



the STORY of the TREATY

part 1



THE TREATY OF WAITANGI
Information Programme

Introduction

This is the story of our founding document, the Treaty of Waitangi. It tells of the events leading up to the Treaty at a time when Māori, far outnumbering Pākehā, controlled New Zealand. It describes the essential bargain that was struck between Māori and the British Crown and what both sides hoped to obtain by agreeing to it. However, it does not tell the full story of what has happened since the signing of the Treaty in 1840: of the pain and loss suffered by Māori when the Treaty came to be ignored by successive settler-dominated governments in the nineteenth century, through to its renewed recognition in recent times. That story is told in another booklet in this series: "The Story of the Treaty - Part 2". The focus here is on the events and circumstances leading to the Treaty and on the

agreement contained within it. At the outset it should be noted that, while the steps leading to the Treaty are well known and have been thoroughly studied, historians do differ in what they see as the main developments and trends. Some historians, for example, emphasise the humanitarian beliefs of the 1830s; others draw attention to the more coercive aspects of British policy or take a middle course of arguing that while British governments were concerned about Māori, they were equally concerned about protecting the interests of Britain and British subjects. There is simply no one correct interpretation of the events leading up to the Treaty.

The Treaty of Waitangi is New Zealand's founding document. Over 500 Māori chiefs and representatives of the British Crown signed the Treaty in 1840. Like all treaties it is an exchange of promises; the promises that were exchanged in 1840 were the basis on which the British Crown acquired New Zealand. The Treaty of Waitangi agreed the terms on which New Zealand would become a British colony.

This is one of a series of booklets on the Treaty of Waitangi which are drawn from the Treaty of Waitangi Information Programme's website www.treatyofwaitangi.govt.nz.

Many historians have contributed to the material in these booklets to ensure it is as accurate and balanced as possible. Their contribution is gratefully acknowledged.

Further copies of this booklet are available from:

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▲ The Treaty House, Waitangi, circa 1900.
Photographed by JB (full name unknown).
ATL: PAColl-5471-017.

◀ Hone Heke and Patuone 1847.
Heke was the first chief to sign the Treaty of Waitangi.
Artist: George French Angas.
ATL: PUBL-0014-01.

The New Zealand frontier in the 1830s

In the 1830s, New Zealand was a very different country to the British colony that was to emerge after February 1840. Although the Māori world was changing, it was still a Māori New Zealand in the decade before the Treaty. At this time, the Māori population is estimated at around 100,000. Resident Europeans, however, were few in the early 1830s – perhaps no more than 200 around the North Island coast. The decade brought increased European contact, trade and settlement. Estimates for 1839 give 2000 European settlers in the country, 1,400 of them in the North Island, with nearly 30 shore whaling stations dotted along the coast at that time. The European population had thus grown rapidly but by the end of the decade it was still only tiny compared with the Māori population.

During the 1830s, Māori society and social structure remained in many ways what it had been.

Māori were divided into a number of major iwi (roughly translated as "tribes"). Historians of the present day tend to emphasise that these "tribes", often hostile to one another, were in fact composed of comparatively small units, hapū and whānau, who were themselves often in conflict.

However, in other respects, the period from 1820 to 1840 was a time of dynamic change for Māori. Some historians have pointed to a series of significant events which took place in New Zealand at this time, in which Māori people, led by their political, economic and religious leaders – ariki, rangatira and tohunga – were engaged in what became a radical transformation of culture and society. It was a time of openness to the world at large. It was at this time that a relationship between the British Crown and the chiefs of New Zealand was forged, as can be seen from the meeting of chiefs with King George IV in 1820, and

Thoms's whaling station, Porirua.
Artist: H. Melville after S.C. Brees, c1842-1845.
ATL: PUBL-0020-05-3.



the petition of 13 chiefs to King William IV in 1831, seeking his formal protection.

