this point. It seems from other evidence that there was an absence or a shortage of blankets at Bunbury's Tauranga meeting. This may indeed have been construed by chiefs as a lack of fitting respect that they would expect to be paid to them by the Queen's representative. See, e.g., Stack to Shortland, 23 May 1840, GBPP, 1841, (311), p.104.

94 Bunbury to Hobson, 15 May 1840, GBPP, 1841, (311), p.104. Bunbury recommended Nuka for some special government mark of distinction because the chief was so well disposed.

95 E.M. Williams Journal, 19-20 May 1840, MS 1840, ATL, reveals that the men were realising that the trip was going to take much longer than expected originally. At Coromandel the delay had been caused by the need to send to Whitianga for the services of Stewart as pilot. From then on, adverse winds slowed down progress.
Moreover, a trip to Rotorua was cancelled. No doubt the reason given, that inter-tribal fighting prevented it, was partially accurate. But Bunbury’s omission in this case endangered the adherence of the major tribal groupings of Arawa and Tuwharetoa in the hinterland of the North Island, tribes which in each case numbered several thousands. To solicit the signatures of these and other groups, Bunbury decided before leaving Tauranga to delegate treaty-gathering further by authorising C.M.S. missionary, James Stack (in charge of the Tauranga mission in Brown’s absence), to make another copy of the treaty from the sheet initially sent to Brown. Bunbury told Stack that signatures on such a copy would be ‘as good as those on the original document’ received by Brown.

In fact, Stack made two copies of the treaty before returning Brown’s original treaty copy, together with an accompanying letter dated 23 May, to Shortland. He sent one copy of the treaty to the C.M.S. missionaries, Thomas Chapman and John Morgan, asking them to ‘use their influence’ to obtain the signatures of chiefs in the Arawa-Tuwharetoa districts.

96 J. Morgan Journal, typescript, AUL, entries for February, March and April 1840 indicate the uncertain state of Maori affairs in the Tauranga and Taupo districts. Letters of 24 May and 26 October also reveal that the serious ill-health of Chapman and Morgan’s wife reduced the effect of both missionaries in their areas of work.

97 Travellers estimated the number as at least 5-6,000. Chapman Journal, AUL, has a map which indicates the numerous pa and see J.C. Bidwill, Rambles in New Zealand, London, 1841 [Capper reprint 1974], p.40, who gives the numbers at Lake Taupo as not less than 5,000.

98 Stack to Shortland, 23 May 1840, GBPP, 1841, (311), p.104. Brown Journal, 9 May 1840, AUL, records Brown’s departure to the Hauraki Gulf and Matamata. He did not return until 4 June. James Stack arrived in New Zealand in the 1820s to work with the Wesleyans. From 1835 he was posted to Mangapouri, then Bay of Islands, Tauranga and East Cape. Stack was familiar with the Maori language but appears to have had repeated problems in relating to the Maori people.

where these missionaries were working. He sent the other treaty copy
to James Fedarb, at one time a C.M.S. worker but now a trader on the Bay
of Islands schooner, Mercury, which was putting in at various spots on
the coast towards East Cape.

Stack's efforts to secure more treaty adherents drew mixed results.
The treaty copy that he sent to Chapman and Morgan has disappeared.
The only reference to it was made in 1913 by the Tuwharetoa chief,
Tureiti Te Heuheu, who recounted the oral tradition concerning the response
of the Arawa and Tuwharetoa tribes to the treaty. This recalled that

100 Thomas Chapman (1791-1876) arrived in New Zealand in 1830 to work
for the C.M.S. With Henry Williams he made the first overtures
in the Thames area, before being stationed there. From 1836 he
attempted to establish the C.M.S. position at Rotorua, first at Te
Koutu, then Mokoia and Te Ngae.

John Morgan (1810-65) arrived in New Zealand in 1833 to join the
C.M.S. He helped to establish the Thames mission. From there he
moved briefly to Mangapouri, before spending several years amongst
the Ngatihaua and Arawa.

101 Stack to Shortland, 23 May 1840, GBPF, 1841, (311), p.104; Colenso
to Hobson, 27 June 1840, Official Correspondence ... Treaty, qMS,
ATL; Fedarb Diary, NZ MSS, APL. Gilbert Mair, Bay of Islands
merchant, had chartered the Mercury placing Fedarb on board as trading
master. James William Fedarb (1817-90) was described by Colenso
as a 'sober, steady, trustworthy person' who had once been in the
mission employ. Fedarb's diary reveals that he left England in 1831
for the Antipodes, spending two periods in New Zealand before settling
there in 1839. From the Bay of Islands he shifted to Waiapu, then
to Motuihi Island, Hauraki Gulf.

102 It is not held by National Archives and hence does not appear in
in Facsimiles. No trace of it has been found elsewhere.

103 'How Te Heuheu rejected the treaty', in Elsdon Best, MS Papers 72,
f.73, ATL, dictated on 26 May 1913 for Buick's publication, The Treaty
of Waitangi. The information that follows relies on this account.
An alternative account appears in J. Grace, Tuwharetoa; the history
of the Maori people of the Taupo district, Wellington, 1959, pp.238,
437, but the facts given are contradictory. The Te Heuheu version
seems to be more reliable. A search of the Chapman and Morgan Journals
and Diaries reveals no mention whatsoever of any meeting, although
the entries in this period are not comprehensive in either instance.
The Te Heuheu who gave Best the account of Tuwharetoa's meeting was
Te Heuheu Tukino V or Tureiti (1865-1921). He succeeded to the
chieftainship of the Tuwharetoa in 1888. He was the grandson of Te
Heuheu II, or Mananui, who rejected the treaty.
two Tuwharetoa chiefs, Iwikau (brother of the then paramount chief, Te Heuheu) and Te Korohiko had signed the treaty at the Bay of Islands.\textsuperscript{104} But when Iwikau returned to Te Rapa pa at Taupo, Te Heuheu dissociated himself (and his tribe) from the unauthorised action, refused to accept the customary gift of blankets and bluntly rejected the suggestion that the British Crown's protection against any other foreign power was needed by New Zealand at all. Te Heuheu, nevertheless, decided to attend a treaty meeting held by Chapman and Morgan at Te Papai-o-Uru pa, Ohinemutu, where, accompanied by some five hundred men, he is reputed to have publicly rejected the mana of the queen over his tribe. The two Tuwharetoa signatures given in the north were never removed from the treaty, but because of Te Heuheu's decision it has always been understood that his tribe did not give its consent to the agreement.

The Tuwharetoa refusal to sign the treaty was followed by a similar refusal from the Arawa confederation - tribes of the same canoe and allied in tribal interests.\textsuperscript{105} In 1840, Arawa was deeply involved in a long-standing feud which split tribal groupings in the Tauranga area and indirectly involved Te Wherowhero also, factors which possibly give further insight into the reluctance of Te Wherowhero and certain Tauranga chiefs to adhere to the treaty. The government, moreover, could not hope for missionary influence to swing the balance in official favour with Arawa or Tuwharetoa because in both areas the missionary hold was tenuous. As a result, these two major confederations remained outside of the treaty commitment.

\textsuperscript{104} Te Heuheu's oral tradition suggests that they signed on 6 February 1840, but the arrangement of signatures on the Waitangi sheet indicates that these Tuwharetoa names were probably added at some later date.

\textsuperscript{105} The date of this meeting is not known. Parore, a Ngapuhi, may have been with the missionaries. The Arawa spokesmen were said to be Te Amohau, Te Haupapa and Te Pukuatua. The blankets given to the two Tuwharetoa signatories were also said to have been returned.
Fedarb had more success with the other copy of the treaty. Leaving Tauranga on 22 May, he sailed down the long coastline which is broken by a number of small, tidal harbours at each of which there was a population of six to seven hundred. Stack had instructed the trader to obtain as many signatures as possible wherever the Mercury called. To some extent, this task was eased by requests for assistance made by Stack to C.M.S. Maori teachers based at Opotiki and Te Kaha. The C.M.S. was in the process of establishing a new station at Opotiki. The appointee, John Wilson, had not taken up residence; nor did he wish to play any role at all in the treaty-making as a 'servant of the government', for Wilson predicted that there would be a shortfall between theory and practice in implementation of the treaty and feared that the missionary position would be compromised as a consequence. Such an attitude left the Tauranga missionaries with little choice but to do the best they could through other means. Fedarb, indeed, did very well, securing the adherence of twenty-six chiefs, in spite of recent visits to the same coastal settlements by Pompallier, who had previously been suspected of fomenting Maori opposition to the treaty. In fact, at Opotiki chiefs of both Catholic and C.M.S. affiliation signed Fedarb's copy on 27-28 May, the C.M.S. chiefs requesting only that some identification of the Catholic adherents be made on the treaty sheet, which was marked accordingly.

107 Colenso to Hobson, 27 June 1840, Official correspondence ... Treaty, qMS, ATL; Stack to Shortland, 23 May 1840, GBPP, 1841, (311), p.104.
109 See Appendix 3.
110 Colenso to Hobson, 27 June 1840, Official correspondence ... Treaty, qMS, ATL. The Fedarb sheet has crosses beside three names, a fourth having had a cross erased because the chief changed his mind. Pompallier, pp.66-67, describes his trip in this area.
While Fedarb pursued his trading interests over the next three weeks, travelling back and forth by land and sea, he collected nineteen more signatures - two at Torere on 11 June, with a third added later; four at Te Kaha on 14 June; and twelve at Whakatane on 16 June. Only the Opotiki signings are recorded in Fedarb's diary which gives no clue of his methods of persuading signatories or the reasons for chiefs agreeing to the document. Fedarb was accustomed to moving amongst the Maori people and was no doubt aware of the need to allow time for consultation. At Opotiki and Te Kaha, at least, he had the support of the local Maori teachers.

When he returned to the Bay of Islands on 19 June, Fedarb entrusted his copy of the treaty to Colenso to pass on to Hobson who duly acknowledged the work achieved. There was no comment on Stack's forging of Hobson's signature on Fedarb's copy of the treaty, although in other circumstances that might have been regarded with official disfavour, and might have invalidated any legality that the treaty may have had. Stack had advanced the government's treaty mission in the Bay of Plenty-East Coast region and his decisions were not questioned. Indeed Hobson's officials were so concerned to secure adherents there, that Shortland had sent off yet more treaty copies to Tauranga on 7 May, only a few days after Bunbury had departed for that very place with his copy. When Stack returned the original Brown copy on 23 May, he voiced a hope that Tupaea's agreement might still be obtained, but this was not forthcoming,

111 The third signing given as Torere may have been held off-shore.

112 Freeman to Colenso, 1 July 1840, Colenso Papers, IV, MS, ATL.

113 The Fedarb sheet is the only surviving sheet on which Hobson's signature was not his own. On one other, Symonds's copy, Shortland signed for the governor. See above, pp.199-200.

114 Shortland to Brown, 7 May 1840, enclosing 'copies' of the treaty, NA, IA, 4/1, no.35. These may have been printed copies from the run that Colenso printed on 17 February 1840; see above, pp.195-6.
although the chief had several opportunities for changing his mind.\(^{115}\)

According to Tureiti Te Heuheu's account of 1913, Tupaea's stance reflected Ngaiterangi's alignment with the Arawa Confederation which had rejected the treaty,\(^{116}\) but since Tupaea was offered the treaty before the Arawa meeting could possibly have occurred, this does not seem to provide an adequate explanation. One certain fact, however, is that the Tauranga tribes gave the treaty a mixed reception, in spite of a plethora of treaty copies and a varied band of negotiators.

After his brief and somewhat uneventful call at Tauranga, Bunbury abandoned a proposed visit to Opotiki and continued southwards,\(^{117}\) driven by a sense of urgency to accomplish Hobson's directive that the South and Stewart Islands be secured to the Crown. Neither Hobson nor Bunbury was well informed about southern New Zealand. Bunbury, however, knew about Hobson's doubts concerning the ability of South Island Maori to observe 'even the form of a treaty'. Hobson had also drawn his attention to Normanby's thoughts on the matter, that unless a treaty were entered into 'intelligently' by the Maori, it would be a 'mere illusion and pretense which ought to be avoided'. In spite of this, Normanby had continued to urge the point that a treaty was preferable. Only if that were not possible did Normanby suggest falling back on asserting sovereignty on the ground of discovery.\(^{118}\)

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\(^{115}\) Tupaea had been offered the treaty, it seems, on 10 April when other Tauranga signatures had been obtained; on 12 May when Bunbury called; and Bulick, Treaty, p.229, note, makes reference to a further occasion at Manukau where Tupaea was visiting, but he gives no source for this.

\(^{116}\) 'How Te Heuheu rejected the treaty', in Best, MS Papers 72, f.73, ATL.

\(^{117}\) Bunbury to Hobson, 5 May 1840, GBPP, 1841, (311), p.100.

\(^{118}\) Normanby to Hobson, 15 August 1839, GBPP, 1840, [238], pp.44-45; Hobson to Bunbury, 25 April 1840, GBPP, 1841, (311), pp.17-18.
Since the Herald fought adverse weather for well over a week to reach the South Island, Bunbury was given adequate opportunity of gleaning some accurate information on the south from the experienced Stewart.\footnote{119} Bunbury would have heard, for instance, that through the sealing trade of the early nineteenth century and the later growth of shore whaling, Maori in the south had been associated with Europeans over a longer period than in any area of the country other than the Bay of Islands. As a result, by inter-marriage and cohabitation, Maori had acquired considerable knowledge of European ways, although limited mainly to seafaring Europeans. Contact, as elsewhere in New Zealand, had brought changes to Maori life; European diseases and raids by North Island Maori had decimated southern Maori in the decade or two before 1840.\footnote{120} Hence Maori remaining on the eastern seaboard of the South Island were few in number and had formed a loosely associated, mobile tribal grouping that incorporated mainly Ngatimamo and Ngaitahu. These factors - limited numbers, an extensive territory with similar tribal affiliations and a continuing fear of renewed attacks from the north - were to prove useful in persuading southern Maori to agree to the treaty as a means of protecting their interests.

\footnote{119} Bunbury to Nias, 12 May 1840, Official correspondence ... Treaty, qMS, ATL. From the Edward Williams diary entries, the Herald’s movements can be dated; likewise the treaty signings which do not appear on Bunbury’s treaty sheet and which remain vague in his reports. The Trent was left at Mercury Bay and the Herald sailed south on 16 May. The ship arrived off Akaroa on the night of 24 May or early on 25 May, but bad weather prevented it going into the harbour anchorage until 27 May.

\footnote{120} George Clarke Jnr. recorded the Maori description of the devastating effects of the measles, a disease which the Maori knew had arrived on one particular ship. He also notes the raids. Clarke, Jnr., Notes, pp.63-64.
When Bunbury landed at Akaroa on 28 May, he found, as expected, only a small party of Maori, but they were not 'wild savages', as Hobson had somehow supposed. According to Edward Williams, most of them spoke English 'pretty well'. Initially, they feared that the treaty negotiators might be conspiring to effect a repetition of Te Rauparaha's Elizabeth affair. But they were assured that it was still not too late for the Crown to look into that case. Williams then read and explained the treaty. A second meeting was set for the following day, but was delayed by bad weather until 30 May when two chiefs, Iwikau and John Love [Tikao], gave their assent to the agreement 'after a little more explanation'. Stewart may well have assisted in this for he was conversant with the South Island dialect of the Maori language which presented Williams with some difficulties. Stewart's assistance, the assurances of Crown protection which was so important to these Maori, and a more leisurely and courteous pace of negotiation were probably all significant elements in securing chiefly agreement.

Bunbury was evidently pleased with his success at Akaroa for he considered that the signatures of the two chiefs were of some 'consequence'; Iwikau was a near relative of the deceased paramount chief, Tamaiharanui, and John Love [Tikao] was an important local chief. Acquaintance with the latter, in fact, proved how 'imperfect' British knowledge of the South Island had been, since Bunbury found him to be a 'very intelligent well-

121 The account that follows and the dates are taken from the Edward Williams diary.
122 See above, pp. 52-55.
dressed native' who spoke English better than any other the Major had met with in the country.  

On leaving Akaroa, Bunbury appears to have planned a call at Otago, but bad weather prevented this. It is possible that at this stage he was becoming increasingly conscious that first priority should be given to asserting British sovereignty to the south rather than to seeking further signatories. The Waitangi agreement was now four months old and it was exactly two months since Gipps, anticipating complications arising from South Island land transactions, had urged that 'prompt measures' were 'urgently required'. Bunbury had seen some evidence at Akaroa to justify Gipps's concern. He may also have known of Gipps's failure to persuade the major South Island chief, Tuhawaiki, to sign a treaty of cession in Sydney earlier in the year and he may have feared the chief's continued opposition. For the Herald now bypassed Ruapuke Island where Tuhawaiki was situated and headed for an uninhabited part of Stewart Island - Port Pegasus, where Stewart had at one time embarked on a ship-building venture. It is difficult to determine whether Bunbury deliberately chose to avoid Maori habitation or whether the weather made it impossible to reach Pateson River (or inlet) where there was a Maori village. In any case, seeing no probability of finding any Maori at Port Pegasus, Bunbury and Nias decided to proclaim the Queen's sovereignty.

123 Bunbury to Hobson, 28 June 1840, GBPP, 1841, (311), p.106. Iwikau was a Ngatirangiaamoa (Ngatirakiaamo). He is thought to have been taken captive in the wars but had been returned by Te Rauparaha in 1839 or thereabouts. In 1844 he was still at Banks Peninsula with Port Levy as his dwelling place. E. Shortland, The Southern Districts of New Zealand, London, 1851, pp.256, 303. Shortland also mentions Tikao at pp.252-3.

John Love (Tikao) was Ngatikahukura. Although the name John Love appears on the treaty sheet, he was also known as Tikao.

124 For Gipps's direction and his attempt at treaty-making, see above, pp.184-5.

basing Crown rights on Cook's discovery - a course suggested by Normanby, recommended by Gipps as 'most advisable', and possibly pressed upon Bunbury by Nias whose impatience to see the mission accomplished was noted by the Major a day or so later. The Maori of Stewart Island were thus given no chance of considering the Waitangi agreement.

Nevertheless, Bunbury did not abandon the quest for signatures from South Island Maori. After a few days at Stewart Island, the Herald moved to Ruapuke Island, where Tuhawaiki, the acknowledged paramount chief on the South Island's east coast, signed the treaty on 10 June. Since the chief was expecting the ship's arrival and signed 'without hesitation', news of Bunbury's mission had evidently reached him. Tuhawaiki already appeared to understand the 'nature' of the treaty, but Bunbury took care to observe correct form by having the document read and explained in the presence of a European witness. The chief had considerable experience in dealings with Europeans over many years; he was an accomplished trader and whaler, with his own whale boats and with Europeans in his employ; he spoke some English, had visited Sydney several times, and had engaged in more than one land deal.

Once he had signed the treaty, Tuhawaiki presented Bunbury with a memorandum concerning the register of a 25-30 ton vessel that was being

126 The exact site of the proclamation is unsure. The proclamation was written out and enclosed in a bottle that was buried on a 'small island' near the Herald's anchorage. This also has not been ascertained. Howard, *Rakiaura*, pp.106-12 discusses these points.

127 Ruapuke Island lies in the eastern approaches to Foveaux Strait.

128 Bunbury to Hobson, 28 June 1840, GBPP, 1841, (311), p.107; E.M. Williams Diary, 9-11 June 1840, MS, ATL. Tuhawaiki (1805?-44), known also as 'Bloody Jack', had gained his ascendancy in the South Island not through birth but by his personal ability. He was a knowledgeable, shrewd man who had adopted aspects of European lifestyle to his own advantage. Bunbury was impressed by his appearance and his weatherboard dwelling.
built for him at Moeraki, and sought Bunbury's endorsement of a form of
guarantee, written in English, that Ruapuke belonged to Tuhawaiki and his
tribe. The first matter Bunbury forwarded to Hobson, but the latter he
dealt with by referring to the land guarantee in the treaty. It is clear
that Tuhawaiki was keen to avail himself of the opportunity to secure
his significant land and trading interests and viewed the treaty as a
prerequisite to obtaining Crown protection of his rights; but the full
import of the agreement may not have dawned on him. On the other hand,
Bunbury, aware that the chief considered himself to be the principal lead-
er on the south coast and might make claims to much of the South Island,
was cautious not to commit the Crown to any land claim that had not first
been officially investigated. With this, Tuhawaiki was apparently satis-
fied. His request that two other chiefs sign the treaty was allowed.