In the 1830s, British missionaries introduced Māori to literacy (in Māori), with the translation of parts of the Bible. With literacy came new ideas and concepts, drawn both from the Bible and from the wider world. Māori who travelled overseas to New South Wales and England enlarged their experience of commercial matters, the role of monarchy, alternative systems of law and alternative political systems, including how indigenous peoples were treated. Some historians have suggested that, from a Māori understanding of the events of 1820 to 1840, the Treaty clearly becomes part of a negotiated relationship, and not the beginning of European power and the end of Māori sovereignty.

Up to the late 1830s, Pākehā (Europeans) came to New Zealand mainly to exploit the country's natural resources – first seals (in the far south) and whaling, then timber, flax and fisheries. From around the early 1820s, British and American sperm whalers used northern harbours to refit and refresh. By 1830 Kororāreka (now known as Russell), located at the Bay of Islands in the territory of the Ngā Puhī people, was a well established trading and whaling port. In a single day a dozen or more ships might anchor and several hundred men would be ashore. New Zealand trade, in terms of both

exports and imports, began to grow rapidly and became increasingly important to the merchants and capitalists of New South Wales.

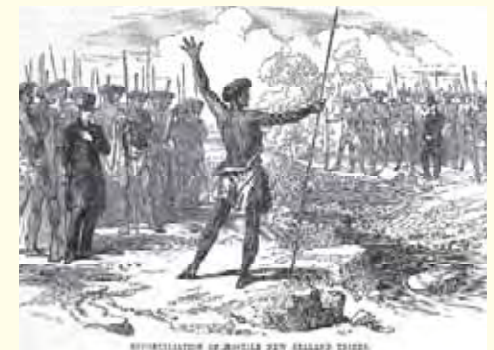
The New Zealand frontier was a rough world, with the mixed population and riff-raff typical of all nineteenth century frontiers. The whaling trade brought men of a number of nationalities to New Zealand, not only British but also French and Americans, and many Māori became involved in the trade, both working on the ships and supplying whaling vessels with pork, potatoes and other commodities.

From 1818, northern Māori war parties, increasingly armed with muskets, waged devastating armed attacks on tribes further south, setting off the migration or resettlement of a number of tribes as well as creating a kind of arms race as all groups competed to obtain European weapons. The period of major population displacements came to an end in the mid-1830s, the last such episode being the conquest and settlement of the Chatham Islands by Ngāti Mutunga and Ngāti Tama, but inter-Māori conflict certainly continued until 1840 and beyond. Some historians believe that a kind of military equilibrium was reached once all tribes had access to the coveted muskets, but even if this is correct it did not mean that inter-Māori conflict ended once all the tribes had European weapons.

The visit of the chiefs Hongi Hika and Waikato to Britain, 1820.
Artist: James Barry.
ATL: G-618.



A scene near Hauraki showing Archdeacon Brown with members of the Tauranga tribes, 9 April 1851.
Artist: J. Johnston. ATL: PUBL-0006-1884-022.



The formation of British policy

British policy towards New Zealand in the 1830s was mainly determined in London, but the role of the colonial governors of New South Wales must not be overlooked. New South Wales was founded as a penal colony in 1788. By the 1830s, Sydney was a substantial town with a large merchant and commercial community. Many of these merchants had interests in New Zealand and the Pacific. The governors of New South Wales tended to see New Zealand as part of their unofficial sphere of influence and were concerned about the activities of British subjects there. To the British Government, New Zealand was a very minor issue, but the New South Wales Government sometimes found that developments in New Zealand could not be ignored.

In Britain during the 1830s various groups, broadly called "humanitarian", had huge effects on policy. The humanitarians were convinced that Māori, like other indigenous peoples in Africa and the Pacific, were under grave threat of virtual annihilation from the moment that European explorers and traders touched their shores. Although they had only a limited understanding of how epidemic diseases spread, the humanitarians and their parliamentary supporters were well aware that European contact had led to the collapse of some indigenous societies in the Americas and southern Africa and the near extinction of some peoples. The same patterns had been repeated in Australia.