Apart from the adherence of Tuhawaiki, Bunbury had been anxious to
obtain the agreement of Taiaroa, the other chief of consequence in the
south. The southward-bound Herald had bypassed Taiaroa's Otago settle-
ment and on the return trip he could not be found in the Maori village at
the harbour entrance; he was said to be at Moeraki. Nias refused to
hold the ship to await Taiaroa's return or to seek out Taiaroa's son
further up-harbour. Bunbury had to be content with gaining the adherance
of Korako and Karetaia, the latter chief being of some importance however.129

With the aim of acquiring the sovereignty of the South and Stewart
Islands now almost complete, Bunbury made his last South Island call at
Cloudy Bay where there were several shore whaling stations. The Maori
population had become largely integrated into the fishing activities of

129 At Ruapuke a chief by name of Taiaroa had signed, but Bunbury clearly
states that he failed to obtain the assent of the famous Taiaroa at
any stage.
the European establishments. Tribal affiliations related more to North Island groupings than to the Ngaitahu of the South Island. It was an area much frequented by overseas ships with seven foreign whalers operating in the Bay as the Herald came in to anchor. Bunbury and his party landed at Guard's Cove on the evening of 16 June, were well received by the elderly chief, Nohorua (a close relative of Te Rauparaha), but the chief and his three nephews adamantly refused to sign the treaty. The following day, a second approach to Nohorua was successful, but his nephews first temporised and then again refused to sign. Chiefs from adjoining coves, on the other hand, came to the Herald in three separate groups, all willingly giving their assent to the treaty.

The main impediment to Maori adherence at Cloudy Bay arose from antagonism towards groups such as the New Zealand Company which had pressurised local Maori in the preceding months in attempts to force them to part with land. As one young chief, 'Maui Pu', explained in broken English, all the chiefs were fearful that if they signed the treaty the Queen would subsequently seize upon their territory. It was only when Maui Pu read the Maori text of the treaty that he rapidly grasped the significance of the land guarantee which he then concisely explained to the other chiefs. Thus his services as an intermediary finally persuaded Nohorua to agree to the treaty. Yet the old chief retained such suspicion of British intentions that he gave his signature only on condition that it be witnessed by his English son-in-law, the whaler Joseph Thoms, 'in order, as he said, should his grandchildren lose their land, their father might share the blame'. Fears over land loss were so great amongst all the chiefs that

130 According to Bunbury and Williams, there were five American, one French and one Bremen whaler.
131 This chief had been to Hobart; he had experience of the navy vessel, H.M.S. Conway.
initially even the customary gift of a blanket was turned down for fear that it might be construed as an admission of land sale. Beyond any doubt, then, at Cloudy Bay it was retention of the land that was uppermost in the minds of chiefs when deciding about the treaty and not the cession of sovereignty which was the crucial point with Bunbury.

Bunbury now decided to proclaim the Queen's sovereignty over the South Island, basing the declaration on the cession made by chiefs of the territory. Nias supported the idea. News that Queen Charlotte Sound Maori had consented to Henry Williams's treaty overtures had reached the Herald and boosted the numbers collected by Bunbury. Later, Bunbury justified the proclamation of sovereignty to Hobson: 'it may appear like cutting the Gordian knot, where so many and such intricate interests are interwoven; yet the further delaying this step could only tend to create further difficulties'. More specifically, he saw the need to assert British sovereignty as the 'most effectual means of preventing further dissension amongst the natives and Europeans'. Moreover, the time was opportune, for 'the presence of so many foreign vessels contributed to render the declaration of Her Majesty's sovereignty more solemn and imposing'. On 17 June, therefore, having informed the chiefs of his intentions, Bunbury landed the marines and hoisted the Union Jack at Horikaka Pa while the Herald gave a 21-gun salute with the ship's yard manned. Thus by public proclamation, British sovereignty was publicised and Bunbury's South Island mission brought to a conclusion.

133 Horikaka pa appears to have been on the island known as Horahora-Kakahau in Kakapo Bay, Port Underwood. An Historic Places Trust plaque marks the spot where the proclamation is said to have been read.
Before returning to the Bay of Islands, two pieces of business were dealt with by Bunbury. First, it was thought advisable to visit Te Rauparaha at Kapiti which the Herald reached early on 19 June. Bunbury, having the good fortune to make contact almost immediately with the chief, was assured by Te Rauparaha that his assent to the treaty had already been given to Henry Williams. Since Bunbury had no means of confirming this, he asked for Te Rauparaha's adherence a second time—an indication of the significance attached to that chief's agreement. From nearby Mana Island, Rangihaeata was also brought, with Te Rauparaha's assistance, to sign.  

The other matter taken up by Bunbury was an approach to Te Hapuku of Hawke's Bay. This chief had been an adherent to the 1835 Declaration of Independence and, in 1840, was thought to be the undisputed principal chief of the Ahuriri (Napier) coastal district although for some years he had resided at Mahia. The fact that William Williams did not intend to seek treaty adherents on this coast until late July or even August may have come to Bunbury's notice during a brief stopover at Port Nicholson, for the Herald tried to make contact with Te Hapuku on 24 June as the ship worked its way back north. Bunbury's expectations that the chief

134 This information, and the following, is drawn from E.M. Williams Diary and Bunbury to Hobson, 28 June 1840, GBPF, 1841, (311), pp. 108-9. Bunbury was also seeking 'Iko' [Te Hiko] son of the deceased Te Pehi, once paramount chief of the tribe, but Te Hiko was absent on the mainland. He had signed Williams's copy at Port Nicholson anyway, but Bunbury would not have known this unless informed by the Maori.

135 Te Hapuku (1808?-78) was a Ngatikahungunu. In wars of the 1820s he had been taken prisoner but subsequently escaped and sought protection under Ngapuhi chiefs living at Mahia. Towards the close of the thirties tribal realignments allowed the Hawkes Bay chiefs to return to their earlier dwelling places. The treaty meeting is said to have been near the mouth of the Tukituki River.

136 See above, p.207.

137 Bunbury and Edward were looking for Te Hapuku at a particular pa, but neither indicate the whereabouts of the pa; it was very likely on Mahia Peninsula, facing towards the landward side, i.e. the mainland, or may have been north of Napier.
would be evasive proved correct; Te Hapuku had been so troublesome with
European whalers that Busby had threatened him with the visitation of a
warship. Only when Bunbury clarified the nature of his mission
through a literate Maori messenger did Te Hapuku appear. But he refused
to sign initially, alleging that Ngapuhi were now slaves through the
treaty, a claim that he illustrated by way of a diagram on a piece of
board - the Queen above the chiefs, as they were over their tribes.
Yet subsequently he appended his agreement; two other chiefs also signed.

Bunbury's detailed record gives an interesting insight into the
tactics used in this instance to secure Te Hapuku's adherence. Every
means of persuasion had been used. Bunbury had countered Te Hapuku's
assertions of Crown supremacy, for instance, by insisting that the British
government would not 'lower the chiefs in the estimation of their tribes';
rather Te Hapuku's assent to the treaty 'could only tend to increase his
consequence'. Bunbury had also reasoned that good government would apply
'equally' to Maori and European, opening the way to mediation in inter-
tribal fighting and to the settling of differences between Maori and
European. Confident now in his recent assertion of British sovereignty, he
had also warned Te Hapuku that whether he signed or not British
authority was more or less a fait accompli, a point that Bunbury threat-
ened to demonstrate with the Herald's guns unless local Maori returned
a whaleboat stolen from a European. Finally, Bunbury turned for support
to Hara, a Ngapuhi treaty signatory who happened to be accompanying

138 Te Hapuku seems to have had a history of trouble involving Europeans. See e.g., Harris to Busby, 21 January 1838, NA, Brit.Res. 1/2, 101; Busby to Hapuku, 30 January 1838, NA, Brit.Res. 1/2, 103, notes Hapuku's Bay of Islands connections; see also Clayton to Busby, 8 October 1838, NA, Brit.Res. 1/2.

139 The Hawkes Bay signing was on 24 June: see E.M. Williams Diary, MS, ATL; cf., Buick, Treaty, p.262, who gives 23 June, an error as in the dating of other signings.

140 While at Port Nicholson, Bunbury had heard of similar moves by Hobson: Bunbury to Parker, 4 July 1840, GBPP, 1841, (311), p.12.
Hapuku; and Hara advised that the treaty be signed. Thus Bunbury had used flattery, promises and threats as well as commandeering chiefly support in order to achieve his objective. Any one, or even all of these factors may have been decisive to the outcome.

With the southern treaty now as complete as he could make it, Bunbury returned to the Bay of Islands, dropping off Stewart at Whitianga on 28 June and arriving at Russell on 2 July. His mission, taking just over two months to complete, had succeeded in securing twenty-seven treaty signatories - a modest figure in comparison with some other treaty sheets but representative of a wider geographical area than any other treaty copy.

In Bunbury's absence, Hobson had accomplished further business relating to the treaty and the assertion of British sovereignty. A major treaty signing, for instance, had occurred at Kaitaia on 28 April where the accession of sixty chiefs of Rarawa and Aupouri constituted a unanimous decision in favour of the treaty. In this respect it differed from the other major northern gatherings at Waitangi and Hokianga where there had been some dissention, although the format of the meeting had been the same. Explanations of the treaty were expressed in much the same way too, the chiefs being assured that the government would better control Europeans, that it would protect Maori interests and that this new British intrusion was in response to earlier Maori approaches to the Crown. For their part, Kaitaia Maori showed that they shared the concerns

141 Hara had arrived in the area when Henry Williams had called at Turanga with the William Williams treaty copy, according to Bunbury. Hara had signed the Waitangi sheet.

142 E.M. Williams Diary entries give the dates.

143 The circumstances of this signing have been collated from the several sources following: Taylor Journal, GNZ MSS, APL; Johnson Journal, 23-28 April 1840, NZ MSS, APL; Letters and Journals of W.G. Puckey, (typescript) APL, various entries; Hobson to Gipps, 5 May 1840, and Shortland to Hobson, 4 May 1840, encl. Nopera's speech, GBPP, 1841, (311), pp.57-59; Shortland to Stanley, 18 January 1845, encl. the speeches of Kaitaia chiefs, GBPP, 1845, (108), pp.5-10.
held by Maori elsewhere in the north. Chiefs expressed a desire to have land sales and trade regulated; for misdemeanours to be appropriately controlled (although the European differentiation between criminal acts such as murder or robbery and moral offences like adultery was not understood); and they indicated that they expected that improved chiefly status and increased material benefits would result from agreement to the treaty.

According to the official negotiators, the decisive factor at this meeting was the attitude of the ariki (paramount chief), Nopera Panakareao. A man of supreme influence in the far north, this chief held a position that enabled him to seek a complete accession of the kind that was simply not possible in the more dispersed leadership structure of the Ngapuhi federation. Moreover, Nopera had enhanced his mana by association with Christianity, proselytising amongst his own tribe from 1837 on. By the end of 1839, the principal Rarawa chiefs were Christian, or at least nominal believers. For them, Nopera combined leadership qualities of the traditional and the new - an influential combination.144

Nopera believed that he had prepared carefully for the treaty meeting. On the previous evening he had questioned the resident C.M.S. missionary, W. Puckey,145 as well as the other government officials about the nature of the treaty, in particular, about the meaning of the word sovereignty. According to one of the official party, an attempt had been made to make

144 Puckey Journal, 7 April 1837, 21 September 1839 and 12 June 1840, has comments on Nopera. The chief had a 'neat little weatherboard cottage' furnished English-style. Johnson Journal, 28 April 1840, records the English-style supper that the official party had there at Nopera's invitation on the night of the Kaitaia signing.

145 W.G. Puckey and J. Mathews established a C.M.S. mission in 1833 at Kaitaia under Nopera's patronage.
this 'intelligible' to him.\textsuperscript{146} Hence Nopera felt prepared for the meeting, although it became clear there that he was failing to grasp the transfer of power and authority implied in the treaty. When other chiefs at the meeting had all finished speaking, Nopera, 'in a very impressive and commanding manner' asserted his right as ariki. Drawing on the precedent set by his ancestor, he reminded the assembly that Rarawa had welcomed the European. He reasoned that the Maori people needed a helmsman such as Hobson, that the governor did not intend to deprive the Maori of payment either for land or for produce. Hence he concluded that only 'the shadow of the land is to the Queen, but the substance remains to us'.\textsuperscript{147} He urged the chiefs, for these reasons, to agree unanimously to the treaty—a direction that was immediately obeyed.

In addition to the Kaitaia signing, Hobson had also obtained further signatures at the Bay of Islands while Bunbury was away. Amongst these was Kawiti, an adherent to the Declaration of Independence and one who had not signed at Waitangi. A rumour that Kawiti was behind a conspiracy to kill Hobson and to oust Europeans from New Zealand tended to be confirmed by information gleaned at the Kaitaia meeting;\textsuperscript{148} this spurred Hobson to action. Pomare's assistance had already been requested to

\textsuperscript{146} Johnson Journal, 27 April 1840, NZ MSS, APL.

\textsuperscript{147} ibid., 28 April 1840. These words, often cited by Europeans and well known in New Zealand from the 1840s, were given by Johnson verbatim from the translation rendered by Puckey. See pp.580,598. Nopera had signed the 1835 Declaration of Independence.

\textsuperscript{148} Johnson Journal, 28 April 1840, NZ MSS, APL, notes that Nopera had spoken about the conspiracy, alleging that an attempt had been made to draw him into it through his wife who had connections with Hokiangia. Taylor Journal, 28 May 1840, casts further light on this, adding that the groups involved were tribes from Hokiangia, Taiahi and Whangaroa.
persuade Kawiti to pledge himself to the treaty, and the chief had responded well, promising to bring not only Kawiti but also Tirarau of Uriohau at Kaipara and other chiefs over whom he had influence. It was an attractive offer because Tirarau and other Uriohau chiefs, all signatories to the 1835 Declaration of Independence, had received official invitations to the Bay in order to give their assent, yet in spite of this special acknowledgement of their chiefly mana, they had made no move. In the second week of May, however, Pomare accompanied Kawiti, Tirarau and his son and brother to a signing meeting with Hobson at Okiato.

Tirarau, influenced by Christianity though not a convert, was the acknowledged senior chief of his district and carried with him the assent of other chiefs who had not yet signed the treaty; he and the two chiefs with him gave their agreement 'willingly' and apparently without any dissension, expressing their pleasure that 'the Queen had sent them a governor'. Kawiti, on the other hand, became 'exceedingly violent and

149 N. Taylor, pp.219-222, records this and the subsequent meeting. Since Bunbury was at the first meeting it must have been held between the time of his arrival in New Zealand on 16 April and his departure of 28/29 April on his treaty trip to the south.

150 Buller Journal, 9 April 1840, MS Papers 180, ATL, records the receipt of letters from Shortland to Tirarau, Parore and Mate, whom Buller was to persuade to go to the Bay. Colenso Papers, IV, p.106, MS, ATL, gives a copy of Tirarau's letter undated.

151 The meeting was held either at Okiato or Paihia.

152 The two chiefs with Tirarau were probably Taurau and Te Roha (or Tiroha) but their actual relationship to the senior chief is uncertain. Tirarau, an Uriohau, had been in increasing contact with Europeans through the 1830s. From his residence in northern Kaipara he regularly visited the Bay, pledging his support to Busby in the late thirties. Though he was not a Christian he was not averse to missionary activity. There are many references to the chief: Buller Journal, 9 February 1840, MS Papers 180, ATL; Colenso Journal, 24 September 1836, 11 December 1839, Hawkes Bay Museum; Hamlin Journal, 26 February 1834, qMS, ATL; Rogers, p.170, note; and Polack, New Zealand, I, pp.163, 171, 190-191.
intractible' as the signing commenced.\textsuperscript{153} Admitting his active antagonism to the British government and ascribing it to offence given at the 5 February Waitangi meeting when tobacco had been inappropriately distributed,\textsuperscript{154} the chief voiced his reluctance to 'sign away his land' which, in his opinion, the Pakeha would get eventually anyway at the rate the Maori population was declining. Yet, having said his piece, he then appended his moko beside his name at the head of the lengthening list of chiefs on the Waitangi parchment. Neither the reason for his original antagonism (which no doubt had more to it than pique over the tobacco) nor his subsequent about-face, is clear. But it is evident that he gave his assent to the treaty only with reservation - a position that would lead him, within a few years, to take up arms against the government. In May 1840, however, it was sufficient for Hobson that this chief had finally acceded.

With the outstanding success at Kaitaia, the securing of the territory south of Ngapuhi through Tirarau's adherence, and the additional signings of Kawiti and other chiefs over several months since the first Waitangi meeting, Hobson had virtually received an entire cession by treaty from northern New Zealand. Only some few chiefs of the Waitemata isthmus had still to be persuaded and Hobson was actually absent in that locality when

\textsuperscript{153} Kawiti (?1774-1854) was of the Ngatihine hapu and lived at Waiomio near Kawakawa. He had extensive contact with Europeans as the shipping in the Bay increased but retained a caution in his dealings. While his children and people were allowed to have close relations with the missionaries, the chief only became a covert the year before his death, taking the name of Te Ruku (Duke). Henry Williams had long had associations with the chief who spent his last years living close to Williams.

\textsuperscript{154} See above, p.164.
Bunbury arrived back at the Bay at the beginning of July. Since Waikato and Manukau chiefs had been invited to this second Waitemata meeting, Hobson may have been making a final bid to obtain Te Wherowhero's adherence, but the Waikato chief was not to be moved. The seven chiefs who did sign were from the western shores of the Hauraki Gulf; amongst them was Kupenga, the major chief of Whakatiwai pa, a brother-in-law to Patuone. This seems to have been the last formal treaty meeting held by Hobson.  

Having completed his business at the Waitemata and returned to the north, Hobson might well have sat down with Bunbury, also recently returned, to discuss progress made in the business of treaty-making and asserting British sovereignty. For both men had been engaged in signature gathering and both, moreover, had issued proclamations of sovereignty, each unaware at the time of the other's actions. Bunbury had made his two proclamations, one on 5 June at Stewart Island which had been claimed by right of Cook's discovery, and the other on 17 June at Cloudy Bay when the cession of the South Island by 'several independent native chiefs' was given as the justification for the assertion of sovereignty. That Hobson had already proclaimed sovereignty over the whole of New Zealand was not known by Bunbury until he called briefly at Port Nicholson on 20 June.

For his part, Hobson argued that his decision to proclaim sovereignty had been forced upon him by the actions of the New Zealand Company settlers who had arrived at Port Nicholson in January 1840. From information that had come to his knowledge on 21 May, he concluded that they were illegally assuming to themselves powers of government that were the prerogative of

155 The signing took place on 9 July at Karaka Bay, Tamaki Estuary. See Appendix 3, and D. Rough, 'Early Days of Auckland', articles from the New Zealand Herald, 11-25 January 1896, AML.

156 Proclamations enclosed in Bunbury to Hobson, 28 June 1840, and see also Bunbury to Parker, 4 July 1840, GBPP, 1841, (311), pp.112-3.
the Crown. In truth, the settlers, realising that Hobson's negotiations to that date could be interpreted as not applying strictly speaking to their district, had indeed introduced on 2 March a form of government which claimed to derive its legality from authority granted it by local chiefs. Such proceedings seemed to Hobson to smack of 'high treason'. He had immediately issued two proclamations: the first, proclaiming sovereignty over the North Island by right of cession; the second, proclaiming sovereignty over the South and Stewart Islands on the ground of discovery. In addition he swiftly dispatched Shortland, invested with the powers of a Justice of the Peace, and with a supporting body of troops and mounted police, to deal with the situation at Port Nicholson. He was to publish the proclamations immediately on his arrival. 157

Hobson's actions were those of a man who believed he was facing an emergency situation. But his precipitate proclaiming of sovereignty, expedient perhaps to confirming the relationship of Crown and British subject at Port Nicholson, led Hobson to justify his decision to the British government by exaggeration and even error concerning the treaty and the position of the Maori people. The British government was assured that cession of the North Island had been secured by the 'universal adherence' of the chiefs. Yet at this stage, apart from the original Waitangi sheet which Hobson held, only the Maunsell treaty copy, signed at Waikato Heads and the Manukau, had been returned to Hobson. While he had also received encouraging reports from Symonds, from Henry and William Williams, and from Bunbury at Coromandel, in no region (with the exception of Kaitaia) could adherence to the treaty be said to be 'universal'. 158

157 Hobson to Secretary of State for Colonies, 25 May 1840, GBPP, 1841, (311), p.15.

158 ibid., p.18. The only other exceptions may have been some areas within the scope of Henry Williams's negotiation.
Erroneous justification was likewise given for asserting sovereignty over the South Island on the ground of discovery (a decision which again Hobson attributed to necessity arising from the Port Nicholson case) for he claimed a 'perfect knowledge of the uncivilized state of the natives'. He had no grounds whatsoever for making this statement; and perhaps because he was aware of the weakness of his argument he informed the Colonial Office that the advice of Governor Gipps, previously given, supported his action.¹⁵⁹

Since the Colonial Office had previously admitted its own lack of information of the South Island and knew of Hobson's similar ignorance, it might have treated Hobson's dispatch to a more critical appraisal. But for information on the North Island the metropolitan government could expect to trust its man on the spot. Unknown to them, however, Hobson was not providing accurate information in this instance. Nor could London officials have appreciated that the treaty, copies of which Hobson enclosed in two dispatches, was not the treaty in the Maori language that had been agreed to by certain Maori chiefs. The treaty copies that Hobson sent to London were two English versions in which the language conveyed a meaning different from that understood in the Maori text. Another point which only added to the misrepresentation of facts was a certification appended to one of these copies by Henry Williams, that the English treaty copy was 'as literal a translation of the Treaty of Waitangi as the idiom of the language will admit of'.¹⁶⁰ This was not true. Williams

¹⁵⁹ ibid.

¹⁶⁰ Hobson to Gipps, 5-6 February 1840, CO 209/6, 46-54, which includes the English copy and Hobson to Gipps, 16 February 1840, CO 209/7, 13-14, which includes the copy certified by H.W. Williams. When this was printed in the Parliamentary Papers this certification was deleted.
well knew that it was quite the reverse - the Maori text was a translation from an English draft. This error was perpetuated when Hobson finally sent both Maori and English texts to London on 15 October. Inscribed alongside each other, the two texts were headed 'Treaty', were said to be 'certified' copy and to have received 512 signatures, but when these copies were printed for publication the Maori text was headed 'Treaty' and the English '(Translation)'.

On the basis of Hobson's inaccurate reporting, the Colonial Office approved his 21 May 1840 proclamations which were given due publicity by official publication in the London Gazette on 2 October 1840. The sanction of the Crown was thus given to the actions of its representatives in New Zealand. This was the only condition or ratification required under British government usage; British sovereignty over New Zealand was thereby confirmed. It was too late for second thoughts in 1841 when the Colonial Office received fuller information that revealed some of the shortfall in treaty negotiations. That large areas of the North Island had not given their assent may have been somewhat disturbing but

161 cf., Hobson to Russell, 15 October 1840, CO 209/7, 178, where the two copies were enclosed; and the printed copies in GBPP, 1841, (311), pp.98-99. See also Ross, 'Te Tiriti ...', p.134, which notes the copies sent to Hobson's superiors as well as the various duplicates held in New Zealand. In one instance, a copy is said to have been included in Hobson to Russell, 25 May 1840, but this seems to be an error made by Ross when interpreting the text of an enclosure in the dispatch. The copies sent to Hobson's superiors are noted in an appendix to this thesis. Ross also notes the minor differences in the English texts which are of no great importance except for one text that omits forests and fisheries.

162 Russell to Hobson, 10 November 1840, CO 209/7, 53-54. The Gazette was an official publication.

163 The reports of individual treaty negotiators were enclosed in Hobson to Russell, 15 October 1840, and printed in GBPP, 1841, (311); they are in CO 209/7, 102ff., where Colonial Office memos reveal some debate about how much should be published. It was feared that other nations might be upset. This dispatch enclosed the Maori and English text of the treaty with copies of chiefs' moko and signatures attached. It impressed the Colonial Office. The names, 512 of them according to a minute, were removed.
the successful South Island signings offset that. Moreover, these latter adherents could be construed as reinforcing British claims in the South Island and, together with Bunbury's assertions of sovereignty in the area, could be seen as giving desirable publicity in New Zealand to the establishment of Crown authority. Furthermore, in discussing the need to obtain a voluntary cession, the Colonial Office had never spelled out the need for a unanimous Maori adherence to the treaty as a prerequisite to proclaiming sovereignty. Rather, Hobson's instructions had embodied principles and ideals with regard to the proposed dealings with the Maori that, while indicative of humanitarian concern, were equally calculated to satisfy various audiences at the metropolitan and even international level.

Hobson, on the other hand, had been forced by New Zealand events to be more pragmatic from the outset, even anticipating a successful Waitangi treaty signing by proclaiming, with Gipps's co-operation, Crown authority over British subjects in New Zealand in the 14 January and 30 January proclamations. Similarly, the strategy of making the one agreement on 6 February, which he then classed as definitive and to which only 'adherents' were sought thereafter, was also an expedient designed to cope with the reality of a dispersed and fragmented Maori leadership structure. In like manner, the 21 May proclamations sprang from decisions taken in haste rather than from an assessment basing British right on the reasonable fulfilment of Normanby's instructions not to seize upon the country but to seek a 'free and intelligent' Maori consent first.

The New Zealand case was an unusual one however; there were several needs to be observed at the one time. Both Hobson and Normanby were aware, for example, that Maori independence or sovereignty, although recognised by Britain, was not strictly speaking cognisable in international
law. Yet, for a number of reasons, some acknowledgement had to be made: other nations were aware of Britain's acceptance of the Maori Declaration of Independence and some of these, the United States and France in particular, had economic interests in New Zealand and might take exception to outright British denial of a Maori independence. Related to this was a need to seek Maori agreement to the entry of British authority into the country, preferably as complete an accession as possible, for the Colonial Office was aware that Maori groups left outside British sovereignty would remain vulnerable to other foreign power involvement and only with Maori co-operation could Britain hope to hold the territory against any such challenges. Complete sovereignty, therefore, voluntarily ceded in treaty by the Maori people to the British Crown, was politically and diplomatically desirable, because such an act could not easily be ignored by other nations. It gave Britain an unquestionable entitlement to assert exclusive authority in New Zealand, even though the legal status of such an agreement might be uncertain owing to the Maori's ambiguous status as a recognised nation state.

There were other needs to be served by a treaty too. The British government deemed it necessary to have complete control over all land transactions in the country. This could only be achieved by Maori agreement, hence the treaty's second article relating to land was as vital to government interests as it was to conveying to the Maori a sense of rights guaranteed. Likewise, the third article conveying Crown protection and specifying the status of Maori as British subjects also served a dual purpose. It placed the Maori people under the control of British law, initially only in theory but ultimately in practice, and at the same time extended rights that could be construed as privileges of some significance for an indigenous race to obtain. This element of protection,
however, was a responsibility forced on the Crown when the decision was made to acquire the entire sovereignty of New Zealand and to assert full internal control over the territory and all its inhabitants. It was perceived then that 'protection' could be a useful inducement in negotiations with the Maori. Strictly speaking, officials hoped that protection against foreign powers might never have to be undertaken because of the cost involved. The Colonial Office had actually discussed this point when a partial cession had been considered until June 1839. At that time it was thought that gifts or annual gift-giving might be a sufficient inducement to Maori. The decision to take on the whole country as a colony, therefore, a responsibility that had not been officially welcomed, was put to some effect in the treaty negotiations by emphasis being given to the 'protection' thus extended. An official necessity was presented as a remarkable beneficence.

The argument concerning protection was given added weight by treaty negotiators - through comparisons being drawn between the British who had peacefully entered into the country and the French who it was alleged would have forcibly acquired New Zealand if given the chance. Official awareness that Britain's military power should not appear to be a threat to Maori was, in fact, noted and it was played down in the treaty-making. It may also be significant that from tribes against whom British force had been used, no signatures were gathered; for example, no attempt was made in South Taranaki where the Alligator's 1834 reprisal had made such an impact; and Ngatitamatera in the Thames, where similar gun-boat tactics had been used in the late 1830s, refused to have anything to do with the treaty. 164

164 The incident involved H.M.S. Pelorus. Correspondence is in NA, Brit. Res. 1/2, letters no. 119-121, 123.
Finally, in a more general sense, a negotiated settlement was deemed officially to be a measure of justice that acknowledged rights held by indigenous peoples. And in this sense, the Waitangi treaty was a declaration of good intent on the part of Britain, a commitment which missionary negotiators felt especially obliged to draw to Crown attention when aspects of the treaty were later questioned and when there were threats to ignore implementation of its terms.

While it is not within the scope of this work to debate the treaty's legal status in any detail, either as it applied in 1840 or in later years, some points are worth noting. It is evident, for instance, that there was some official concern about the legal status of New Zealand, although the legal interpretation placed on the treaty itself by officials in England and in New Zealand is by no means clear. What is clear is that an impression was given in New Zealand, in particular to the Maori, that a bona fide act was being entered into. That act served various purposes, however, so that it was viewed with varying emphases by contemporaries. The American naval commander, Charles Wilkes, visiting the Bay of Islands in March 1840, viewed it as 'nothing more or less than a cession of their [Maori] lands, authority, and persons to Queen Victoria'. He considered that protection of the Maori had been over-emphasised as a reason for British intervention which he attributed more to British desire to thwart land speculation and to pre-empt 'French' plans for the country. Missionaries working in New Zealand, on the other hand, were more concerned about the potential benefit of British protection. Buller, for instance, maintained that New Zealand was 'altogether an anomalous case ... a subject of peculiar difficulty'. And Maunsell, mindful of missionary negotiation and placing some considerable weight on this factor which had persuaded

165 Wilkes, pp.375, 380.
166 Buller Journal, 9 April 1840, MS Papers 180, ATL.
many Maori to sign the treaty, returned his signed copy to Hobson with a reminder: that the good faith of the British Crown should hold the government to the terms of the agreement.\footnote{Maunsell to Hobson, 14 April 1840, encl. in Hobson to Russell, 15 October 1840, GBPP, 1841, (311), p.99.} Maunsell was anticipating the 'different ground' that would be taken in Europeans' attitudes to the Waitangi treaty which Hadfield at Otaki noticed some two years later. It was 'broadly hinted' by then that the treaty had been 'a mere blind to deceive foreign powers'. As Hadfield well knew, Maori had been presented with the 1840 agreement as a 'bona fide' act,\footnote{Hadfield to Mrs H. [Hadfield?], 17 January 1842, Hadfield Papers, qMS, ATL.} a genuine commitment between them and the British Crown.

Maori understanding of the nature of the treaty agreement, however, was certainly more varied than European perception of the engagement. This variation arose from the great diversity of treaty-signing situations. In the major northern negotiations at Waitangi, Hokianga and Kaitaia, for instance, the significance of the treaty meetings was carefully observed by Hobson and his associates. Each of these assemblies, because of prior invitation and planning, was numerously attended and generally progressed in an organised fashion. An impression of formality was created by the presence of the brilliantly uniformed police (at least at Waitangi and Kaitaia) and in each case the gathering was followed by suitable feasting and gift-giving. These were important factors from a Maori point of view, for such pomp and circumstance were fitting recognition by British government representatives of the mana of chiefs. It was the absence of such recognition that Symonds saw as significant in Te Wherowhero's reluctance to accede to the treaty, and it was the temporary lapse in official organisation of gift-giving that Kawiti blamed for his pique over the Waitangi signing.\footnote{See above, p. 238.}
The official effort with the northern signings contrasted markedly
with the experience of other areas where the treaty, often by force of
circumstance, could not be accorded such ceremony. Much depended on the
individual negotiators and their ability to convey the import of the treaty
document; but generally, meetings seem to have been brief and the subject
not explored at great length in discussion. In some instances, there
were problems with gift-giving which Maori might well have construed as
British failure to give chiefs the respect due to them. Bunbury, for
instance, noted that blankets were such common items in Maori use in the
Coromandel district that they were barely adequate as tokens of official
esteem. Further down the coast, Fedarb resorted to giving items of cloth-
ing, pipes and tobacco in lieu of blankets. There is no evidence to
suggest that Maori signed the treaty merely to obtain gifts, as sometimes
has been claimed. On the contrary, Maunsell took signatures and only
gave gifts some time later; and in the Cook Strait signings some Maori
were reluctant to accept any gifts for fear that they might be interpreted
by the British as some kind of payment. Over all, the organisation
of treaty signings was a haphazard affair in most areas other than the
north. Not surprisingly, the treaty was seen in retrospect by
many Maori as a peculiarly northern matter, even though it had been
variously circulated around much of the country. Hence in later years,
when events stimulated Maori to complain about the non-implementation of
the treaty's terms, it was to Ngapuhi that other tribes pointed, for that

170 See GBPP, 1841, (311), pp.100, 101, 111; and Colenso to Hobson,
27 June 1840, Official Correspondence ... Treaty, qMS, ATL;
Freeman to Colenso, 1 July 1840, Colenso Papers, IV, MS, ATL.
Fedarb billed G. Mair for gifts to the cost of £5.4.0.
tribe was considered to have taken the initiative in 'pulling the Pakeha canoe' - traders, missionaries, and the British government - to New Zealand shores. When the record of government adversely affected the Maori people, therefore, it was seen as the Ngapuhi's responsibility primarily to take up the task of righting wrongs. Thus the treaty would become a special take (cause) for Ngapuhi.

Another reason for the greater significance of the treaty in the north was the emphasis that Hobson chose to place on negotiating with the 1835 signatories, most of them northern chiefs. A substantial number of chiefs involved in the northern gatherings had enjoyed precedents of contact with the Crown; first through the more or less indirect relationship established by trade and at missionary initiative, and then later through the 1831 petition, the 1834 flag-giving and the 1835 Declaration of Independence and its official acceptance; Busby's appointment had consolidated that relationship. To these men, then, Hobson came as an inheritor of the long-cultivated tradition of a personalised association between them and the Crown. Indeed Hobson, presenting himself as a kaiwhakarite (mediator), offered primarily to be more effective than Busby in dealing with difficulties that had arisen in New Zealand as a result of the greater influx of British subjects. His acceptance by northern chiefs, therefore, could well have been on the understanding that he was an extension of the previous relationship, an understanding suggested at Tauranga too. The official failure to express clearly the substantial transfer of authority that was inherent in the treaty - a new factor entirely - thus left northern and then all other chiefs at a disadvantage in grasping the real intent of the British government.

Various explanations given at treaty-signings around New Zealand support the conclusion that Maori expected the treaty to initiate a new
relationship but one in which Maori and European would share authority. The intervention of Britain would still be limited. Chiefs at Waitangi and Kaitaia were assured that Maori customs and law would not be interfered with. Elsewhere, such as at Hawkes Bay, they were actually encouraged to believe that their rangatiratanga would be enhanced. While Maori might have reasoned, as Heke did, that there was really no way that they could ascertain for certain the effect of the treaty, at the same time, on the ground of treaty wording and explanations accompanying negotiations, they might feasibly have expected that they were making a cession of limited rights only to Britain - a relinquishment of responsibility for external affairs, and a concession of certain rights within the country that would still leave a degree of Maori control over tribal matters.

There were nevertheless both similarities and differences in Maori attitudes which determined acceptance or rejection of the treaty. Areas where missionary activity was greatest were usually those where a protectorate-type relationship with Britain was greeted most favourably. Both Williams and Bunbury observed this fact; and yet long association with Europeans, as at Kororareka, might deter Maori from signing. The benefits of land protection built into the treaty also had a mixed reception. They were pertinent to the districts where the New Zealand Company was operating. They could also be made to appear vital even where land pressure was possibly not so serious; this seems to have been the case on the east coast where William Williams apparently consciously imbued local Maori with his own anxieties over real and potential land loss. On the other hand, where few Europeans had intruded, in the central North Island,

171 e.g. Johnson, 28 April 1840, NZ MSS, APL: and see above, pp.169-70.
172 See above, p.231.
for example, the treaty was seen as neither necessary nor desirable in order to protect land, at least from Europeans. The furthering of tribal interests in land where rival factions were involved, however, was a determining factor both with Maori who signed and those who did not. This was apparent in the Bay of Plenty where Maori would not sign, and in the accession of Wiremu Kingi of Waikanae. When Kingi returned to the Bay of Islands with Henry Williams in June 1840, he was already tentatively suggesting the return of his tribe to Taranaki lands from which they had been displaced by Waikato. Upon signing the treaty, therefore, some Maori certainly perceived the possibilities of using the agreement and the government's promises of mediation and protection to further traditional tribal interests.

Apart from local factors which might have been influential in Maori decision-making, Maori agreement to the treaty depended a good deal on the tact and patience of the treaty negotiators. It was crucial to allow adequate time for consultation with chiefs. Although Hobson had cautioned Bunbury about this, the major showed impatience at Coromandel and Tauranga where Maori assent was not unanimously forthcoming. Elsewhere on Bunbury's mission, this was compensated for by knowledge of the treaty having preceded the arrival of the Herald, so that Tuhawaiki was ready to sign immediately and the Otago chiefs who were contacted likewise gave their assent at a brief meeting. By contrast, Henry Williams waited ten days to secure the adherence of Port Nicholson chiefs; and other missionary negotiators also seem to have needed time to obtain Maori adherence.

In comparison with Bunbury (and possibly with Symonds also), missionary negotiators not only took greater pains over fulfilling the task of

173 Carleton, II, p.17; Colenso Journal, 13 June 1840, Hawkes Bay Museum.
collecting signatures, they also seem to have been more conscious of the need to make concessions to certain other Maori sensitivities. In this respect their knowledge of Maori custom was invaluable. An instance of this was the signing of the treaty by Maori women. Bunbury could not have been expected to know that women of high rank in Maori society could be given a fitting acknowledgement. But Henry Williams was fully aware of this fact and acted accordingly. At Port Nicholson, the accession of Kahe was allowed and at Kapiti the chieftainess, Topeora, signed. A precedent for women signing had been established at Waitangi when Ana Hamu, the widow of Te Koki, the original patron of the Paihia mission, had been allowed to sign the treaty. Although Williams had already allowed the two women to sign in the south, he must have deemed it prudent to draw Hobson's attention to the fact that still at Kapiti 'the ladies have expressed some disapproval in not having a more prominent part in the Treaty with Her Majesty' in as much as it was an agreement with a lady. Subsequent to this, Williams appears to have allowed a Wanganui woman of rank, Rere o Maki, to sign. And in the north at Kaitaia, the missionaries, Taylor and Puckey, had similarly allowed the signing of Ereonora, the high-born wife of Nopera, ariki of Rarawa.

174 The name appears on the Waitangi sheet close to Rawiri [Taiwhanga?]. Like Rawiri she had lived at the Paihia station since 1831. Rogers, p.31.

175 H.W. Williams to Hobson, 15 May, Official correspondence ... Treaty, qMS, ATL.

176 The name appears on the Williams sheet as simply Rere. While there is no proof that it was Rere o Maki, this seems most likely. Rere had a son, Rangihiwini, better known in later years as Major Kemp. A section of the Wanganui River near the present town is named after her. (Information Mr Ruka Broughton, August 1982.)

177 Ereonora was the daughter (or near relative) of the North Hokiangua chief, Papahia. A woman reputed to have once been capable of killing men with her own hands, she was a convert to Christianity at the time of the treaty-signing. An excellent description of her is given in Johnson's Journal.
On the other hand, Bunbury, lacking the knowledge of the missionaries and possibly sceptical of any advice from the young Edward Williams, refused to allow the signing of the daughter of Te Pehi, the celebrated Ngatitoka chief who had been of paramount importance in the whole area of Cloudy Bay and the south before his death some years before. The woman was naturally angered by the seeming insult. Her husband, one of Nohorua's three nephews, and possibly of inferior rank to her, would not sign, probably as a consequence. Hence the nineteenth-century Victorian attitudes which relegated women to positions of inferiority operated against more successful negotiations in Bunbury's case, whereas the missionaries allowed Maori custom to override it in these several instances.

More generally, missionary influence in the treaty negotiations was significant with Maori simply because trust was placed by many Maori in the good intentions of the Protestant groups. This applied both with Maori closely associated with a mission and those who anticipated missionary development in their district, as at Wanganui and in the East Coast districts. This missionary association not only assisted in persuading Maori to sign the treaty, it also appears to have added a religious aspect to Maori understanding of the agreement. This was apparent particularly at Waitangi where Henry Williams was evidently responsible for developing the idea that Maori and British could be one people in a spiritual as well as a temporal sense. Thus the treaty could be construed as a covenant between the Maori people and the Queen as head of the English Church and state (a concept that had its parallel in Maori society where a chief might also hold the rank of a tohunga).

178 See Bunbury to Hobson, 28 June 1840, GBPP, 1841, (311), p.108, where Bunbury thought fit to include it in his report to Hobson.
There were other aspects of the covenant understanding which might have encouraged its use too. Heke, for example, had spoken of the treaty as the New Covenant. In the sense that Christ Himself was the new covenant and that the old Mosaic Law was put aside on conversion to Christianity, then the treaty with its promise of initiating a new relationship between the Crown and the Maori chiefs could indeed be likened to the New Covenant. The idea had been echoed at the Kaitaia meeting when one young chief expressed the hope that 'if your [British] thoughts are towards Christ as ours are, we shall be one'.

It was also customary for the missionaries to compare Christian marriage to a covenant of an indissoluble kind. And since there had been a substantial number of such marriages in the north by 1840, this also may have figured in missionary explanations.

But for British officials embarked on making the treaty, the religious understanding, like the humanitarian element, was subordinate to the primary business of securing sovereignty in New Zealand. Tact, flattery, guile, bluff, and subterfuge, were all part of the official diplomatic baggage in 1840. After the Waitangi signing, certainly after the northern signings, it seems to have been inconsequential whether Maori signed the treaty or not because Hobson's intention was to assert British sovereignty in spite of a lack of unanimous Maori assent, a factor that Maori were not made aware of. In fact, the freedom of choice in the treaty negotiations that it seemed Britain was extending to the Maori people no longer existed even while the treaty was being extended through 1840. Such a deliberate official misrepresentation of events was directed of course primarily to convince a Maori audience of official benevolence and straightforward dealing, although one New Zealand newspaper subsequently emphasised the

179 Taylor Journal, 28 April 1840, GNZ MSS, APL. The speaker was given as 'Wartona Wera'.

other significant factor - the official sensitivity towards a British audience. The paper summed up the whole Waitangi exercise with a disconcerting but accurate bluntness: 'For the good people at home, the affair was made to assume the appearance of one of the purest pieces of philanthropy on the part of England in favour of the Natives to protect them against European aggression; but the simple truth is, disguise it as we may, that under this cloak of benevolence, has been practised the greatest hypocrisy, to obtain possession of the country honestly, if possible, but, nevertheless to obtain it.'