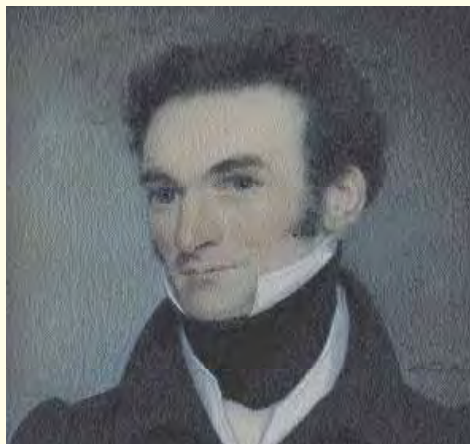
Lord Glenelg, Secretary of State for War and the Colonies in the late 1830s, was one of a group of humanitarian Anglican evangelicals prominent in British politics at the time.
Artist: Thomas Clement Thompson. ATL: C-021-011.



The powerful anti-slavery organisations in England, having achieved their goal of abolishing slavery in the British empire in 1834, continued in the form of the Aborigines Protection Society, which aimed to improve the condition of the indigenous peoples of the British empire. Australia and South Africa were particular areas of concern. The influence of the humanitarians in parliament, culminating in the 1836 Report from the Select Parliamentary Committee on Aborigines (British Settlements), was a dominant influence on British policy in New Zealand in the 1830s.

The humanitarians opposed the formal colonisation and settlement of New Zealand, fearing a repeat of what had happened in the Cape Colony and Australia, and for some years they successfully blocked the efforts of entrepreneurs such as Edward Gibbon Wakefield to obtain official support or at least approval. While the British Government supported trade with New Zealand at this time, it did not favour settlement. British imperial policy favoured an empire of commerce based on free trade, not an empire of settlement. Such colonies could either break away (as the United States had) or involve Britain in unwanted expense and trouble (as was the case in South Africa).

James Busby.
Artist: Richard Read.
Private collection, courtesy ATL: NON-ATL-P-0065.



Meanwhile, the authorities in New South Wales had tried to regulate the inevitable difficulties between traders and Māori by such legal devices as naming some missionaries and some Bay of Islands chiefs as Justices of the Peace, extending the authority of the New South Wales courts to New Zealand in some circumstances, and actively supporting the British missionary organisations (of which the most important in New Zealand was the Anglican Church Missionary Society, the CMS).

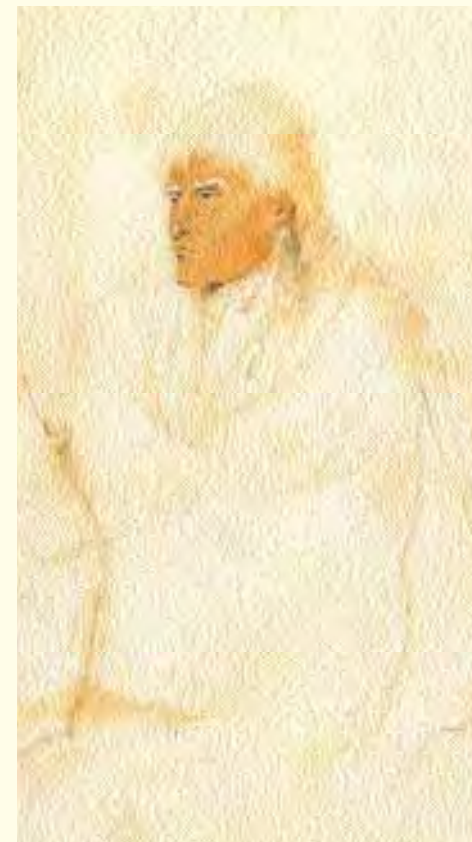
There were legal difficulties, however, about the "extra-territorial" jurisdiction of the New South Wales courts. This became especially serious when British subjects became notoriously involved in tribal warfare but were able to escape prosecution in Sydney. The most important of these cases was that of Captain Stewart of the Elizabeth, who assisted the Ngāti Toa chief Te Rauparaha and his allies in an attack on Ngāi Tahu in which many of the latter were killed. This episode convinced the New South Wales Government that, somehow, a stronger official presence in New Zealand was needed. With the agreement of the British Government, James Busby was appointed as British "Resident", equivalent to a consular officer.

Busby was expected to apprehend escaped convicts and other evil-doers and return them to New South Wales. However he was provided with no police or other resources. In effect he was there to stand guard over a British flag. He rarely went far from the Bay of Islands and was on bad terms with both New South Wales Governor Bourke and with some of the missionaries. James Stephen at the Colonial Office looked forward to replacing him with somebody more able.

Māori society had its own systems of law, authority and regulation. Busby, however, had the responsibility of trying to organise the Māori chiefs into something more recognisable to the British as a settled form of government. He was to encourage chiefs to make western-style "laws" and enforce them themselves, backed by periodic visits from a warship from the Sydney Royal Navy squadron.

However, Busby had very little power at his disposal and even the New South Wales Government sometimes took action in New Zealand without bothering to consult him. One contemporary described Busby as a "man-o'-war [naval warship] without guns". But Busby did make good use of opportunities and one came in 1835, creating what some historians suggest was a show of Māori unity in the Declaration of Independence of New Zealand.

Te Rauparaha in 1842.
Artist: J.A. Gilfillan.
ATL: A-114-023.



The Declaration of Independence (1835)

The Declaration of Independence of New Zealand was a document in the Māori language, titled He Wakaputanga o te Rangatiratanga o Nu Tirene. The need for the Declaration appears to have been triggered by the activities of an eccentric Frenchman, Charles de Thierry, who claimed that he would set up a "sovereign and independent state" in the Hokianga district. De Thierry's actions caused considerable concern to local chiefs (rangatira). Busby seems to have used this threat as an opportunity to carry out the part of his instructions that asked him to set up "a settled form of government" among the Māori people. By his own account, he saw this as a means to make the country "a dependency of the British Empire in everything but name". Busby's aspirations should not be taken to reflect official policy, however.

The Declaration of Independence was initially signed by 34 northern chiefs at Waitangi on 28 October 1835. Signings continued and when the last chief had signed it on 22 July 1839 there were a total of 52 names on the Declaration, including that of the Waikato Tainui ariki, Te Wherowhero.

The Declaration, among other things, declared that all sovereign power and authority in the land – "Ko te Kingitanga ko te mana i te w[h]enua" – resided with the chiefs "in their collective capacity", expressed as the United Tribes of New Zealand. The Declaration stated that the chiefs would meet annually at Waitangi to make laws and noted that the document was to be sent to King William IV. In return for the "friendship and protection" that Māori were to give British subjects in New Zealand, the chiefs invited the king "to continue to be the parent (matua) of their infant state and its Protector from all attempts upon its independence". However, one Māori scholar has noted that "matua" should not be translated as the paternalistic meaning of father, but rather, is referring to the experience of the father and the inexperience of Māori in this area of government. Busby sent the Declaration to the King, and it was formally acknowledged by the Crown in 1836.

Busby and the chiefs may, therefore, have had different objectives with the Declaration. Busby saw it as a step towards making New Zealand a British

The French ship La Favourite entering the Bay of Islands, 1835.
Artist: Edmond Francois Paris.
ATL: PUBL-0133-067.



Two Māori with rifles beneath a flagpole flying the White Ensign, New Zealand's first flag, 1834.
Artist: Edward Markham.
ATL: MS-1550-120.



possession, while the chiefs saw it as a guarantee by the Crown of their independence, as a strengthening of their relationship with the British Crown and a promise of protection. Symbolically, the Declaration has come to mean a great deal to many Māori people. In retrospect, Māori have looked to the Declaration as British recognition of an independent Māori nation. They have also used it on occasion as the foundation for their assertion of autonomous rights, or mana motuhake. Some historians suggest that, irrespective of the initial impetus, it is important to look to the actions of the chiefs in choosing to sign. In this respect the Declaration is seen as a significant step towards nationhood, even if in embryonic form.