180 Bay of Islands Observer, 7 July 1842. The exercise of gaining possession of New Zealand had cost the British government £3,635.18s.7d in general expenses, and gifts to Maori were valued at £562.1s.5d. Buick, Treaty, p.256, note. Buick's source is not given.
'Everyone says he is ready to respect it; but there is a great difference of opinion as to the mode in which that Treaty should be respected.'

- Robert Peel, Great Britain Parliamentary Debates, (GBPD), LXXXI, col.953.
Although the Waitangi treaty played a crucial part in the acquisition of British sovereignty, it gave Britain, in a sense, only an entitlement to New Zealand. This is evident from official moves to consolidate sovereignty, wherein two factors were involved: the first was the need to secure the country against the potential claims of other nations; and the second was the problem of asserting effective power and authority within New Zealand.

The first need, to proclaim an overall or external dominion, was achieved during 1840, partly through the official publicity given Maori accession to the treaty which was accepted by the Colonial Office as sufficient to justify British claims to sovereignty; and partly through other government actions taken in relation to the establishment of a British colony. As legal experts and historians have indicated, these actions had begun in June 1839 when moves in England had extended the jurisdiction of New South Wales to New Zealand in anticipation of the success of Hobson's mission.¹

Through 1840 it was evident that Hobson was anxious to secure Britain's position in New Zealand by excluding any other likely claimants. Hence his precipitate proclamation of sovereignty over all New Zealand on 21 May was intended to deal with the independent moves of the New Zealand Company settlement at Port Nicholson.² And in August, he swiftly


2 Ibid., p.61. There are a number of references to the New Zealand Company settlers flying the New Zealand flag; see e.g., J.Miller, p.47.
dispatched government officers to Akaroa where they made a show of author-
ity just prior to the arrival there of French settlers who were intent
on forming a small colony. Thus, as far as possible, Hobson endeavoured
to give a clear expression of official intention to secure the whole
of New Zealand to the Crown, proceedings which the Secretary of State
for Colonies acknowledged. With greater confidence, therefore, Hobson
could assume the title of Lieutenant Governor of New Zealand. Late
in 1840, the imperial government took the necessary steps to separate
New Zealand from the temporary jurisdiction of New South Wales. By
Royal Charter, the country became a new British colony; Hobson was
commissioned as Governor and instructed to establish the machinery of
state, a small executive council and legislative council. The instructions
came into operation in New Zealand in May 1841.

The second need in relation to acquiring sovereignty - the assertion
of effective power and authority within the country, or internal dominion -
was not such an easy task however. Because of Colonial Office frugality,
Hobson's initial group of officials was small; it was also not partic-
ularly impressive either in ability or dedication. Young men recruited
mostly from the missionary families provided some immediate assistance,
but only when Hobson urgently requested adequate 'judicial and legal
functionaries' did the Colonial Office send William Swainson as Attorney-
General and William Martin as Judge of the Supreme Court, two able men
who reached New Zealand in September 1841. Bunbury's arrival in April

3 N. Taylor, Appendix 6; Stanley to Hobson, 17 September 1840, in
Hobson to Russell, 9 October 1840, GBPP, 1841, (311), pp.81-82.
4 Hobson had cautiously signed himself initially as 'Lieutenant-Governor
of the British Settlements in progress in New Zealand': see Pro-
clamation, 30 January 1840, in Hobson to Gipps, 4 February 1840,
CO 209/6, 24-27.
5 McLintock, Crown Colony Government, Ch.5.
6 ibid., pp.130-32.
1840 with some eighty troops of the 80th regiment was a most welcome addition to strengthen the government, but Hobson was still acutely aware of the weakness of British authority. 7 In dealing with the Maori, although Hobson had been forced to rely on the assistance of the missionaries from the very first, there was a limit to their willingness to be associated with government business. 8 While such missionary mediation between Maori and European was to continue informally for some long time, it was given formal status when Hobson appointed as Protector of Aborigines, George Clarke, a missionary with twenty-three years' experience in New Zealand, in April 1840. 9

The Protector's appointment, fulfilling a recommendation of the Aborigines Report, was an admirable new move in colonial policy, although Clarke soon became aware of the ambiguity of his position. The government expected him to fulfil more than one function: he was to be not only an impartial guardian of Maori welfare, but also the government's main negotiator for purchases of land, even initiating moves for certain lands where these might not be voluntarily offered by Maori owners. During his years of office, Clarke repeatedly drew government attention to his anomalous position, but the dual responsibility remained until the Protectorate Department was abolished in 1846. It was not an ideal situation because the Protector, as a government agent, could not be truly neutral in supporting Maori interests against government designs. Moreover, the creation of a separate institution for Maori business outside the central machinery of the state, belied the treaty's promises

7 ibid., pp.120-21.

8 See Carleton, II, pp.20-29, for some of the early missionary feeling.

9 Clarke's letter of acceptance, April 1840, NA, IA 1/106. Clarke was released from missionary duties to fill the position.
to amalgamate the races and treat the Maori as British subjects. Nevertheless, Clarke's knowledge of the Maori people proved useful to the government. He warned Hobson that Maori acceptance of British sovereignty was conditional, that the Maori were 'carefully watching and comparing every public act deducing from thence positive conclusions as to the line of conduct that will be pursued towards themselves'. Thus cautioned, Hobson tried to counter the 'different tone of feeling' shown toward the Maori by Europeans who were provocatively flaunting Britain's newly-acquired power much to Maori irritation. In early April 1840, several chiefs from the Kaikohe, Waimate and Waitangi districts laid complaints with Hobson: 'Our hearts are dark and gloomy from what the Pakehas have told us, they say that the missionaries first came to pave the way for the English who have sent the Governor here, that soldiers will follow and then he will take away our lands.' Nene confirmed that similar remarks had been made to him. Other deputations from Kaikohe and Hokiangal told Hobson that they knew of the extermination of natives by the English in every other country, and particularly in Australia. Faced with allegations that he could not truly deny, Hobson was forced to admit the might of the British, but he assured the Maori

10 'Amalgamation' was the word in contemporary use although the meaning intended was actually assimilation of the Maori within the British or settler community.


13 ibid., p.97. At the end of 1840 Maori at Matamata and Thames drew attention to the more threatening position adopted by Europeans in such negotiations as land sales. See also Carleton, II, pp.28-29, where an incident between Heke and one of Henry Williams's own workers is noted; also complaints from Whangaroa Maori that Europeans had been using 'such un-heard of, infamous language ... that the young men had proposed to knock them on the head.'
that in their case it would be used to protect them, not to destroy nor dispossess them. Since such rumours were widespread, an official circular in Maori was sent out to chiefs at the end of April. It specifically rebutted the charge that the government intended to seize any Maori land and blamed those Europeans who were ill-disposed to the Queen for such notions.

As Clarke began his work as Protector in the latter half of 1840, he reported to Hobson the extent of Maori unease over the treaty and the establishment of a British administration. Whether Maori had been signatories to the treaty or not, there was obviously a general anxiety to weigh the advantages and disadvantages of the new relationship with the government. At Orere, on the Hauraki Gulf, the Ngatipaoa chief, Kahukōtū, repeated the tales reputedly told by local Europeans, that within a few years the Maori would be no better than slaves if they had signed the treaty whereas those who had refused to sign would maintain their independence and keep their land. Matamata Maori were similarly confused and uncertain. Few from that area had signed for fear, they said, that they would be enslaved. In the meantime, they were becoming convinced that the course of government was inevitably going to operate against Maori interests because they had already experienced the restrictions of pre-emption. From this they concluded that regulations would multiply and one governor succeed another until the Maori were ensnared.

14 Johnson Journal, 7, 8 April 1840, NZ MSS, APL; Clarke Report in Gipps to Russell, 7 March 1841, GBPP, 1842, (569), p.96. Nene sketched a circle on the ground by which he demonstrated the methods that Europeans would use to encircle the Maori and finally sweep them away.

15 Proclamation, 27 April 1840, (Maori copy), held at APL.

16 In some areas of the Waikato and Thames the treaty had been signed only a month or so previous to Clarke's visit. The last signatures were appended to the Kawhia sheet in September 1840.
There was strong language also at Pukitea (downstream from Ngaruawahia) where Maunsell had conducted treaty negotiations. Local Maori claimed that they had been 'betrayed', and that if the government wanted the land, it would be better to take it openly, for then the Maori would 'know how to act'.

Apart from the generally unsettling effect of this kind of talk, Maori also became uneasy by mid-1840 concerning the relationship between New Zealand and New South Wales. They found it puzzling that the country should be a dependency of that colony which had so 'degraded' the Aborigines. Their fears were heightened when news reached New Zealand that the New South Wales legislature was debating a Bill which would affect land in New Zealand. This was Gipps's New Zealand Land Claims Bill, introduced on 28 May 1840. The main purpose of the Bill was to appoint commissioners to investigate the titles of all lands purchased in New Zealand prior to 1840.

By its very nature, the Bill questioned the competence of Maori to enter into contracts and, by implication, it also challenged the independent sovereign status of New Zealand prior to the treaty. These issues were thoroughly aired in debate, together with the general status of indigenous races in international law and under British practice. Gipps argued that in the absence of a formal law of nations, the law had to be deduced from practice. Hence he reasoned that New Zealand did not depart from the accepted British North American experience, that

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17 Clarke Report in Gipps to Russell, 7 March 1841, GBPP, 1842, (569), pp.94-98.
18 E.L. Godfrey and M. Richmond were subsequently appointed to the positions. See Gipps's Speech in Council, 9 July 1840, in Gipps to Russell, 16 August 1840, GBPP, 1841, (311), pp.63ff.; Sweetman, Chs. 4-6. Gipps's Bill was passed, received the Governor's assent and was forwarded to the Colonial Office where it was disallowed, although not on any of the grounds argued below.
19 Gipps had in mind the past and current practice in Canada and the United States. He supported his arguments by citing American legal decisions and definitions - Kent's Commentaries, Storey, Marshall, and the judgement in Johnson v. McIntosh.
in spite of the treaty, sovereignty had been acquired by Cook's discovery. According to Gipps, the purpose of the treaty was merely to confirm a right of dominion and to secure, as was customary in such situations, the Crown right of pre-emption; this left the Maori a restricted right of occupancy and use. In outlining this argument, Gipps insisted that his main aim was to establish Crown prerogative, not to debate the methods by which sovereignty had been acquired, nor to assess the status of the Maori prior to 1840. Yet he did express opinions on these two latter points by asserting that Britain had not acknowledged the independence of New Zealand 'expressly', but only 'tacitly'; and that Normanby had gone further than was necessary with regard to the Maori. It seems that Gipps had failed to do his homework or had interpreted the early statutes and the 1835 Declaration of Independence differently from the Colonial Office.20

Several petitions were brought against the Bill and one petitioner, the well-known Sydney lawyer-politician, and Maori land claimant, W.C. Wentworth, appeared before the Council to challenge its legality.21 Wentworth attacked the historical foundation upon which the Crown right regarding land title was said to have evolved. He maintained that although Britain's experience had been derived from North America, pre-emption had developed there primarily as a convenient means of regulating affairs between European powers in their negotiations with native peoples. Hence it did not affect the actual rights of natives to their lands.

20 Gipps argued from the same points as the Colonial Office but drew different conclusions.

21 Sweetman, Chs. 4, 6, cover Wentworth's case in detail. Wentworth was a member of a Sydney group that had formed the New Zealand Association in April 1840 to defend the rights of purchasers of New Zealand lands.
Moreover, in practice, European possession had been secured by conquest as often as by negotiation; the United States legal authorities regretted that the relationship between Indians and Europeans was an inequitable one but they were now forced to accept it as a fait accompli. Wentworth argued, therefore, that the British North American precedent gave no justification for its adoption in New Zealand. Maori, unlike Indians, were a civilised race with a long history of independent contact with the British. Their title to land should be considered valid. For good measure, Wentworth also pointed out that according to Vattel's definition, the Crown had let its right of discovery lapse by failing to follow it up by occupation within a reasonable period of time - the very conclusion that had persuaded the Colonial Office to negotiate for cession.

Within two weeks of the Bill passing, the Bay of Islands press carried full reports, drawing attention to the independence of the Maori that had been recognised in Normanby's instructions, noting the fate of natives elsewhere, and wondering if Maori were similarly doomed. These reports caused the 'greatest excitement and indignation' in the north, according to Busby. Apart from the press news, information was also circulated by a Kaikohe Maori who had sat through some of the discussions in Sydney. A deputation of Maori consulted the missionary, Davis, who assured them that their lands were secured to them by treaty. Yet it was undoubtedly difficult to convince Maori of this, for fears over the land seemed to be justified by one aspect of Gipps's Bill that appeared to them to be quite unjust. This was the government's intention.

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22 New Zealand Advertiser and Bay of Islands Gazette, 13 August 1840. The debates on the Bill had covered the period 28 May to 9 July, the Bill finally passing on 3 August 1840.

to secure to the Crown those lands left as 'surplus' after awards had been granted to claimants by the land commissioners to be appointed under the powers of the Bill. Government argued that if Maori ownership rights had been extinguished by fair sale then subsequent decisions on the land claimed became a matter between the European purchaser and the Crown. From the Maori point of view it was hard to see the logic of this. One Maori perceptively observed that if Gipps were determined to take land from European purchasers by this means, then it was unlikely that he would spare Maori. 'Does he love us more than his own countrymen?', he pointedly asked.  

While not all the details of the debate on Gipps's Bill may have been familiar to Maori, Clarke found that by December 1840 there was considerable consternation about the measure in the Thames and Waikato. Whakatiwae Maori wanted to know what right Gipps had to determine New Zealand affairs. And at Otawhao, Maori demanded that government acts and intentions be translated into Maori because they were now a 'reading people' with as much right as Europeans to be informed about laws; 'then we will think for ourselves for the future', they told Clarke. Clarke was hard put to reassure Maori. He reminded them of the treaty's land guarantee, of the April 1840 circular that Hobson had sent to chiefs and of the many times that the treaty had been reaffirmed at 'all public meetings'. He repeated the treaty promises himself. And he attempted to persuade Maori that they had misunderstood Gipps's Bill by pointing to the purchase of some Waitemata land that had been made in September 1840.

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25 Ibid., p.94.
26 Ibid., p.98. Otawhao Maori told Clarke that they had heard the news from Rewa [Ngapuhi chief]. W. Taylor, pp.232-3, records that news about the Bill was given every publicity in Wellington and it is very likely that it was well-known throughout New Zealand.
Government had given a 'fair equivalent' for the land, intended for a new capital, Auckland. Maori may have accepted some of these arguments, including an emphasis that Clarke always put on the treaty being the Maori 'Magna Charta', but they scoffed at his idea that without the treaty they would have succumbed to the might of another foreign power. In most areas of Clarke's contact, a fiercely independent Maori spirit was evident.

As officer of the government in closest contact with the Maori, Clarke was no doubt perturbed that British sovereignty had such a tenuous hold amongst the tribes. Hence he attempted to consolidate these efforts to reassure Maori, by distributing additional copies of Hobson's April circular to Thames-Waikato tribes. This was insufficient in the long term, however, because as he well knew, communication amongst Maori from one end of the country to the other was continual and rapid. Events of any consequence and press news were the subjects of discussion throughout the country within weeks. Hence the government, aiming in part to counter rumour and press news that was unsettling to Maori, decided to publish its own monthly newspaper in the Maori language, Te Karere Maori, the Maori Messenger or Gazette. The paper attempted to meet Maori requests to be kept informed about government actions by periodically printing ordinances and regulations of relevance to the Maori people. In general, it presented an odd collection of information, although in the early 1840s the material usually related to current events, whereas in the latter part of the decade it largely concentrated on exhortation

27 Clarke Report in Gipps to Russell, 7 March 1841, GBPP, 1842, (569), pp.94, 97, 98.
28 ibid., p.97.
29 ibid., p.98; FitzRoy, Remarks, pp.13, 20.
and instruction in the arts of civilisation. Since the treaty and issues deriving from the assertion of sovereignty were matters of almost continuous public debate, Clarke printed the Maori text of the treaty in one of the first issues. From early 1842, therefore, the text of the treaty enjoyed some degree of circulation in Maori communities. 30

Yet in spite of this official publicity and all the reassurances about the Crown's good faith in relation to the treaty, there was good cause for Maori fears about their future. That New Zealand would be an exception in the history of race relations because of the treaty had yet to be determined by events. Questions about land, law and authority - issues so closely related in the articles of the treaty - would have to be worked out in government policies and in practice. The task was not an easy one for those involved. In interpreting and implementing the treaty, various factors contributed to create confusion and doubt - the ambiguities of the agreement itself, official problems of communication concerning its meaning and application, and not least the conflicting pressures of a number of parties interested in the final outcome.

A hint of the differences of opinion that would give rise to struggles over the treaty's interpretation was evident in Gipps's first moves on the land issue. Maori were not happy about Gipps's plans to define their

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30 Te Karere, February 1842 (referred to hereafter as the Maori Messenger), was published under government auspices from 1842 to 1863 with a few interruptions. Grey, for instance, suspended its publication in January 1846 and it was not produced again until 1849, when an English text was printed beside the Maori. The paper was distributed at no charge, at least initially, and was sent to missionaries and government agents for distribution amongst Maori readers. It was certainly circulated at Wellington, at Tauranga, on the East Coast, and in the north, and copies were available from the Protectorate Office in Auckland. Clarke reported a circulation figure of a thousand copies in 1842-43, but W. Williams stated that Te Karere had proved a major factor in keeping five thousand Maori on the East Coast alone informed of government intent and amenable to authority. Kemp reported similar interest in the north. Adams, p.232; Kemp report, 2 March 1843, NA, MA-2, 43/24; G. Clarke Jnr to Col.Sec., 28 December 1842, NA, MA 4/58.
land ownership in a narrow sense that simply did not reflect the true situation. They had only accepted the treaty believing that it guaranteed their rights to the land in the most complete sense. This was understood by Hobson, by those directly concerned in the business of treaty-making in New Zealand, and by a large body of settlers; it was also accepted by Hobson's successor, Robert FitzRoy. It seems, however, that the Colonial Office accepted Hobson's reports on the treaty under an impression similar to Gipps, that the treaty guaranteed Maori rights only to land 'occupied and enjoyed' - pa, cultivations and burial grounds. For the next seven years most officials at the Colonial Office either continued to misunderstand the extent of Maori land ownership guaranteed by the treaty, or were reluctant to concede the extent of land rights which were already accepted by officials in New Zealand. This discrepancy in understanding gave rise to a prolonged and often bitter debate which involved all those connected with New Zealand - the imperial government, the colonial government in New Zealand (and for a time New South Wales), the New Zealand Company, the London-based missionary bodies, many of the Europeans in New Zealand, and the Maori. 31

A debate over interpreting the position of the Maori in respect to British law and authority under the treaty also began in the colony's first years. It was not pursued initially with quite the same vigour as the land conflict, but it was nonetheless important in the long run in deciding relationships between the two races. Within a few years, the principle was established that all Maori, whether treaty adherents or not, were British subjects. So too was the ideal of amalgamation. In the meantime Maori custom would be tolerated only until Maori could be

31 These conclusions are reached in a detailed analysis by Adams, pp.176-87, and have been confirmed by my research.
'brought within the pale of civilized life'. This commitment to amalgamation ignored the fact that Maori enjoyed a cultural heritage of their own that was rich in oral tradition and diverse in its modes of expression. To nineteenth-century Victorians, Maori custom was considered decadent. These were comforting notions for Europeans in New Zealand because little adjustment to Maori usages was demanded from them as a result. The few concessions that were forced upon settlers in the 1840s were more often than not resented. Debate usually turned on the speed with which Maori might be forced to concede to European designs. Not that this necessarily meant full participation in all aspects of life in the colony: even the most well-disposed Europeans were convinced that Maori required a lengthy period of tutelage as a prerequisite for assuming the full rights of British subjects. Thus Maori were excluded from some benefits of colonial life yet obliged to conform in other respects to the requirements of government. The extent to which the treaty defined relations between the Crown and the Maori, and between European and Maori, remained uncertain in the 1840s in spite of a good deal of debate. Indeed it continued to be debated, in large measure because the extension of British authority within New Zealand was closely related to control of land.

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It is important here to trace the misunderstandings on the land guarantee in greater detail in order to appreciate fully the extent of the early treaty debate. Gipps, for instance, in introducing the Land Claims Bill, had clearly revealed a restrictive approach to Maori land rights and based his assessment of the New Zealand situation on what he understood of the British experience in North America. He reasoned that Maori had a right only to that land which they occupied for cultivation purposes and habitation. The rest became the 'waste land' of the
Crown. A treaty, which Gipps had drawn up on this basis, had been rejected by a group of South Island Maori in February 1840. Yet when Hobson forwarded a copy of the Waitangi agreement some time later, the complete possession guaranteed in the second article was expressed with sufficient vagueness for Gipps to approve the treaty, unaware apparently that his understanding of it was at variance with that of Hobson and the signatories. In subsequent correspondence between the two men, the point was not clarified, it seems. Lord John Russell at the Colonial Office, ignorant of any conflict of understanding, approved both the treaty and Gipps's comments on it. Hence neither Gipps nor Russell understood the treaty as Hobson did and, as G.W. Hope, Permanent Under-secretary at the Colonial Office remarked, had they done so, 'there can be little doubt that it would have been at once disallowed by Her Majesty's Government'.