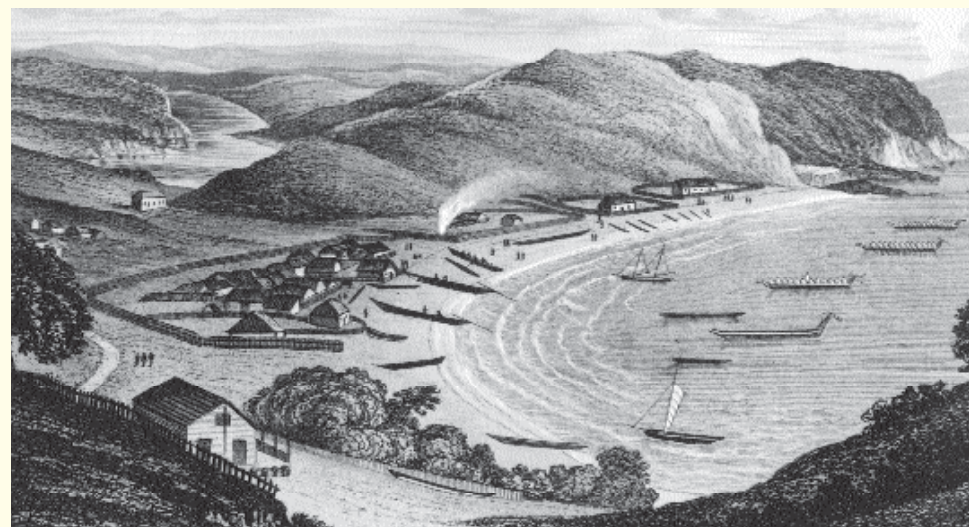
However, most historians agree that at the time the Declaration had very little practical effect. Even before they left the meeting where the Confederation constitution was drawn up, the chiefs told Busby not to expect any individual chief to subordinate his mana to that of the Confederation. Busby continued to collect signatures, but there is no evidence that the Confederation was ever convened again, except at the time of the signing of the Treaty

of the Bay of Islands, such as it was, was more in the hands of the Kororāreka Association of local settlers, working with Busby and with some of the local chiefs. No functioning New Zealand-wide government came into existence as a result of the Declaration. Effective sovereignty lay not with the United Tribes but with the chiefs of the individual iwi and hapū.

The Declaration was printed and published in 1836 and 1837, but some historians suggest it was never taken seriously until, in 1840, it proved to be an impediment to the annexation of New Zealand. The primary purpose of the Treaty, in fact, was to revoke the Declaration so as to permit the transmission of sovereignty to Queen Victoria. For that purpose the names of the chiefs who had signed the Declaration (or their successors) were called from Busby's private list on a (1836) printed copy. Many of their names are at the head of the Waitangi Treaty Sheet.

of Waitangi in February 1840. Law enforcement in

Kororāreka, Bay of Islands, New Zealand, 1838.
Artist: Joel Samuel Polack.
ATL: PUBL-0115-1-front.



The lead-up to the Treaty

Two key developments in the later 1830s were British Government concern about the acquisition of land by British subjects and other Europeans in New Zealand, and the activities of the New Zealand Company with its programme of "systematic colonisation". The land purchase problem and the determination of the New Zealand Company to send settlers to New Zealand meant that the British Government could no longer let matters drift. As well as these issues, the long-standing problem of law and order continued to be a matter of official concern.