32 Sweetman, pp.60-65.

33 cf. Gipps to Russell, 5 March 1841 and correspondence enclosed, GBPP, 1342, (569). Hobson, irritated by the difficulty of controlling Europeans taking leases on Maori land and thereby avoiding the restrictions of Gipps's 1840 Land Bill, sought advice from Gipps. A first reply from the New South Wales Attorney-General assumed a narrow interpretation of Maori land rights which was of no use to Hobson. A second dispatch from Gipps suggested that a legislative enactment at a later date might be required: 'Such an enactment must be based upon the principle that uncivilised tribes, not having an individual right of property in the soil, but only a right analogous to that of commonage, cannot, either by a sale or lease, impart to others an individual interest in it, or, in any words, that they cannot give to others that which they do not themselves possess.' Gipps thus advanced what constituted little more than a legal fiction, for Maori had been quite capable of leasing their land, had done so for some years and would continue to do so for some time. The discrepancy in understanding the extent of Maori ownership between Gipps and Hobson became apparent in this correspondence although Hobson does not appear to have drawn attention to it beyond his first comment on the Attorney-General's advice which did not 'meet the case complained of.'

34 cit. Adams, p.180. Hope was ignoring the possible Maori reaction to such a decision - an oversight which might have proved fatal to the British position in New Zealand.
Before the interpretation of the land guarantee of the treaty could be resolved, changes in government occurred. Hobson died in September 1842, his responsibilities being assumed by Willoughby Shortland until the arrival of the new governor, FitzRoy, in December 1843. And in England, Russell was succeeded by a new Colonial Secretary, Lord Stanley.

The problem of the land guarantee came to Stanley's notice in October 1842 in relation to the settlement of New Zealand Company claims to lands purchased from the Maori prior to 1840. The Company had initially acknowledged Maori land rights to be absolute, but in subsequent negotiations with the Colonial Office they moved their argument to new ground. Hard-pressed by settler demands and by financial problems, they urged that only a restricted right of ownership should be ascribed to Maori land and claimed that this was the accepted practice with other indigenous races. Protracted negotiations between the Company and the Colonial Office, held in abeyance to some extent by the land title investigations of a British-appointed commissioner, William Spain, in New Zealand, climaxed in 1844 when the Company succeeded in securing the appointment of a parliamentary select committee to examine its case. Hope, acting on behalf of the Colonial Office, submitted a draft report to the committee that recognised the special rights held by Maori in their lands. But the committee rejected this draft and, by a narrow majority, adopted one by the Chairman, Lord Howick. Howick's report classed the treaty as 'injudicious' and recommended that efforts be made to restrict Maori ownership of land. He suggested that a tax be levied on all uncultivated land, with confiscation as the penalty for non-payment.

35 Adams, pp.190-92, Appendix 4.
36 ibid., p.182. Spain was sent out by Russell to conduct a more impartial investigation than was thought could be achieved by local investigators.
Although this purportedly aimed at controlling speculation in land, in practice it threatened to abrogate the absolute land guarantee as it was understood by the signatories.

Stanley did not feel obliged to implement the report, partly because of the narrow majority on which it had passed and partly because he genuinely doubted its wisdom. He admitted in an official dispatch to New Zealand that he could not define land rights from England as he lacked that informed judgement that was to be had only in the colony. Moreover, as he observed, measures taken up to that time in New Zealand supported the principle of acknowledging the land guarantee in the widest sense; a restricted interpretation was 'irreconcilable with the large words of the Treaty of Waitangi' and 'inconsistent with the honour, good faith and policy of the Crown'. But having made this acknowledgement, he subsequently proceeded to play around with the idea of a land tax, an inconsistency in his approach to the principles of the treaty which drew criticism from New Zealand Company supporters in England. Stanley's disconcerting ambivalence also attracted protest from those committed to

37 Stanley to FitzRoy, 13 August 1844, GBPP, 1845, (1), where he assesses the 1844 Report. Stanley compared the Maori and the Aborigines, concluding that it was not right to apply the same rule to both.

38 Stanley to Grey, 27 June 1845, GBPP, 1846, (337), p.72. For those committed to upholding the treaty it must have been rather startling to see how Stanley ignored or failed to grasp the guarantee of the treaty when he wrote to Grey that 'you will see that a similar tax is there [Canada] recommended, and has been adopted in that and other North American colonies, for the express purpose of compelling the cultivation or the abandonment to the Crown of large tracts of waste lands, the ownership of which was indisputable, but which, in their actual state, were an obstacle to the improvement of the colony. The tax was allowed to be paid in land, and in default of payment the land was ordered to be entered upon and sold at a future period.' Stanley recommended a 'similar remedy' for New Zealand, overlooking (apparently) the exceptional circumstances of the case.
upholding the treaty, especially the missionary bodies and their men in New Zealand. Hope, with a clear insight into the land guarantee, took a firm stand, threatening to resign if Stanley succumbed to Company pressure, a move which would have embarrassed the Prime Minister, Sir Robert Peel, and his party, who were thus forced to find a way of settling New Zealand Company problems without sacrificing the treaty.

Stanley's decision that judgment on the interpretation of the land guarantee would be based on the New Zealand experience at least allowed for the possibility that article two might be interpreted as the signatories understood it. He confirmed this in June 1845 in a three-day debate in the House of Commons, when the land issue was discussed at length. This debate finally forced a reluctant Colonial Office to define publicly its attitude to the New Zealand land question. Although Stanley still refrained from giving a firm definition on the land guarantee of the treaty, he did admit at last that Maori law and custom concerning land would have to be taken into consideration. Much of this debate, however, tended to overlook the most critical point, that interpretation of the land guarantee was already being worked out in practice in New Zealand through the implementation of pre-emption. This point was challenged but sustained through another crisis in the official debate that drew to a close in the second half of the decade.

39 Hope also put pressure on the Prime Minister, Sir Robert Peel.

40 GBPD, 81, 17 June 1845.

41 Stanley to Grey, 27 June 1845, GBPP, 1846, (337), p.75.

42 See below, pp.345-6.
From the foundation of the colony, it was officially acknowledged in New Zealand that the established practice of purchasing Maori land should be continued. Ownership of all land, as the treaty's second article indicated, was accepted as vested entirely in the Maori people. In return for this guarantee, the Crown had the sole right of pre-emption, as the treaty specified. Hobson knew from Normanby's instructions that the government needed this complete control over all land transactions to build up a land purchase and emigration fund from the profits of resale. He accordingly made the necessary provision in land ordinances.43

For the Maori to have the government as the sole purchaser of their land was a completely new arrangement however. Until 1840 they had been accustomed to dealing freely with their land. It was widely recognised in New Zealand that this right of possession was jealously guarded, and that it was associated with the Maori's concept of freedom and independence as a race. It is surprising, therefore, that Maori were prepared to restrict that freedom by agreeing to the pre-emptive clause in the treaty. This suggests that pre-emption was probably presented either as a benefit to be gained or as a minor concession in return for the more important advantage of the guarantee of complete Maori ownership.

It is difficult to know precisely how pre-emption was explained to the Maori during the various treaty negotiations, but we do have some clues. Hobson and the Colonial Office unquestionably intended to obtain the sole right of purchasing Maori land and they were confident that the treaty

43 Normanby to Hobson, 14 August 1839, GBPP, 1840, [238], p.41, and p.44; Hobson to Undersecretary of State for Colonies, August 1839, where he states that the explanation was 'very clear and satisfactory'.
conferred this. But the Maori text of the treaty simply referred to giving the Crown the 'hokonga' (the buying and selling or the trade) in land. It is important to ask then if Maori were made aware of the fact that the government was going to be the sole purchaser. Or did Maori think that they had promised to give the government merely the first offer? And did they realise that if the Crown did not wish to buy, or was unable to buy, then the land could not be offered to any other interested party whatsoever?

The answers to these questions are as various as the negotiators and chiefs involved. Henry Williams, the government's main negotiator at Waitangi and the major negotiator in the New Zealand Company districts, was quizzed by Selwyn about his pre-emption explanations some years later: 'I hereby request you to inform me in writing what you explained to the Natives and how they understood it.' Williams's reply was concise but not informative: 'The chiefs wishing to sell any portion of their lands, shall give to the Queen the right of pre-emption of their lands.' If this was the only explanation given by Williams, then the missionary Colenso was justified in observing that, apart from absentee chiefs, some chiefs at the Waitangi meeting did not fully understand pre-emption. This was the impression left with another onlooker too: pre-emption had been 'mentioned', William Brodie recalled, but 'I believe they did not understand it.'

Selwyn to Williams, 30 June 1847, cit. Ross, 'Te Tiriti ...', p.149.


Colenso, to C.M.S., begun 24 January 1840, C N M11, 715-16, microfilm, AUL.

Report of Select Committee on New Zealand, GBPP, 1844, (556), Minutes, p.39.
at the Waitangi meeting, Moka at least knew of the land purchase restrictions placed on Europeans, and queried pre-emption accordingly. Hence Maori understanding, at least at Waitangi, was possibly restricted by inadequate explanations,\(^4\) by absence from the meeting of 5 February when it was explained, even by a chief's momentary cat-nap at the critical time.

Immediately after the Waitangi signing, when Colenso expressed his doubts about Maori understanding in a letter to the C.M.S., he cited as evidence a Maori chief, Hara, who had offered land to individual would-be purchasers since the signing. When the pre-emption factor had been drawn to Hara's attention, he had indignantly defended his customary right to deal with his lands as he pleased.\(^4\) Yet a Paihia chief, Tamati Wiremu, seems to have appreciated that the right of purchase rested solely with the Crown, for he appealed to the governor in March 1840 to put a halt to the overtures that individual Europeans were still making concerning land.\(^5\) Opinions were obviously varied. Tirarau, who went to the Bay to sign the treaty in early May, was to refer to Hobson two weeks later for clarification on the very matter of pre-emption.\(^6\)

\(^4\) Ross, 'Te Tiriti ...', p.151 and Adams, p.198, refer to an anonymous letter which might perhaps have been penned by Henry Williams in 1861, where the writer explained that pre-emption was described at Waitangi as follows: 'The Queen is to have the first offer of the land you may wish to sell, and in the event of its being refused by the Crown, the land is yours to sell it to whom you please.' Adams doubts the reliability of this evidence and one could also observe that Colenso, who was present at Waitangi and who fully grasped the official intent of the pre-emption clause, queried Maori understanding, not the accuracy of the explanation given.

\(^5\) Colenso to C.M.S., 24 January 1840, CN, M11, 715-16.


\(^6\) Buller Journal, 30 May 1840, MS Papers 180, ATL.
But down the west coast at Kawhia, Whiteley was adamant that Maori signatories there had fully understood that they were to sell to the Crown alone. 52

Bunbury, in contrast to other negotiators, reported clearly on the explanations of pre-emption that he had given on his trip south in May-June 1840. At Coromandel, the Maori were told that the government wanted to 'check their imprudently selling their lands, without sufficiently benefiting themselves or obtaining a fair equivalent'. At Tauranga, the explanation was similar. Pre-emption was 'intended equally for their benefit, and to encourage industrious white men to settle amongst them', to share European skills with the Maori. Rather than allowing large areas of land to be alienated to absentee speculators who would be no benefit to the Maori, it was better for the Queen to buy their lands herself 'at a juster valuation'. 53

Henry Williams, who went south on treaty negotiations about the same time as Bunbury, also seems to have justified pre-emption as a protection against land speculation, for Williams reported back to Hobson that Maori chiefs to the south of Cook Strait and on the northern coast up to Wanganui had signed the treaty 'with much satisfaction'. They were 'gratified that a check was put to the importunities of the Europeans to the purchase of their lands and that protection was now afforded to them in common with Her Majesty's subjects'. Since these were areas where New Zealand Company agents had been active, the aspect of protection clearly was attractive. 54

52 J. Whiteley, 18 April 1856, in GBPP, 1860 [2719], p.274.
53 Bunbury to Hobson, 6, 15 May 1840, encls. 3 and 6 in Hobson to Russell, 15 October 1840, GBPP, 1841, (311), pp.100, 103.
54 H. Williams to Hobson, 11 June 1840, encl.8, in Hobson to Russell, 15 October 1840, GBPP, 1841, (311), p.105.
Although this emphasis on protection against land speculation was only a partial explanation of the purposes of pre-emption, it is quite likely that by pursuing this argument neither Bunbury nor Williams set out deliberately to deceive the Maori. Neither of them may have realised the full significance of the clause. Both men had been sent out from the Bay of Islands on Hobson's express directions, but there is no evidence to suggest that Hobson confided to either of them the financial details of the colony and the part that pre-emption would play. On the other hand, both men knew that the need to curtail land speculation had been a major component of the argument in favour of British intervention in New Zealand. Bunbury would have been apprised of this by the publicity given the treaty before he left Sydney; and Williams had been apprehensive of the encroachments of land purchasers, especially the New Zealand Company, well before Hobson's arrival. To a greater or lesser extent, his apprehensions were shared by other New Zealand missionaries: William Williams petitioned the British government to protect Maori rights on the East Coast against the reported purchases of the Company; Morgan wrote that he feared that the Maori would sell all their land because of their desire for European property; and Whiteley thought that unless adequate protection was given, Maori would be tempted to sell land that was absolutely essential to their future welfare. Since most

55 Busby to Hope, 17 January 1845, GBPP, 1845, (108), p.15, where Busby states that neither he nor H. Williams really grasped the full significance of this. Later, a notice from the Land and Emigration Commissioners announcing the passage to New Zealand of several shiploads of emigrants had taken them by surprise.

56 W. Williams's petition in Coates to Russell, 9 March 1841, GBPP, 1841, (311), p.139.

57 Morgan to C.M.S., 26 October 1840, Morgan Journal, I, pp.127-8, AUL.

58 Whiteley believed that Europeans needed some restraint also, to prevent them from wasting their capital in speculation.
of the treaty negotiators were missionaries or, as in the case of E.M. Williams, Bunbury's interpreter, a missionary's son, it seems reasonable to conclude that the general sense conveyed in explaining pre-emption was a protective one. 59

Whatever might have been Maori attitudes at the time of signing, it later became clear that pre-emption would be considered an advantage or a disadvantage depending on the circumstances of those Maori involved. In the north, although a great deal of land had been alienated prior to 1840, Maori were not averse to selling more, and some apparently anticipated this immediate benefit from the treaty. Many of the major chiefs in the Bay and Hokianga districts made land offers to Hobson in 1840 and, by early May, Hobson noted 'much impatience and discontent' among Maori who wanted to sell. Symonds confirmed this; Maori had even eased off work in anticipation of sales. 60

In the southern districts, however, Maori were eager to secure government assistance in dealing with the New Zealand Company settlers who were exerting every means in their power, not excluding force, to lay claim to lands which the Maori considered they had never sold. Since the Company had actually pre-empted the Crown in purchasing in the south, it does not seem to have occurred to Maori to question whether government had sole right of purchase or only first offer. This was not the problem for southern Maori. What they needed was government protection in matters of land. Thus, with considerable patience, Maori in the Port Nicholson area appealed to the governor by letter and by

59 cf. the later explanations concerning protection, below, Pt.II, Ch.1.
60 cit. Adams, p.201; NA, MA-2, Register of inwards letters for 1840, especially letters from Hokianga chiefs who had anticipated sales to repay loans.
deputation to settle their difficulties. When pre-emption was waived in the Company's districts, and later in the Wairarapa, it was in favour of European interests and not at Maori request.

By contrast, in the north, a more sustained Maori reaction against pre-emption came to government notice as early as December 1841 at the Bay of Islands, and then in 1843 at Kaitaia where Maori were dissatisfied at the loss of the 'very considerable revenue' which they had formerly enjoyed from their land sales. Discontent was also apparent that year at Auckland. By the time FitzRoy arrived in December 1843, Waikato and Ngatiwhatua chiefs were convinced that the pre-emption clause should be reconsidered. Ngatiwhatua representatives appealed to FitzRoy: 'At the meeting at Waitangi you [the Government] said that we should be equal to the Pakeha and that we should sell our lands to the Queen. But we are now saying that it is up to the Queen to have the first say (offer) and if she doesn't want it, we should be able to sell it to any other Pakeha.' Waikato supported this view. Furthermore, they shrewdly countered the usual government rationale of pre-emption as protection against speculators - an argument that was wearing thin by this time - by pointing out it was the government itself that wanted extensive land blocks. Settlers usually required only small tracts which Maori

62 Grey to Stanley, 14 April 1846, GBPP, 1847, [837], p.1; Hope to Ingestre, 7 August 1845, GBPP, 1845, (661), p.3.
63 Petition of Kororareka residents, 15 December 1841, CO 209/14, 312-21.
64 cit. Adams, p.201.
were generally willing to alienate to encourage Europeans to live amongst them. 65

FitzRoy was aware that settler-press influence was responsible, at least in part, for encouraging the expression of these complaints. Maori had been 'repeatedly told' that they had given the Queen the 'hokonga' only, and that in the Maori text of the treaty this did not constitute a cession of the 'sole and exclusive right of purchase'. They had also been told that pre-emption was incompatible with article three of the treaty by which Maori were supposed to enjoy all the rights and privileges of British subjects. As long as they were unable to dispose freely of their own lands, this article was not in effect - they were 'no better than slaves (taurekareka) taken in war, who have not the disposal of their own lands, while occupied by their conquerors'. 66

FitzRoy's assertion that some of the blame for Maori unease could be levelled at the press was quite correct. A steady campaign against pre-emption had been waged for almost six months before his arrival. In June 1843, the Southern Cross newspaper had complained about the effect of pre-emption on the Maori people: 'The Parliament of Great Britain could not create such an anomaly as this; a being with all the rights and privileges of a British subject without the right of selling his land to whom he chooses.' 67 The same paper followed this up in

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65 Southern Cross, 30 December 1843: Ngatiwhatua letter, translation into English by G. Clarke, and Waikato letter, translation into English by Thos. Forsaith, each certified 'true copy'. These translations suggest that Maori understood at Waitangi that by pre-emption they gave the Crown the first offer only, but the original Maori letters are not so explicit: Maori Messenger, January 1844, where Waikato seem to reject the sole right interpretation as unfair, rather than as an inaccurate rendering of the original agreement.


67 Southern Cross, 3 June 1843, p.3. Since this was one of the first issues of this newspaper such editorial comment would have attracted public interest.
August by printing the 'official' translation of the treaty alongside what was called a 'literal and true translation' which was a close rendering in English of the Maori text signed by the majority of chiefs. 68 For thoughtful readers the discrepancy between the Maori and English texts that was thus made plain might have suggested a need for moderation in attempting to interpret the treaty. But the main purpose of the report was to cast doubt on the validity of the whole treaty agreement. The paper claimed that Maori had not given their 'intelligent' consent to the treaty, as Normanby had stipulated, because they had not fully understood its terms. 69 Although the press indicated that the Maori had possibly drawn a different understanding from the one intended in the English text of 1840, it was not suggested that Europeans take this into consideration and acknowledge that it was a Maori language text that had been negotiated and signed. The emphasis was placed instead on the uselessness of the treaty to achieve European needs. The 'valid' treaty was the treaty as Europeans intended it to be, that is, the English version, regardless of what Maori had signed or understood.

This press comment on the treaty was not untypical of the variations in argument that were currently being used by Europeans when launching attacks on the treaty. In the case of pre-emption, for instance, European and Maori interests coincided - one wished to buy, supposedly the other to sell, but the government's monopoly restricted the freedom of both. Hence the treaty's terms could be cited in a real or pretended defence of Maori rights while at the same time promoting settler interests - a use (or misuse) of the treaty which would be repeated many times over.

68 ibid., 26 August 1843. S.M.D. Martin, the editor, appended these two translations to the following publication: S.M.D. Martin, New Zealand in a series of letters, London, 1845.

69 Southern Cross, 26 August 1843.
in New Zealand's history. Moreover, when attacks on the terms of the
document were expended, it was still possible to argue, for various
reasons, that the treaty was invalid, and therefore irrelevant, an aspect
that would also gain significance in later debates over the treaty's
legal status.

In 1843, the pressure of the press, backed by representations from
Maori and European, was sufficient to persuade FitzRoy that the government
would have to make some sort of adjustment over pre-emption. He also
confessed to Stanley that he believed that the facts of the Maori's case
went far to support the kind of assertions being made. The truth was
that Maori were asking government to buy their land, or let others buy,
but government was unable to do either. 70 When Maori agreed to the pre-
emption clause of the treaty, they naturally expected that government
would buy Maori land when it was offered, for the insertion of such a
clause could reasonably be interpreted as the official intent. Given
the official arguments of protection against speculation, it was also
reasonable to anticipate that government would give a fair price for land.
In practice, however, neither of these expectations was fulfilled.

To begin with, Hobson was provided with insufficient funds to fulfil
adequately the policy of the imperial government. This required that
land for settlement be bought at the lowest possible price from Maori,
to be sold at a high price to Europeans, the profits (commonly referred
to as the 'government brokerage') to be expended on further development
and emigration. It was a policy that aimed at making the colony as self-

70 FitzRoy to Stanley, 15 April 1844, GBPP, 1845, (131), p.22.
sufficient financially as possible.\textsuperscript{71} Apart from the initial financial problems of setting up a small colonial establishment, Hobson's problems were compounded by the decision to shift the centre of government to the Waitemata in early 1841. This necessitated extensive preparatory purchases at Auckland in 1840, at the same time as government was receiving northern land offers which could not be taken up. Northern Maori were naturally disappointed. The drying-up of the accustomed revenue from land sales, together with the consequent impoverishment of numbers of Maori contributed substantially to the early restlessness in the north where tensions came to a climax in Heke's outburst in 1844.\textsuperscript{72}

Where land sales did take place, as at Auckland, Maori rapidly realised the extent to which the government was capitalising on the price differential.\textsuperscript{73} Hence, when Maori offered new land, it was at an increased price which FitzRoy found to be 'wholly out of the question': the government had neither money nor credit - it was in no position to

\textsuperscript{71} The principle of a land and emigration fund was central to Wakefieldian ideas on colonial development and had been tried, somewhat unsuccessfully, in the South Australian Company experiment. Official thinking on the utilisation of 'waste land' as a colony's major national resource had been moving in the same direction, however, for some years. In Australia, for example, free grants of land gave way to land sales at fixed prices by the end of the 1830s. These principles were incorporated in the Australian Colonies Waste Lands Act, 1842. The Act was criticised in New Zealand as being unsuitable for local conditions where lands were not 'waste' as in Australia: Minutes and Proceedings of Legislative Council, 17 July 1844, encl. in FitzRoy to Stanley, 20 August 1844, GBPP, 1845, (247).

\textsuperscript{72} The growing poverty was noted by officials and missionaries as early as 1842.

\textsuperscript{73} Adams, p.205: 'By 1841, the Colonial Government had paid £1,445 for land which it sold at £25,431; by 1844, £4,054 had been paid for land sold for £40,283. Martin, England and the New Zealanders, p.64 calculated that the average price per acre paid for land purchased by the Crown to the end of 1844 was 4\textsuperscript{2}d. For prices in the 1841 Auckland sales, see encl. 1 and 2 in Hobson to Russell, 5 August 1841, GBPP, 1842, (569), p.511.
consider new offers. Moreover, it still had unsold land on its hands. Maori felt justifiably betrayed by the workings of pre-emption. Any protective advantages to be gained from pre-emption must have seemed paltry indeed when compared with the disadvantages of being unable to sell at all, or at a price that was so palpably unfair. As a result, not only did government lose considerable influence and respect amongst Maori, but the treaty also came under critical review.

Since the Colonial Office had allowed FitzRoy to exercise some discretion with regard to pre-emption, he yielded to the pressure from Maori and European elements of the population, and decided to waive the pre-emption restriction. Under the first waiver of March 1844, individuals could buy direct from Maori on condition that a fee of 10/- an acre was paid to the government. Certain areas, such as pa and sacred places were to be withheld from sale and the details of each sale had to be scrutinised by Protectors. By the following October, however, such a small amount of land had been sold that FitzRoy decided to reduce

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74 FitzRoy to Stanley, 15 April 1844, GBPP, 1845, (131), p.24. This had come to hand from adjustments with the New Zealand Company and old settlers whereby lands had been exchanged.

75 See Johnson Journal, April 1840, NZ MSS, APL, where Johnson noted the vulnerable position in which pre-emption placed government, even before it had taken much practical effect.

76 See encl.1 in FitzRoy to Stanley, 14 July 1844, GBPP, 1845, (247), pp.21-23, for a memorial from Auckland settlers to FitzRoy on his arrival, appealing against pre-emption. FitzRoy to Stanley, 14 October 1844, GBPP, 1845, (369), pp.20ff., mentioned an attempt by Europeans to incite Maori to combine against the Crown; and see encl.1 in Grey to Gladstone, 29 September 1846, GBPP, 1847, [837], for a memorial from Auckland inhabitants who denied this. Restlessness at the Bay of Islands, Hokianga and Auckland was noticed by Clarke; cf. Stanley to Grey, 13 June 1845, GBPP, 1846, (337), p.72, where Stanley doubts that a refusal to waive pre-emption would have resulted in war or insurrection - an observation that seems to overlook Heke's outbreak in 1844.

77 FitzRoy to Stanley, 15 April 1844 and encl.0, GBPP, 1845, (131), pp.18, 44-45.
the government fee to 1d an acre. Under the first waiver, about 600 acres changed hands; under the second, 100,000 acres.

When announcing the waivers, FitzRoy had taken care to stress that the aim of pre-emption, as it had been incorporated into the treaty, was to protect Maori interests - to check the purchase of Maori lands while their value was insufficiently known to their owners. This appeared to the New Zealand Company settlers at Port Nicholson to be little short of a deliberate misrepresentation of the real purpose of the measure, to which they drew Stanley's attention: as Stanley well knew, they noted the real object of pre-emption was to secure in New Zealand the application of the principles of sound colonisation. The Colonial Office scarcely needed the reminder. They had accepted FitzRoy's March waiver with caution, foreseeing that it would make the Maori competitors with the Crown, but the second waiver was unacceptable because it completely destroyed the whole economic purpose of pre-emption.

Stanley, therefore, directed FitzRoy's successor, George Grey, when he took office in November 1845, to restore the Crown's pre-emptive right, except in those districts where the New Zealand Company stood in lieu of the Crown.

78 FitzRoy to Stanley, 14 October 1844, GBPP, 1845, (369), pp.20-21, 25ff.; the waiver was supported by the Attorney-General and Council.

79 Encl. in FitzRoy to Stanley, 15 April 1844, GBPP, 1845, (131), pp.43-44.

80 Memorial to Stanley, 10 October 1844, GBPP, 1845, (378), pp.13-19. The Wellington settlers also feared that the pre-emption waiver might encourage the recognition of a Maori freehold title to the soil which they opposed in favour of the restrictive right of occupancy and use.

81 Stanley to FitzRoy, 30 November 1844, GBPP, 1845, (131); Stanley to Grey, 14 August 1845, GBPP, 1846, (337).
While the function of pre-emption in Crown promotion of colonisation may have been uncertain in 1840, the principle was well established in colonial practice by the time that FitzRoy waived it. But FitzRoy either failed to recognise its contribution to the land fund or he was prepared to sacrifice pre-emption on grounds of expediency and humanity. Certainly his attitude was at variance with that of the Colonial Office where priority appears to have been given to balancing colonial budgets. Bishop Selwyn appreciated this fact only too well and was highly critical of the effect on Maori. He could see that pre-emption was working against Maori interests by creating funds to import European labour which would supplant Maori labour - from a Maori point of view, 'using the value of their lands against themselves'. Yet in spite of this, he favoured retaining pre-emption for protective reasons, and in this he was not alone. Martin, for instance, shared the missionary fear that Maori would sell their lands indiscriminately if pre-emption were abandoned and cited the rapid increase in lands offered under FitzRoy's temporary waivers with Maori 'hawking' their lands in Auckland streets. And Clarke was apprehensive about the effects of the waivers, anticipating outbreaks of violence when disputed lands were offered for sale. Maori themselves were cautious. Although they had been pleased initially by the idea of a relaxation on government land regulations and extolled the decision as 'ka pai', when the waiver was finally made, some expressed a wish to retain a degree of protection. Te Matua, for example,

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82 Selwyn to FitzRoy, November 1845, NA, G19/1.
83 Martin, England and the New Zealanders, p.53.
84 See e.g. Ashworth Journal, n.d. [December?] 1843, MS, ATL; Ashworth met a group of Maori returning from FitzRoy's levee of 26 December 1843 and reported a conversation which he held in mingled Maori and English: 'Then his (FitzRoy's) promises of further liberty to the natives in selling their lands were harped upon', and he was a 'capital' Governor.
could see the need for Maori-European co-operation in this matter and
told FitzRoy that although the regulations were good, 'we shall still
look to you as our shepherd - our guardian; it will be necessary for
you to have a very watchful eye over your own people, as well as for
the chiefs over their people'.

From the variation of attitudes to pre-emption, it is evident that
the personal interests of those concerned shaped their approach to it.
Officials, for instance, often had additional reasons for favouring pre-
emption. Hobson saw that it could be used as an orderly method of
controlling the expansion of settlement. And FitzRoy and Grey consid-
ered it useful as a mechanism for controlling Maori behaviour. Grey
immediately drew Stanley's attention to the fact that 'no more certain
means of controlling the natives could be found than refusing to purchase
any lands from those who conducted themselves improperly'. Rather
than the benefit that Maori expected from pre-emption, there always
existed the possibility that it might be used as a punishment.

In the colony's first years, pre-emption did not produce the land
and emigration fund that was expected by the Colonial Office. And the
few thousand pounds received from land sales were rapidly spent on the
expanding needs of government. As a 'sound principle of colonization',
pre-emption probably required that government should have access to
extensive acres of 'waste land'; such had been procured by force in
Australia, and by a combination of force and negotiation in North America.
But neither of these means was suitable or practicable in New Zealand
where humanitarian principles had been much vaunted and where Maori were

85 Encl.0 in FitzRoy to Stanley, 15 April 1844, GBPP, 1845, (131), pp.
43-44. The Ngatiwhatua chief, Te Kawau, must also have felt it
necessary to exercise some unusual restraint over his fellow chief,
Te Hira, for he wrote a letter to the editor of the Southern Cross,
14 September 1844, wanting it to be known publicly that Hira was
no longer able to sell land.

86 Adams, p.197.
capable of resisting by force any moves to acquire their land other than by fair purchase. The government's commitment to pre-emption, however, lost it much goodwill amongst both races. Prospective European purchasers were irritated by the working of pre-emption to the point of inciting Maori to create trouble, and no amount of reasoning could readily convince Maori that they were getting a fair deal. Yet FitzRoy's waiver of pre-emption was not satisfactory either. Grey noted the confusion that the waiver caused in a land title situation that was already complicated. Moreover, it had been argued that Maori would benefit from an open competitive market for their lands but, according to Grey, this advantage was lost because lands were not advertised.  

Pre-emption had originally been secured in the treaty primarily as a means of making the colony as financially self-sufficient as possible. In its attempt to minimise the costs of government administration and colonisation, it was adhering to the cardinal principle of Colonial Office administration, that colonies should cost the imperial government as little as possible. Yet in New Zealand, the Colonial Office had claimed that they were basing policy on a new principle of giving the Maori a fairer deal than other native races in the British colonies. The failure to back their word with adequate initial financial resources and their reluctance to rethink the working of pre-emption when it was gaining little financial return, but costing much in goodwill, suggests something of a credibility gap. At the very least it indicates muddled official thinking on the matter, an inability to adjust to or to reconcile the conflicting interests of economic colonial government and genuine commitment to native welfare - two areas in which new thinking had evolved in the decade preceding Waitangi.

87 Grey to Stanley, 9 June 1846, GBPP, 1847, (837), pp.7-9.
88 McLintock, Crown Colony Government, pp.120, 126.
When Grey moved to restore pre-emption in the Native Land Purchase Ordinance of 1846, the New Zealander protested vigorously against the move which it attacked as the 'first step towards the negation of the Treaty of Waitangi'. The measure was not concerned simply with restoring the Crown right of purchase; it also aimed to tighten up generally on government control over Maori lands. Under the ordinance it became an offence for individual settlers to occupy or interfere with Maori land in any way. Maori were thus effectively prevented from utilising their lands freely. Leases were prohibited and restrictions were placed on taking timber and flax, although the treaty's pre-emption clause applied only to land that Maori wanted to sell, and not to forests, or to new resources on or under the land. There was good reason for the press to claim that it was a 'stealthy violation' of Maori rights, for that was exactly what it was. Maori had agreed to the treaty mainly because it guaranteed their rangatiratanga over their lands, forests, fisheries and other prized possessions. The Bill undermined that rangatiratanga. It was no doubt presented to Maori in the usual guise of protection, as the press suggested, but in reality it was indicative of a new firmness in government dealings with Maori in all respects. In particular, it paralleled a shift to bring Maori firmly within the compass of British law.

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The establishment of British authority in the early 1840s was as contentious as the interpretation and implementation of the land clauses of the treaty. New Zealand, in this period, was regarded as an unusual case, something of an experiment in colonial government because of the treaty. In other parts of the Empire the position of indigenous races

89 New Zealander, 21 November 1846, and 29 November 1846, which reported a public meeting concerning a petition to the Throne against the Ordinance.
had not been so clearly spelt out at the inception of colonisation, if at all. In Canada, for example, Indians who still lived on land which had not been ceded to or purchased by the Crown were left under the immediate authority of their own chiefs - a recognition by the Crown that Indians retained a degree of internal sovereignty.\footnote{J.S. Molloy, 'The era of civilization - British policy for the Indians of Canada, 1830-1860', unpublished D.Phil. thesis, Oxford, 1978, p.11.} But in New Zealand, article three of the treaty had placed on government, in theory at least, an immediate responsibility for many thousands of Maori subjects. Normanby had recognised that this would need some special provision and, in accordance with his instructions, Hobson had appointed Clarke as first Protector of Aborigines. The immensity of the task, even when a number of sub-protectors was added to his staff, could scarcely have been appreciated by the Colonial Office. Hobson was provided neither with adequate money nor with any well-conceived plan of how Maori could be incorporated within the government's jurisdiction. Although Normanby, and later Russell, wrote on the matter of native policy to Hobson, they were mainly concerned with outlining principles and guidelines on which government was to proceed in its relations with the Maori. Like Normanby, Russell recommended that Maori custom be allowed, with the exception of cannibalism, but he was somewhat more specific about measures to be taken. He suggested that some adjustment of English law might be necessary, that the work of the missionaries in civilising the Maori should be supported and that force should be used with Maori only if it were needed in the suppression of extreme customs.\footnote{Russell to Hobson, 9 December 1840, GBPP, 1841, (311), p.27. For a criticism of the 'airy speculation' and 'theorising' of the imperial government, see McLintock, Crown Colony Government, pp.110, 125-9; and for a contemporary comment, Morgan to C.M.S., 26 October 1840, Morgan Journal, I, p.128, AUL: 'It is not sufficient to tell a Governor that he must take care of them [the Maori]. Some plan must be laid down, and the Home Government see that it is fully carried into effect.'}
Yet this was still a very general discussion from the point of view of administrators in New Zealand and it left them with the responsibility of providing some practical plan of action without the assistance of any imperial precedent. Major questions were left unanswered: to what extent should Maori be subject to British law? Could they be exempt in certain circumstances? How far could Maori custom be tolerated in practice? How could government enforce its authority with only a meagre staff of officials and few troops? Since there was no preconceived plan, decisions on these questions and on other problems were forced upon the government by the nature of events.

To a considerable extent, the government's path in resolving some matters of law and order was smoothed by the disposition of many Maori chiefs to accept and co-operate with processes of British law and government. In many instances, chiefs who had signed the treaty were seeking some change, and Ensign Best, who was involved in the first attempts to extend government authority, believed that if only Maori could be made to understand the law fully, then their response would be positive. Maori seemed especially willing to allow government arbitration in petty disputes between themselves and settlers. Cases of theft, of fraudulent trade deals, of cattle trespass onto cultivations, and of unlawful removal of timber from Maori land were not uncommon. In some of these cases, appeals for government intervention were made direct to the governor.

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92 Hobson was sent Grey's writings on the Australian Aborigines but there is no record of the effect, if any, that these made on Hobson: see GBPP, 1841, (311), pp.43ff. The Protectorate was introduced in Australia also, although it constituted little more than a rearguard action in the 1840s when patterns of race interaction had been set by some fifty years of European settlement. C.D. Rowley, The Destruct- tion of Aboriginal Society. Aboriginal Policy and Practice, Canberra, 1970.

93 N. Taylor, pp.228, 298-9.

94 For instances of these, see A. Ward, p.48. Ward gives a detailed treatment of the law and its application to the Maori throughout the nineteenth century. For the period 1840-1847, see also Adams, Ch.7.
himself, but in most instances requests were forwarded to the Protectors of Aborigines.\footnote{A. Ward, p.50.} Maori also began to bring cases before the colony's courts, sometimes with success.\footnote{Ibid., pp.45-46. Ward gives a brief outline of the court system established in the colony. Best records successful results for Maori and see Brown Journal, IV, 16 February 1847, AUL, where Nuka, a Tauranga chief, recovered £50 for pigs and other goods supplied by him to a European who had attempted to avoid giving the payment.}

Where solely Maori were involved in disputes, Maori were more cautious, often resentful of government offers of arbitration, but even in these matters there were signs of change. Best found himself advising on an adultery case in Wellington in mid-1840;\footnote{N. Taylor, pp.227-8.} and Edward Shortland was caught up in a similar situation in the Bay of Plenty.\footnote{E. Shortland, Traditions and Superstitions of the New Zealanders, London, 1856, pp.237-40.} In the Waipa, Te Waru, in a notable gesture of commitment to British law, submitted his daughter to a government official on a charge of murdering a slave. The chief also stated his willingness to co-operate with government in apprehending criminals.\footnote{N. Taylor, pp.294-6. The Maori had been led to expect some payment. This was not unusual, for Maori often assisted in apprehending drunks in Auckland streets, a service for which they received a small fee: New Zealand Herald and Auckland Gazette, 23 February 1842. It was also customary for Maori to return ships' deserters. See also N. Taylor, pp.298-9, for the murder case, which was never taken further. Exculpatory circumstances of Maori custom seemed to exonerate the girl (although the missionary Morgan read her a 'severe lecture'). Cf. the Maketu case where a different decision was obviously determined by participants: pp.292-3, 310.} Wiremu Neira Te Awaitaia, a Christian chief from Raglan, likewise committed Maori in that district to deal with murder, 'or other heinous crime', delivering the offender over to British justice.\footnote{Ibid., p.287, 12 April 1841.} And there were other encouraging signs: at Otawhao, for instance, a magistrate had been requested, because chiefs were 'united in
hailing the coming of the Governor and the adoption of a new law with gladness’. Even in those areas where government agents were seldom seen, Christian Maori were seeking out local missionaries or native teachers to act as mediators in a variety of tribal difficulties. Sometimes decision and settlement might even be made by mission tribunals who imposed their own fines or punishments, such as expulsion from the pa community.

But Maori compliance with British law had definite limits. Where issues were so serious that imprisonment or hanging was a likely punishment, Maori tended to protect offenders, particularly if they were of chiefly rank. On the other hand when punishment constituted a fine, or could be commuted to a fine, Maori proved more amenable to court decisions, possibly because the punishment more closely fitted the customary pattern of utu. There was one notable early exception, however: a case of murder where Maori co-operation was forthcoming. A Bay of Islands Maori, Maketu, viciously murdered a European woman, her two children and a half-caste child. Although there had been a previous case of a European murdered by a Maori, Kihi, it had been quietly resolved by the natural death of Kihi before his trial. Maketu presented a more serious problem. His subsequent apprehension, trial and hanging in March 1842 were regarded by Maori and European as something of a test case of Maori submission to British law. Europeans felt considerably heartened by what they saw as Maori co-operation in the matter.

101 ibid., p.350, 15 April 1842.
102 A. Ward, p.54: Brown Journal, 24-29 July 1843, AUL.
103 See below, p.304. When the Native Exemption Ordinance was passed, FitzRoy recognised the need to make concessions to chiefly rank by allowing for compensation payments, which resembled the custom of utu.
A number of northern chiefs publicly dissociated themselves from Maketu's action and asserted their commitment to the Queen's laws. \[106\]

But the truth of the matter, as more perceptive Europeans realised, was that Maketu had created the conditions for a major inter-tribal fight by killing the half-caste child of the chief, Rewa, along with the Europeans. To avert war, Maori had sacrificed Maketu to British justice.

In general, a reluctance to submit to the authority of the law was evident when Maori feared that government would not be capable of providing them with protection from the consequences likely to follow on the abandonment of customary methods of dealing with problems. This was apparent at Raglan in 1840, when Wiremu Neira and other chiefs sought government assistance in dealing with murders arising from makutu (sorcery). The initial request, made at missionary prompting, was subsequently reconsidered, for the Maori were concerned that if they agreed that the murders cease, then their slaves would take advantage of the situation to exercise witchcraft on the chiefs and to take liberties with their wives. \[107\] Such problems were widespread in the forties and persisted for many years after. \[108\] Government authority was not a simple alternative to chiefly authority, nor were chiefs prepared to

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106 Carleton, II, p.35; New Zealand Herald and Auckland Gazette, 19 January 1842, printed letters from chiefs; see also Maori Messenger, 1 January 1842. The chief, Waikato, sent the governor the helmet given to him by King George IV, presumably as a kind of token of commitment or acceptance of the governor's role as a mediator or law-giver.