From the beginning of contact between Māori and Pākehā, there had been dealings in land. By the time of the Treaty there were four main types of land transactions. First, there were the arrangements made between chiefs and the missionary

organisations, arising from the needs of the missionary organisations for land for missionary stations, buildings and farms. There were also small-scale commercial transactions when whalers, timber millers and merchants acquired pieces of land, sometimes for purely commercial purposes but sometimes as property for their part-Māori families. As British intervention became more likely by the end of the 1830s, New South Wales capitalists such as William Wentworth became involved in land speculation, buying up large areas in the hope of converting them to secure titles later. In a class by themselves were the massive and very controversial acquisitions of the New Zealand Company in central New Zealand in late 1839-40. Some missionaries, too, against orders from London, began to reserve tracts of land for tribes to prevent such sales.

Port Nicholson, showing the site of the town of Wellington, the river of the Hutt and adjacent country, taken from charts and drawings made from Wakefield's survey, 1839. Artist: Charles Heaphy. ATL: C-029-006-b.



As with the Treaty itself, these land transactions may not have meant the same thing to European "purchasers" and Māori "sellers". Historians do not all agree on this point, but many historians (and the Waitangi Tribunal) consider that Māori saw the transactions not as permanent alienations but more akin to use-rights, as part of a reciprocal relationship between tribes and the particular Europeans who traded with and lived among them. The issue of land transactions caused the British Government increasing concern, resulting in a special inquiry by the House of Lords in 1838. They saw that the transactions could result in increasingly serious confrontation and violence in New Zealand, something the British Government, influenced by humanitarian ideals, wished to avoid. It is significant that a key feature of the Treaty of Waitangi was the imposition of Crown pre-emption (the exclusive right of land purchase) in New Zealand, making it clear that private settlers could not buy land directly from Māori: instead, Māori could sell land only to the Crown. This was seen as a way of bringing order into an increasingly confused and disorderly situation.

Crown pre-emption was, in any event, standard practice in all British colonies and former colonies. In the United States, for example, direct purchases of Indian lands by private buyers and local and state authorities were legally invalid.

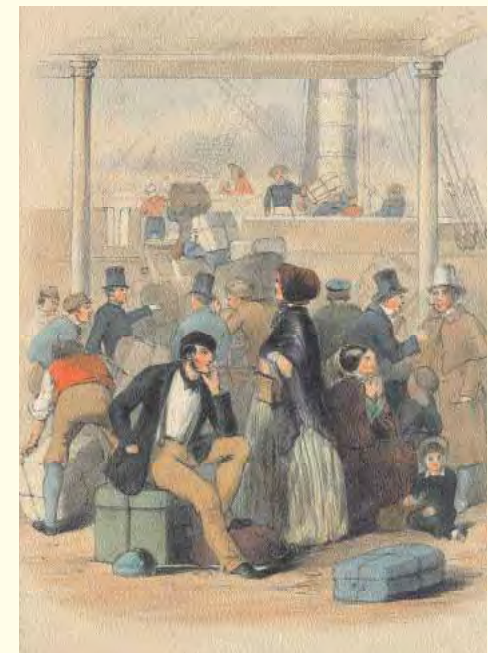
The New Zealand Association, which took shape in 1837, became the New Zealand Colonisation Company in 1838. The internal history of the Company and its relationship with the British Government are both complex stories in their own right. The promoters of the Company, led by E.G. Wakefield, believed in emigration as a cure for Britain's social problems. Those involved in the Company had already established a successful colony in South Australia (1834) and now formed comprehensive plans to create British settlements in New Zealand. In late 1839, several hundred Company settlers, with no official approval, set out for New Zealand.

At the same time as the British Government had been carrying out inconclusive negotiations with the

New Zealand Company, it had also been considering a number of options relating to annexation of New Zealand. (Again, it is important to remember that New Zealand was not a major concern of the British Government or even of the Colonial Office, which was much more preoccupied with South Africa and Canada). The exact form of British intervention was a matter of debate. In 1837, Captain William Hobson, commander of HMS Rattlesnake, who visited New Zealand in May of that year, had suggested to the Governor of New South Wales that the Crown should acquire "a legal title to some few districts, especially at the Bay of Islands". These "Factories", a term meaning small-scale commercial and trading settlements, would allow British courts to be established and British authority to be slowly spread over a wider area.