108 Brown Journal, 24-29 July 1843, AUL. Brown noted murders arising from witchcraft and adultery, as well as infanticide, and lamented: 'The possibility is that all these cases will pass unnoticed by the Government because the parties are not in reality British subjects.' See also Maori Messenger, 31 October 1859, which reported murders in M.B. Kawihi's pa as a result of witchcraft. The government finally resorted to a Tohunga Suppression Act to curb the persistent influence of makutu.
concede more than was necessary of their power. Chiefly power was needed to keep the tribes in control and, when this increasingly failed, Maori expressed their concern that government was not giving chiefs the requisite backing. 109

In the more general area of administration, the matters that most often required government intervention concerned the land. Just as missionaries some years earlier had encouraged neutrality as an alternative to war, so now the option of referral to government offered Maori a kind of Pax Britannica as a means of handling their endemic inter-tribal disputes. That Maori were eager to make use of this new situation in the early years of the colony is evidenced by the number of Maori letters from that period requesting government assistance. 110 Missionary journals also record the tendency amongst tribes to reject force in settling land disputes in favour of asserting rights based on customary ownership. Noting that genealogies were more often cited as a consequence, Chapman added that 'There is much of this among the natives in the present day arising from the change that is taking place in this island.' 111

Maori themselves acknowledged this gradual shift to peaceful mediation and made use of opportunities to present cases either to the governor or to government agents. Te Wherowhero told FitzRoy that Maori were willing to seek assistance in even the most serious of long-standing disputes. 112 There were advantages to be gained. As Taipari

109 Clarke to Col.Sec., 1 July 1845, in FitzRoy to Stanley, 17 September 1845, GBPP, 1846, (337), p.134.
110 NA, MA-2 Register for 1840s lists dozens of letters which concern problems relating especially to land.
111 Chapman Journal, 2 February 1846, and 30 November 1845, AUL, where he observed a genealogical rod carved with notches numbering back to the 'great progenitor' of its owner. See also Woon Journal, 31 August 1840, qMS, ATL, where he notes that Mohi Tawhai, 'a very keen fellow', was going to cite the Bible at Nopera as his 'weapon' in an inter-tribal dispute.
112 FitzRoy to Stanley, 25 May 1844, GBPP, 1845, (247), p.8. The case in point concerned Motiti Island at Maketu. It has continued to be a cause of inter-tribal disagreement to this day.
of Tauranga pointed out to Best, 'if we [Maori] continue fighting our race will become extinct whereas Peace will increase it. It is now some years since I took any part in the quarrels of these parts & I find that whilst others become weak I am getting strong. The children of my Pah [sic] are not murdered in their youth and the boys are growing into men. I can now raise more fighting men than any Chief of Tauranga & I will use my strength to preserve peace.'

But the shift to negotiation through government involvement could serve quite another purpose. It was designed to make the government a 'catspaw' in native quarrels. Carleton explained how a Maori would sell disputed land for a song, if the effect of the sale would be to involve the rival claimant in a quarrel with the English: 'He would have the double satisfaction of revenge, and of relief from the obligation of being bound in honour to maintain a troublesome and uncertain right.' Clarke was aware of the possibility of this problem as early as 1840, when he reported that disputed land, often a border area between two adjacent tribes, was the most likely land to be offered first. To counter some of the problems of this situation which could only become increasingly complicated, he recommended the compilation of a kind of 'Doomsday Book' which would record the major boundaries of the tribal areas and the internal divisions of a district as they existed at the inception of British sovereignty. Similar suggestions were made a

113 N. Taylor, p.394, 14 January 1843.
114 Carleton, II, p.61; Parsonson, 'The Expansion of a Competitive Society', p.57: 'The sale of land was a new, irrevocable and often bitter way of ending a dispute.'
116 Clarke to Col.Sec., 1 June 1843, encl. in FitzRoy to Stanley, 20 August 1845, GBPP, 1846, (337), p.113. See also, A. Ward, p.49-50, who refers to a recommendation made by the Thames-Bay of Plenty chief, Kahukoti, that descriptions of tribal land claims should be sent in for government record.
few years later by William Brown and Selwyn. By then Clarke favoured the establishment of a land tribunal, although he probably had been convinced of the need for some such body in the 1840s as a result of the added confusion in land issues following FitzRoy's waivers. Martin, for instance, remarked on the increased offers of kainga tautohe (debatable lands) at that time.

A case that was typical of the government's problems in dealing with disputed lands was that of Nopera. Land around the Mangonui harbour had been held in former days by Nopera's tribe, but for some thirty years a group of Ngapuhi, related to Hongi Hika, had been allowed to occupy the land. In that time these occupants had sold some of the land to Europeans, thereby disregarding the traditional rights of the owners. Nopera evidently determined on a plan of reasserting his rights. He appealed to government to intervene and succeeded in establishing some sort of claim on one side of Mangonui harbour where he hoisted the Union Jack. The issue involved government in a bitter and lengthy wrangle which encompassed not only the two rival Maori groups but also their associated tribes, the local settlers and other interested Europeans. The Auckland Southern Cross charged Nopera with breaking the treaty, although it was not really clear how it had arrived at this conclusion.

Nopera's dispute was only one of many such cases throughout the country in the 1840s. At the inception of the colony it had been the express wish of the government that such disputes should cease. But in many areas old inter-tribal feuds continued to rankle. The land title

117 Stanley to Grey, 28 November 1845, transmitting a letter from W. Brown, GBPP, 1846, (337), p.101; Selwyn to FitzRoy, November 1845, NA, G 19/1.
118 Martin, England and the New Zealanders, p.49.
119 Nopera began to stir in May 1840: New Zealand Advertiser and Bay of Islands Gazette, 22 July 1840; NA, MA-2, Register, May letter and others in 1840, from Nopera; Godfrey to Col.Sec., 10 February 1843, in FitzRoy to Stanley, 18 December 1844, GBPP, 1845, (369), p.73.
120 Southern Cross, 10 June 1843.
situation had also been complicated for some tribes by the wars in the decades immediately preceding 1840. Hence the arrival of government provided Maori with a new weapon in fighting a traditional Maori power game. Missionaries bemoaned the incapacity of government to deal effectively with these disputes which often resulted in a considerable loss of life. But given the government's limited manpower it is difficult to see how Hobson and his immediate successors could have adequately coped with a situation where an interplay of traditional Maori forces was still paramount. Indeed some chiefs were well aware of the government's weakness and showed little confidence in the alternative of peaceful negotiation offered by British authority. This was particularly true of the Thames-Bay of Plenty area. Taraia, a Ngatitamatera chief from Thames, expressed a willingness in late 1840 to welcome the government and to desist from fighting, but only on condition that he receive soldiers to protect him from his traditional enemies.

It was, in fact, an issue involving Taraia in June 1842 that raised the question of how effective government authority was. Taraia attacked the Ngaiterangi of Tauranga for an alleged boundary dispute, killed several, and committed acts of cannibalism. The government felt

121 Parsonson, 'The Expansion of a Competitive Society', pp.57-58; and a more lengthy analysis in Parsonson, 'He Whenua Te Utu', esp. Part 2.

122 Wily and Maunsell, Ch.8, discusses a dispute over occupation and boundaries, and Chapman to C.M.S., 26 January 1848, Chapman Journal, p.334, AUL, which notes the death of thirty Maori in the Waikato in a disagreement over a few acres; and another dispute in the Bay of Plenty in May 1848.

123 Clarke Report in Gipps to Russell, 7 March 1841, GBPP, 1842, (569), pp.95-96.

124 For various discussions of this affair see Adams, p.219; Wake, pp.348-50; A. Ward, p.58; Wards, pp.60-62; and Report, GBPP, (556), Appendix, pp.192ff.
obliged to act in the matter since Ngaiterangi had requested government protection. Taraia, however, resented the government moves to mediate, arguing that 'the Governor was no Governor for him or his people and that he had never signed the Treaty nor would he acknowledge his authority'.

More explicitly he told Hobson that 'With the Governor is the adjustment of European affairs and with us the adjustment of the natives.' The government was at first inclined to deal forcibly with this blunt rejection of British sovereignty, but with insufficient troops to ensure success, it was decided to resolve the matter through negotiation, which was fortunately accepted. The disputed lands were sold to the government, prisoners were released, and a promise of compensation was made to Ngaiterangi.

Within six months the question of the extent of government power and authority once more became an issue when a more serious dispute flared up between Ngaiterangi and Ngatiwhakaue of Maketu. Tohi Te Ururangi of Maketu drew attention to the fact that he had not signed the treaty of Waitangi and repeated Taraia's argument that the government had no right to interfere in such cases. Willoughby Shortland, Acting-Governor since Hobson's death in September 1842, contemplated using troops against

125 N. Taylor, p.364, 8 July 1842.
126 cit. Wards, p.61, fn.4; see also Taraia and Takanini to government, June 1842 refusing to acknowledge the government's right to interfere: NA, MA-2 Register 42/81-82. About the same time another letter, 'numerously signed', protested against the sovereignty of the Queen of England in New Zealand: MA-2, 42/67, 22 June 1842.
127 For many years land was 'sold to the Queen' as a means of settling disputes. See e.g., Maori Land Court Minutes, 1880, Maori Affairs Department, Whangarei. (Information, Jane McRae.)
Tohi, but the legality of such action was queried by Clarke, Martin, and Swainson. Swainson argued that the British title to the sovereignty of New Zealand was incomplete, that a prerequisite of asserting sovereignty had been the 'free and intelligent consent' of the Maori; hence those who had never accepted the treaty nor the Queen's authority in any formal way, could not be considered British subjects and were outside the legal limits of British sovereignty. Clarke admitted this possibility but suggested alternatively that it was 'an act of humanity to both natives and Europeans to consider the whole of the tribes of New Zealand as British subjects'. Where tribes had not yet ceded sovereignty, Clarke thought that 'every honourable and humane means' should be used to get them to do so, but to use force would be considered by Maori as a 'breach of faith' of the principles propounded when sovereignty was being negotiated. Although the consensus amongst other officials favoured recognition of all Maori as British subjects, indecision with regard to using force allowed the affair to drift into a negotiated settlement by March 1843.

But the matter had raised administrative problems relating to the treaty and to sovereignty that would eventually have to be resolved. Swainson suggested subsequently that areas so affected could perhaps be constituted Native Districts where Maori custom might prevail.

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129 After the Taraia affair, the Maori Messenger had printed a notice of warning in August and September, that if Maori rose to fight each other the Governor would also rise and force them to cease: Report, GBPP, 1844, (556), p.458; see p.469 for translation.

130 Shortland vetoed the idea of seeking further formal acceptance of the treaty as an act of government weakness.

131 A. Ward, pp.61ff. discusses the fact that Native Districts were later allowed for in both the 1846 Charter for self-government and the 1852 Constitution.
he intended that these districts would still be considered British territory, he apparently favoured something akin to the reservation system of the North American Indian, although the districts were to be merely temporary expedients, with the overall aim of amalgamation sustained. Presumably he reasoned that the government's position in relation to the Maori was unrealistic and that it was preferable to allow for an interim use of Maori authority rather than reveal government inability in practice to extend the privilege of British law. Yet the Native Districts idea was not acceptable to Clarke for he had been convinced even before Waitangi that, in a situation of expanding European settlement, the only effective protection for Maori was to incorporate them within the rule of law. Clarke was no doubt influenced in this by the current humanitarian conviction that the welfare of native races was best served by treating them in this way. But separate Maori districts were opposed by others for quite different reasons. Shortland feared that they would set a precedent for widespread rejection of Crown authority. And settlers resented the restriction on access to land for settlement that such districts would constitute. A combination of interests, therefore, quashed the idea.

Whatever scruples Swainson might have had about British sovereignty in New Zealand, the Colonial Office refused to countenance them. Stephen and Stanley stated that sovereignty had been publicly asserted by the Crown and announced to all foreign states. Any 'controversy' about it was 'utterly inadmissible' and ought 'to be repressed with a strong hand'.

132 See e.g., Martin, England and the New Zealanders, pp.22-28, where he refers to the American experience in his analysis of the New Zealand case. The Bay of Islands Observer, 7 April 1842 suggested that the government distinguish between territories ceded and those not ceded, so presumably the idea may have had some currency, perhaps from the government's inability to afford protection to Europeans in Maori districts.
Stanley reinforced this with a lengthy dispatch stating the position of the Crown: 'All the territories comprised within the commissions for the government of New Zealand, and all persons inhabiting those territories are and must be considered as being to all intents and purposes within the dominions of the British Crown.' Having dealt with this point of general sovereignty (or external dominion), Stanley then conceded that within New Zealand, on the other hand, there was no reason why Maori should not live under their own laws and usages in dealings with each other (with certain exceptions such as cannibalism) as was the case with the natives of other areas of Empire. And Stephen, in agreement, pointed out that subjection to British sovereignty and subjection to English law were not 'convertible terms', that a temporary tolerance of Maori custom had been allowed for in Hobson's instructions, but that no declaratory law had been enacted as it should have been.\(^{133}\)

Swainson was probably more in agreement with this line of reasoning than the Colonial Office officials realised. It was the perspective and priorities of officials in London and New Zealand that were different. Whereas the Colonial Office officials reacted to the debate over the Tauranga affair in the first instance by asserting that sovereignty had been unquestionably secured against any claims of other nations, Swainson was more concerned with the difficulty of assessing the contractual nature of the treaty and its effects within New Zealand. Like other New Zealand officials, he was endeavouring to define the extent to which sovereign power and authority could be justly and effectively exercised.

\(^{133}\) N. Taylor, Appendix 20; Adams, pp.220-22.
His preference for Native Districts, influenced perhaps by colonial experience elsewhere, approximated the probable Maori understanding of the treaty: Maori could be both British subjects and Maori citizens - a situation not unlike the early thinking of the King Movement and certainly in line with later Maori aspirations. In fact, Maori would later search back for early official references to their customary rights, such as Swainson and even the Colonial Office acknowledged, in vain attempts to gain official recognition of independent rights which government hoped would lapse. But even by 1843, a more extensive recognition and retention of certain rights of Maori sovereignty was simply not acceptable in New Zealand. The third article of the treaty, granting the Maori the rights and privileges of British subjects, was designed to serve both humanitarian and practical goals of settlement. Though its incorporation in the 1840 agreement would often be construed as an ideal, it was nonetheless a practical recognition of the need to engineer a Maori adjustment to law and to an environment of European expansion. With two races living in close proximity, a qualification of the third article by entrenching and institutionalising Maori custom and independence in separate districts was most unlikely.

The debate over the affair did at least force the Colonial Office to clarify certain matters. The Maori people as a whole were to be subject to British sovereignty; and government reserved the right to intervene in disputes between Maori, although this was to be done with discretion, for it was conceded that Maori custom should be allowed to prevail in dealings that involved only Maori or, in some circumstances,

134 See e.g., Notes of the Treaty of Waitangi Movement in Wairua Papers (private collection); Nga Kaupapa i Whakaotia e te Hui i tu ki te Kauhanganui i te 26 o nga ra o Hune 1948, Hamilton, n.d. [1948?].
Maori and government. Reflecting on this from the distance of the Colonial Office, Stanley and Stephen saw no real problem in thus making separate allowance for Maori usages, as had been done in other areas of Empire, and directed New Zealand officials accordingly. Stanley expressed the pious hope that New Zealand might 'set the first example of an uncivilised race peaceably incorporated with an European population'.

Yet when FitzRoy arrived at the end of 1843, he was no more able than his predecessors to extend government law and authority over the Maori people. The Colonial Office was not prepared to increase the troops at his disposal and, since the colony's financial position was worsening, no extension of government administration could be initiated. Just as the British government was failing to commit adequate resources for a fair implementation of its land policy, so it was likewise failing in the area of administration and law. This shortfall between the original commitment in the treaty and the subsequent practice once again calls into question the extent to which the British government was genuinely committed to effecting a new deal in New Zealand.

When FitzRoy reflected on these circumstances later, he was critical of the injustice done to both Maori and European. For want of money and manpower he had been forced to adopt an excessively conciliatory policy whereby force of arms had to be left in Maori hands since government lacked the power to impose law. Maori continued, therefore, to be merely provisional British subjects with a theoretical rather than the practical privilege of British law conferred on them. As the

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136 FitzRoy, Remarks, p.45. The government was so hard-pressed to find money for even the existing group of officials that cut-backs were considered.

137 ibid., p.60. FitzRoy outlines the shortcomings of British law and administration for the Maori.
contradictions of this situation became more apparent, there were signs of discontent amongst both European and Maori. As a body, the European sector of the population began to demand that if Maori really were British subjects, then they ought to be forced to comply with English law. Any refusal would constitute a breach of the treaty of Waitangi.

While FitzRoy shared the belief that in the long term Maori should be treated as British subjects, he appreciated that some immediate adjustment of the law to Maori needs was called for. This was mooted when he arrived and he took advantage of a visit from a deputation of Maori chiefs attending a mighty inter-tribal gathering at Remuera in May 1844 to outline part of his proposal. To accommodate the abhorrence with which Maori generally regarded imprisonment, he proposed that compensation be paid in lieu of imprisonment, with chiefs acting as guarantors.\(^{138}\)

In July this was incorporated in the Native Exemption Ordinance together with certain other concessions to Maori custom. Several other ordinances of 1844 were similarly modified in minor ways to meet Maori needs.\(^{139}\)

FitzRoy also requested Chief Justice Martin to draw up for publication a kind of Maori language lesson-book which contained instructions on English laws and customs.\(^{140}\) This fulfilled to some extent the Maori request to be kept informed about the law and it supplemented the publication in the _Maori Messenger_ of the occasional ordinance. In addition,

\(^{138}\) FitzRoy to Stanley, 25 May 1844, GBPP, 1845, (247), p.13; cf. Clarke Report, GBPP, 1842, (569), p.94, where Clarke had reassured Maori about prisons which he suggested were to protect Maori from 'bad' Europeans. The Maori had been pleased that the prisons were only [my emphasis] for Europeans. Subsequent experience proved otherwise.

\(^{139}\) The Auckland press indicated that there was also a certain reserve about applying some regulations to Maori for fear of the possible reaction. See, e.g., _Southern Cross_, 4 May 1844.

\(^{140}\) Sir William Martin, _Ko Nga Tikanga a te Pakeha_, Auckland, 1845. Amongst the early senior colonial officials only Martin apparently understood Maori: FitzRoy to Earl Grey, 20 March 1847, GBPP, 1847, [837], p.74.
Clarke consciously used the Maori Messenger as a medium of instruction in the processes of the law, reporting important court cases and explaining the official action taken. At times, Clarke's arguments were somewhat dubious. In the case of the Ngatiwhatua chief, Te Menia, for example, Clarke told Maori that the chiefs who had snatched Te Menia from his Auckland imprisonment had thereby diminished their rangatiratanga which it was the government's prerogative to restore. The journal, nevertheless, went some way to fill the Maori desire to be kept informed.

Exhortation, however, was no substitute for strong government. As FitzRoy's term of office progressed, it became apparent to both Maori and European observers that the government was too weak to adhere with confidence to a strong line of policy. Maori were restricted in practising native custom or 'ritenga' yet no organised system of law had been provided as a substitute. Outside of the immediate vicinity of towns, Maori custom continued to prevail. Settlers were dependent more on the protection of local chiefs than on the government and were thus still liable to the penalties attached to a breach of Maori custom. Maori, for their part, were aware that their situation had really improved little with the advent of British authority. In theory, British authority was supposed to be their support; in fact, customary ways tended to continue. Maori did not all want government protection, of course, but the presence of an alternative source of power in the land increasingly compromised chiefly status and authority. The position of a chief and the customary tribal restrictions that had exercised some restraint over out-settlers and restless Maori youth were now no longer so respected. 'This anomalous state of things renders the present

141 Maori Messenger, March 1842.
position of the settlers and the natives much worse than it was before the regular colonization of the country', Clarke lamented. As a result, Maori gradually lost faith in government and its ability to implement its promises, and fell back on traditional methods of handling affairs. For Europeans, however, the situation was intolerable and a concensus of opinion in the European community, whether official, missionary or settler, began to favour the adoption of a stronger government policy towards the Maori people. Even the Colonial Office officials, who had regularly advised the government to adopt a mediatory role, shifted to a less indulgent position when news of FitzRoy's Native Exemption Ordinance reached London about the same time as the first reports of stirrings in the north to challenge British sovereignty.

142 Clarke to Earl Grey, 30 March 1846, in Grey to Stanley, 12 June 1846, GBPP, 1847, [337], p.17.
CHAPTER SIX

CHALLENGES TO SOVEREIGNTY AND TO THE TREATY

'Do you return to your own country, to England, which was made by God for you. God made this land for us, and not for any stranger or foreign nation to touch.'

- Heke to the Governor, 2 December 1845, enclosed in Grey to Stanley, 9 February 1846, GBPP, 1846, (690), p.15.
The 'Governor's book [the treaty] was very good, likewise his talk; but they would watch his actions with some jealousy', some northern Maori told Clarke in the early 1840s. The Protector of Aborigines was well aware of this fact; British sovereignty was on trial. All Maori, regardless of the extent of their commitment to the treaty, shared to some degree a suspicion of government intentions. Although Hobson's record proved to them that on the whole he was well disposed to the Maori, many feared that under subsequent governors Europeans would be 'exalted' and the Maori 'put down'. In view of their knowledge of the Australian experience, these were not unreasonable misgivings about the wisdom of having allowed a British intrusion into the country to go unchallenged, but Maori had decided to reserve their final judgement on the treaty for the future.

In the meantime, many Maori cast aside their doubts and were caught up in the surge of activity relating to the establishment of a British colony. In areas close to expanding European settlement, Maori immediately enjoyed a quickening of trade as their produce found a ready market and brought good prices. Maori labour was in demand to supplement settler energies in the tasks connected with setting up home in a new environment - for building houses, both temporary and permanent, carrying supplies, ferrying passengers, acting as guides. Maori were carried along in this sudden swell of European activity, and as Clarke later reflected, 'it might truly be said that their cup of temporal prosperity was "running over"'.

1 Clarke Report, 1 July 1845, in FitzRoy to Stanley, 17 September 1845, GBPP, 1846, (337), p.132.

2 Clarke Report, 1 July 1845, in FitzRoy to Stanley, 17 September 1845, GBPP, 1846, (337), p.132.
But the early prosperity did not last. As its distractions diminished and as the effects of the new authority in the land increased, the possibility of a Maori challenge to British sovereignty became more likely. By 1842, 'old hands' like Busby and Henry Williams were uneasy about a potential Maori backlash. Williams admitted that he knew no chief who had not expressed his distrust of the Europeans generally: 'In this I consider their feelings as perfectly natural. What were the feelings and conduct of the ancient Britons towards the first invaders of the country?'\textsuperscript{3} If Williams drew this comparison from the drift of events in New Zealand, then it was only a matter of time before Maori, with their disposition to seek historical precedents, would be making similar allusions.

Since the north felt the first impact of government, it was natural perhaps that the first signs of serious unrest might appear there also. Towards the end of 1841, a series of events occurred that was unsettling to Maori people. The first, a minor government matter, became an important source of irritation. In November 1841, Hobson issued a proclamation forbidding the cutting of kauri.\textsuperscript{4} The move was intended, no doubt wisely, to curb the wanton destruction of forests,\textsuperscript{5} but it contravened the treaty's guarantee of Maori possession of their forests and encroached upon Maori rights to a customary source of revenue. The move provoked even Waka Nene to exclaim that if the

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\textsuperscript{3} H. Williams to J. Busby, 20 April 1842, in Carleton, II, pp.xxi-xxii.

\textsuperscript{4} New Zealand Government Gazette, 3 November 1841; and 26 January 1842 where it was withdrawn; Adams, p.201; Carleton, II, pp.66-67.

\textsuperscript{5} For contemporary observations of the need for some restrictions to prevent the 'famine' of timber, see Clarke Report, GBPP, 1842, (569), p.98; Chapman Journal, I, pp.176, 208-9; Morgan Journal, I, p.141, AUL.
governor were present in the Hokianga, he [Nene] would cut down a kauri before him to see how he would act. In the same month, the first serious application of British law to a Maori offender occurred when the Bay of Islands chief, Maketu, murdered Europeans and was apprehended to await trial. Although the case was later satisfactorily resolved, it caused a great uproar at the time, and those Maori prone to excessive jealousy of the government were tempted to believe that the government had over-reached itself.

Before the Maketu incident, tensions over pre-1840 land sales had emerged. The two commissioners who had been appointed to investigate the land claims of the early settlers had begun their sittings at Russell on 11 October 1841. The hearings inevitably caused some general excitement. From a practical point of view, one of the commissioners had to visit the locality of each claim, take the evidence of the claimant, his witnesses and the Maori involved (those opposing the claim as well as those upholding it). The co-operation of Maori, so essential to government, was usually willingly given, yet the whole exercise was rather unsettling. The extent of early land sales to Europeans was now made plain, not only to those Maori who attended the sittings, but also to a wider public through the press where the description of each

6 Carleton, II, p.67.
7 See above, pp.292-3.
8 Carleton, II, pp.xx-xxi, 41. Williams called a meeting at Paihia where chiefs of the Bay of Islands, Hokianga and Whangaroa districts discussed the matter. The meeting had official approbation. About the time of Maketu's trial, however, there was an outbreak of lawlessness at Whangarei where a number of settlers withstood a raid by Tirarau and Paikea: N. Taylor, Appendix 14.
9 For a history of the land claims problems see Surplus Lands Commission, AJHR, 1948, G-8, esp. pp.25, 48ff., which trace the legislation affecting the issue. Gipps's Land Bill of August 1840 became inoperative when New Zealand became a separate colony, but Hobson re-enacted the measure with few changes on 9 June 1841. There was further legislation in 1842, 1844, 1846, 1849 and 1856. See also Sweetman, Ch.2; and Report of the Land Claims Commissioner, AJHR, 1862, F-1.
claim and of the chiefs involved was published. The press also publicised the resentment of old settlers who were anxious to justify the validity of their claims. Settlers argued that their purchases had been made on terms applicable to the circumstances prevailing prior to 1840 when New Zealand was an independent country recognised by the British government, and that the 'Queen of England' had no right to interfere with titles 'equitably acquired' under the sovereignty of the Confederation of 1835. By implication and sometimes by specific reference the good faith of the Crown in recognising Maori sovereignty prior to 1840 was called into question and the treaty, the proclaimed guarantee of Maori rights, was attacked as a fraud.

For the resulting restlessness amongst Maori, Hobson blamed Europeans who had 'industriously' excited Maori disaffection. There was some truth in what he claimed, but evidence indicates that Maori had become uneasy a year earlier when news of Gipps's Land Claims Bill had first reached New Zealand. Woon observed that Maori in the Hokianga and the Bay areas were still excited over the settlement of their lands in September 1842. The progression of the claims investigations to other areas such as Auckland, and the rumour that Commissioner Spain, appointed directly from England, might reassess the decisions already made by the

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10 See e.g., New Zealand Herald and Auckland Gazette, 24 July (suppl.), 4 September, 23 October 1841; 19 January, 22 January 1842.

11 Bay of Islands Observer, 24 February, 14 April 1842; and 3 March, 5, 12 May, for petitions on this matter which also refer to the Confederation and to Hobson's instructions with their recognition of Maori sovereignty. Hobson had anticipated that settlers would take this line of reasoning: Hobson to Under-Secretary, Colonial Office, August 1839, GBPP, 1840, [238], p.42.

12 Bay of Islands Observer, 13 January 1842.

13 See above, pp. 260-62.

14 Woon Journal, 12 September 1842, qMS, ATL.
first commissioners, were factors that unfortunately prolonged the un-
certainty and possible disillusionment amongst both Europeans and Maori.\textsuperscript{15}

In the short term, the land claims investigations were probably the
aspect of government that was most unsettling to both European and Maori
communities in the early 1840s. Although Maori were prepared to support
claims where the original sale had been fair and where it had been follow-
ed by occupation within a reasonable period of time, there was still a
tendency for the investigations to provoke Maori to become dissatisfied
with all old sales. Moreover, in the long run, the claims problems,
with their potential for generating Maori suspicions over their land
and the treaty guarantee, were compounded by further claims arising from
FitzRoy's pre-emption waivers and from Grey's attacks on missionary
holdings. The old land claims were a legacy that settler government
of the 1850s inherited and it was not until 1862 that accurate surveys
were made, grants confirmed and surplus land defined. Thus every time
the question arose in this twenty-year period, as for example, with the
passage of the Land Claims Act of 1856, there was every chance that the
same arguments would be aired by Europeans and the same fears raised in
the Maori mind.\textsuperscript{16}

One immediate effect of the claims investigations in the 1840s was
that Maori were tempted to believe that their suspicions of government
intentions to acquire Maori land by one means or another were justified.
This arose from the government decision that land judged to be equitably
purchased, but in excess of the acreage allowed in any one claim, would

\textsuperscript{15} New Zealand Herald and Auckland Gazette, 29 December 1841. This
report suggests that Maori were paid for the evidence they gave.
The press continued to keep up a campaign against the government:
ibid., 29 January, 2, 5, 12 February 1842.

\textsuperscript{16} It was also disappointing to Maori that many pieces of land were
not occupied by settlers.
become the property of the Crown. From a Maori point of view it seemed more reasonable that it should revert to the original Maori owners. The government's decision on this matter of 'surplus lands' disappointed Maori expectations, or at least led to some confusion, for Hobson and Busby had assured chiefs at Waitangi that such lands would revert to Maori ownership. In fact, Maori speakers at the time seemed more interested in the land already sold than in the arrangements concerning land not yet sold. FitzRoy also seems to have given a similar impression when he arrived at the end of 1843. At a major meeting at Waimate in September 1844, Maori sought clarification of the land question. Although FitzRoy's explanations apparently satisfied them at that time, a lingering suspicion that they had been cheated of their rights prompted Maori to appeal over the surplus lands and resulted in a government commission in 1846-47, more than a century later, by which time investigators believed that no evidence of the early promises could be found.

17 In accordance with government regulations, no Crown grant could be given for more than four square miles or 2,560 acres without the consent of the Executive Council (which was given in a few instances); claims had to be lodged within six months; and a schedule was provided whereby values could be computed: before 1824, land was to be valued at 6d an acre; between 1825 and 1829, from 6d to 8d; in 1835, from 1/- to 2/-; and in 1839, from 4/- to 8/- an acre. Goods given for land were to be valued at three times their Sydney prices. Absentee purchasers were more heavily charged than residents.

18 See above, p.157. Nopera may have been given the same idea: Southern Cross, 28 April 1849; see H.T. Kemp to Clarke, 10 February 1843, GBPP, 1844, (556), Appendix 4, p.125 and Godfrey to Col.Sec., 10 February 1843, in FitzRoy to Stanley, 10 December 1844, GBPP, 1845, (369), p.73, which concern Nopera's determination to resume surplus lands.

19 Auckland Chronicle and New Zealand Colonist, 27 December 1843; Southern Cross, 30 December 1843.

20 Waimate meeting, MSS 430, AML.

21 Surplus Lands Commission, AJHR, 1948, G-8, pp.60-62 dismissed the possibility of FitzRoy making this promise. The press reports above seem to prove the contrary, however, and Adams, p.192, confirms this.
While the tensions over land claims affected mainly the north and the Auckland district where the majority of early purchases had been made, knowledge of them elsewhere created a degree of unease. There were some exceptions, of course, where early speculative purchases were not upheld, and Maori in these instances gained an advantage by retaining both the land and the purchase price (or goods). But in various other decisions relating to land, there was ample cause for dissatisfaction. In the Kaipara area, for example, government received from Maori a substantial acreage in compensation for an attack on a settler, Thomas Forsaith, but after making a grant to Forsaith, the government kept the remainder. The British Treasury expressed a fear that it might set a precedent for more greedy acquisition of Maori lands, but the Colonial Office allowed the decision nevertheless.

Quite apart from the restriction on Maori freedom imposed by government pre-emption, it gradually became apparent to Maori in a variety of other ways, that they were no longer free to dispose of their lands as they had been prior to 1840. At that time, Europeans who had married into a tribe had usually been given the use of land. In some cases this land now became subject to government investigation for title. Difficulties arose over questions of the rights of Maori widows, of inheritance, and of half-caste children. Did the latter, for instance, enjoy the full rights of British subjects, in which case did the ruling on surplus lands apply? Or were they a special case protected through their Maori mothers in customary rights associated with the original gift of the land?

Solutions decided upon by government were not always satisfactory.

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22 AJHR, 1948, G-8, p.42; see also Southern Cross, 16 September 1848, where a Maori is reported as having returned the purchase money.

23 Adams, pp.192-3; A. Ward, p.58.

24 The most notable cases were those of Edward Meurant and a Mr. Marshall.
It was also difficult for Maori to accept that by a valid sale to a European, their land, and any rights over that land, had passed permanently to the European buyer. One buyer, for example, encountered Maori resistance to the removal of manganese from some Whangarei land in 1844. When he protested that the land was his by purchase, the local Maori chief disagreed: the land had been purchased but not the stones. Although the European was willing to allow Maori access to the manganese which was used for dye, he was finally forced to settle the matter by giving the young chief, 'by written agreement', a cask of tobacco. Since the chief spoke English and clearly understood the nature of a contract, it is difficult to know whether he was simply 'giving it a try' or whether he genuinely believed that he still retained residual rights in the land. Some years later, the missionary, Chapman, referred to a similar instance when the ownership of loose stones on C.M.S. land in the Rotorua area was debated.

Problems associated with the extent of ownership also existed in those cases where land was resold by Europeans. The European concept of land as a commodity which could be exploited through resale was a new idea. With the exception of the rush of speculative purchases just prior to 1840, Maori land had customarily been alienated to Europeans to secure the benefits of a Pakeha presence close to the tribe. The arrangement was a personal one, hence in a number of cases when land was resold after 1840, Maori demanded another payment from the new owner. Sometimes this demand might be sparked off by the original articles of

25 E. Ashworth Journal, 28 January 1844, MS, ATL.
26 Chapman Journal, I, p.310, 14 December 1845; p.438, 1852, AUL.
27 For a full discussion of this see Parsonson, 'He Whenua ...', Part 2, Ch.7.
purchase wearing out, sometimes it would be stimulated by a real or
imaginary settler trespass on a Maori sacred spot (wahi tapu), or
infringement of other custom. But it was clear from a variety of
similar instances that the concept of a total alienation of land rights
through sale came to be accepted by Maori only after considerable
experience.

It became apparent to government in the early 1840s that Maori in a
number of areas were also beginning to show a more cautious attitude
towards land sales. Some refused to sell any land at all. Mohi
Tawhai of Waima took this stand at once in 1840, and anti-land selling
committees were formed in his area. By 1842, chiefs at Whangaroa
were refusing to sell. The following year, Kaitaia chiefs adopted an
even firmer line, strongly protesting against any more sales, declaring
their intention to exercise their previous rights and privileges over
their lands and objecting to government assuming any authority over their
possessions, including surplus lands. Clarke had warned the government
in 1840 that Maori were not prepared to sell land indiscriminately.
They wanted to retain coastal areas and swamp lands for the resources
associated with them and they were reluctant to alienate large tracts of
lands, for one of their major purposes in selling land was to secure the
closer association of Europeans and thereby stimulate the demand for

28 See e.g., N. Taylor, Appendix 14.
29 Buller Journal, 20 November 1840, MS Papers 180, ATL.
30 NA, MA-2, Register, 42/98.
31 H.T. Kemp to Clarke, 10 February 1843, Report, Appendix 4, p.125,
GBPP, 1844, (556); also Godfrey to Col.Sec., 10 February 1843,
in FitzRoy to Stanley, 18 December 1844, GBPP, 1845, (369), p.73;
Shortland to Stanley, 13 January 1845, GBPP, 1845, (108), p.7, where
Shortland expressed his concern about Maori reluctance to sell.
Maori produce and services of all kinds. To achieve such aims Maori were prepared to tolerate considerable settler provocation and to adjust to compromises in government negotiations. The ideal situation in regard to land described by Wiremu Neira, and probably hoped for by other Maori too, was one of reciprocity: 'We are now anxious that our lands should be secured to us, that a check should be put upon English urging us to sell those lands that we cannot part with; and when we do sell, we wish that the feeling of kindness should be mutual; when we dispose freely of our lands, let the English dispose freely of their property.'

There was a limit beyond which Maori refused to be pushed in matters concerning their land. In the New Zealand Company districts, Maori held out against considerable settler pressure, and challenged the extent of land claimed by the Company. At New Plymouth, Maori insisted that their favourite lands should be withheld from the Company, a concession that FitzRoy was prepared to make by reversing the original decision of Commissioner Spain. In the Wanganui area, Maori denied the sale of the eastern side of the river and warned the government: 'You may take our land, but you shall break our necks first.' In Wellington, Maori fought to retain control of pa sites and cultivations in the face of a barrage of settler might. Te Aro and Kumutoto chiefs appealed for government support and shrewdly courted official goodwill. But the

32 Clarke Report in Hobson to Russell, 13 November 1841, GBPP, 1842, (569), p.172, where Clarke notes that the Wellington situation exemplified this point.
34 FitzRoy, Remarks, pp.29-30.
36 See N. Taylor, p.243, where Best commented on this.
Kumutoto chief, Wi Tako, exasperated finally by one settler attack in the press, rose to the challenge: 'I ask you Pakehas, what did the Queen tell you? Did she say to you, "Go to New Zealand and fraudulently take away the land of the natives?" You say No. Then why do you encroach upon lands that have not been fairly purchased?'

In spite of the pledge to protect Maori rights given in the Waitangi agreement, there was clearly plenty of scope for Maori to feel that the promise was not being fulfilled. In the Wellington area, in particular, the government was forced by the New Zealand Company to accept a fait accompli as far as land claims were concerned. From the Hobson period through to Grey's term, evidence indicates that government was prepared to favour European interests at the expense of the Maori people from whom concessions were forced. The sudden influx of a comparatively large European population, which was ready to assert its rights over the local Maori to the point of using violence, was an unexpected development for Maori and made the southern districts generally a potentially explosive area from the very beginning of 1840.

In June 1843, these tensions between Maori and European led to conflict at Wairau. The New Zealand Company had decided to push ahead with the survey and settlement of land which they claimed in that area, but Maori demanded that the Company wait for Commissioner Spain's decision on the case. In the ensuing confrontation between Maori and Pakeha,

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38 e.g., Hobson to Russell, 13 November 1841 and encls., GBPP, 1842, (569), p.170; Buller Journal, 24 January 1840, MS Papers 180, ATL. Buller noted that the arrival of so many Europeans at Port Nicholson was 'perfectly new and astounding' to the Maori and 'calculated to create concern'. As far as the New Zealand Company settlers were concerned, FitzRoy noted that the prevailing feeling appeared to be 'anxiety for a collision'. FitzRoy, Remarks, p.17.

39 For the Wairau incident, see Wards, pp.74-78, 88-89.
twenty-two Europeans were killed, including Captain Wakefield and the Police Magistrate from Nelson. The Maori, led by Te Rauparaha and Rangihaeata, also suffered a loss of life, one of those killed being Rangihaeata's wife. The local settler community was outraged and the Wellington press cried out for the death of the two chiefs. But in February 1844, FitzRoy's final adjudication of the case, which the Colonial Office upheld, exonerated the Maori and laid the blame squarely on the Europeans. Although the facts of the Wairau incident supported this judgement, it was a decision that failed to meet the expectations of European and Maori. Many Europeans felt that it condoned and encouraged further Maori violence, while Maori felt that it indicated merely government weakness and inability to demand some restitution which was the response they had expected.

The clash of interests at Wairau, made the more dramatic because the participants happened to be leading members of their respective communities, left a lasting impression on both races. A year afterwards, George Clarke Junior noted that a 'deep-rooted prejudice and suspicion of each other's motives has been engendered (thereby) in the minds of both races, and a settled determination on the part of the natives to resist what they may consider acts of aggression or injustice by the settlers, especially in reference to the question of land'.

That Europeans should attempt to take Maori land by force was indeed a completely new idea for the Maori people as a whole and Maori responded with a new firmness of attitude that was apparent to Clarke when he assisted in negotiations for the purchase of the Otago block the following year. Tuhawaiki and Taiaroa, aware of the shortcomings in previous purchases made in

40 Clarke Jnr to Clarke Senr, 29 June 1844, in FitzRoy to Stanley, 18 December 1844, GBPP, 1845, (369), p.73.
Company districts, refused to sell the entire block and insisted that village cultivations, burial grounds and reserves should be clearly defined and specified in the agreement, as remaining in Maori hands. This demand for a more rigorous attention to the detail of the contract was also backed with a threat of force, an 'influential chief' assenting to the sale with the remark that 'if the pakehas did not make all straight, they had only to repeat the scene of the Wairau'. Such remarks, coupled with a more resolute Maori stance in other areas such as the Hutt valley, tended to reinforce a growing conviction amongst various sectors of the European population that the time was ripe for government to take a firmer line with the Maori.

Amongst a certain group of Maori in the north a parallel belief had taken root: that the time had come to make a stand against British sovereignty. In July 1844 a group of northern Maori, at the instigation of the chief Heke, cut down the flagstaff on Maiki Hill at Russell. The staff was primarily used as a signal station for ships, but Heke took exception to it because he regarded it as a 'tohu' (sign) that New Zealand had passed into British hands. In the following months his attitude was confirmed by the government's insistence that the mast be re-erected, even when it was brought down again at Maori hands three more times. The initial incident of July 1844 escalated over the next eighteen months into a major confrontation between Maori and European, with tribes in the north committing themselves to support Heke or the government (or

41 Clarke, Notes, p.62.
42 cit. Richmond to FitzRoy, 23 May 1844, in FitzRoy to Stanley, 10 December 1844, GBFP, 1845, (369), p.60. For the deed of sale and map, see pp.54-56.
43 J. Rutherford, Hope Heke's Rebellion, 1844-46, Auckland, 1947; Wards, Ch.4. Various printings of British parliamentary papers carried reports of the war: GBFP, 1845, (131), (517-II), 1846, (337), (448), (690).