The decision to annex at least some of New Zealand dates from 30 May 1839, and was made by Lord

Embarking for the land of Gold. Taking leave of old England, 1852-1860. Artist: E. Noyce. ATL: E-079-002.



Normanby, the Secretary of State for the Colonies at that time. In June 1839, Letters Patent, a type of proclamation, were signed by Queen Victoria. These altered the definition of the boundaries of New South Wales to include "any territory which is or may be acquired in sovereignty by Her Majesty within that group of islands in the Pacific Ocean commonly called New Zealand". This meant that when the Crown's sovereignty over New Zealand was proclaimed in 1840, New Zealand technically became part of the existing colony of New South Wales.

The drafting of Hobson's instructions took place in mid-1839, and they were formally issued to Hobson in August. The departure of the New Zealand Company ships to the Cook Strait region resulted in Hobson being instructed to secure the whole of New Zealand if he thought fit. How much discretion Hobson actually had, however, is a matter of debate. The instructions strongly suggested that cession of the whole country was desirable and was in the best interests of Māori. The British Government had come to the conclusion that, by this time, Māori sovereignty was "little more than nominal" and that the benefits of British protection "would far more than compensate for the sacrifice, by the natives, of a national independence, which they are no longer able to maintain".

The Cuba at anchor at Port Nicholson heads, 1840.
Artist: Charles Heaphy.
ATL: A-144-003.



British policy and the Treaty

The immediate concerns of land purchasing and the New Zealand Company did not mean that humanitarian ideals were lost sight of. In fact, such ideals were emphasised in the drafting of the Treaty when it was prepared in February 1840. Britain needed legal authority to deal with her own subjects and was also concerned to take steps that would prevent other European states claiming the country (in particular, France: a French colonisation company was also heading for New Zealand at this time). Protecting Māori was also seen as important. The British Government intended to guarantee Māori land rights and was strongly influenced by new thinking about systematic colonisation. One aspect of the latter was that it was seen as essential that land purchasing be strictly controlled and supervised by the Crown.

The British Government (influenced to some extent by its missionary advisors) reached the important conclusion in 1839 that it was both futile and undesirable to keep Māori and settlers apart. The Government recognised that it had only a limited ability to control the activities of European settlers. British officials and governments considered it futile

to protect Māori people by isolating them on "reserves", where they could be left alone to practise a version of their culture already damaged – so it was assumed – by guns and alcohol. Such "reserves" would in any case be swept away by the settlers, as they had been in the Americas and Australia. It was decided that colonisation in New Zealand would be done differently.

By 1839, Māori and settler were already intermingled in the main ports and harbours, engaged in trade and commercial agriculture. One Māori farmer, Rawiri Taiwhanga, a Treaty signatory, had already taken up dairying and was selling milk and butter to Kororāreka before 1840. Aware of this process of intermingling and trading, British government policy was to develop it further to encourage Māori to "amalgamate" with settler society, continue their education under the missionaries and (so it was hoped) prosper together with the settlers. Even the New Zealand Company planned that Māori in its settlements would be given one in ten sections of the new subdivisions, not as 'reserves' in an American or Australian sense but rather as investments that would grow in capital value and be the real payment for the land occupied by the settlers.

Māori performing a dance on board the French ship the Astrolabe at Tologa Bay, 1833.
Artist: Louis Auguste de Sainson.
ATL: B-052-021.



Queen Victoria around 1841.
Artist: William Charles Ross.
ATL: 1/2-055839.



Signing the Treaty

When William Hobson arrived in the Bay of Islands on board HMS Herald on 29 January 1840, he had the status of Lieutenant-Governor of a colony that did not yet exist and the extent of which had not been decided. His instructions from Lord Normanby (the actual drafting of which was done by James Stephen of the Colonial Office) required him to take possession of the country, with the consent of the Māori chiefs. He was not, however, given a draft treaty text to take with him. On the way to New Zealand, Hobson stopped at Sydney and had detailed discussions with Sir George Gipps, the Governor of New South Wales. Gipps had then issued a proclamation stating that titles to land in New Zealand had to derive from a grant from the Crown.

On his arrival at the Bay of Islands, Hobson relieved Busby of his authority as British Resident and asked for his cooperation in the preparation of formal proclamations (in English only) that Hobson had

taken over as Consul and Lieutenant-Governor, and that no further land claims would be recognised until they had been approved by the new authorities. The CMS mission printer, William Colenso, was asked to prepare these proclamations and also to prepare a printed circular letter (in Māori only) to the "high chiefs" of the "United Tribes" announcing that a "rangatira" from the Queen of England had arrived "hei Kawana hoki mo tatou" (to be a governor for us). The chiefs were invited to meet him on the next Wednesday (5 February) at Busby's house at Waitangi.

Hobson and his Secretary, J. S. Freeman, prepared some notes for a treaty of cession to be signed by the chiefs who were to meet, and it was taken for comment to Busby. Busby said that it was not satisfactory for the purpose at hand, and offered to improve it. This was done on 3 February and resulted, on a second attempt, in a treaty of three

The signing of the Treaty of Waitangi, 6 February 1840.
Artist: Marcus King. ATL: C-033-007.



clauses together with a long and cumbersome explanation of what it meant. Hobson, not satisfied with that, added a different explanatory preamble, retaining the three articles as Busby had drafted them and finished the document with a short attestation clause.

A copy of this draft was then given to Henry Williams and his son Edward to translate into Māori on 4 February. On 5 February, Hobson had ready a text of the Treaty of Waitangi in Māori for a meeting that day of the chiefs at Waitangi. The Treaty was presented to some 500 Māori and was debated late into the night. Hobson had expected the chiefs to mull over the subject for three days but was called back on the 6th because the chiefs wished to go home. On that day it was signed by an estimated 40 chiefs. It was next taken to Waimate North and then to a major meeting at Hokianga Harbour, where further signatures and marks of agreement were

added. It is important to understand that the Treaty was not signed only at Waitangi but was widely circulated around the country. Two hundred copies of the Treaty were printed on 17 February. There was a meeting at Waitematā Harbour (Auckland) in early March, and more agreements were obtained.

Either on 6 February or a few days later, a copy of both the Māori text and a translation back into English was prepared by Henry Williams for Governor Gipps in New South Wales, with signatures of both Hobson and Williams, who authenticated it with the words: "I certify that the above is as literal a translation of the Treaty of Waitangi as the idiom of the language will allow". (Public Record Office, London, CO 209/7, 13-15.) This back-translation is the "official" text of the Treaty in English.

Many commentators say that the Treaty was drawn up hastily and by amateurs. Other historians believe that this is misleading. They note that Gipps and

The first Government Settlement on the Waitemata River, 1 October 1840.
Artist: John Johnson. ATL: E-216-f-115.



Hobson were well aware of previous treaties signed by the British with local authorities in various parts of Africa and Asia. These historians also draw attention to Normanby's instructions, which had been prepared with very great care, as an important guideline especially on the land question. They conclude that Hobson and his advisors knew exactly what they were doing when they drafted the English text of the Treaty. Similarly, some historians suggest that it is not entirely correct to say that the Māori text was hastily drafted. They note that although it was certainly done in one night, it was done by men who were familiar with the Māori language. Other historians draw attention to the use of the particular type of missionary Māori language used at the time as an insight into the use and meanings of key words. Clearly there can be no dispute, however, that the entire process from its drafting and translating to the Treaty's initial signing on 6 February 1840 occurred within a matter of only a few days.

Williams and the chiefs had spent much of the night of 5 February talking about the Treaty and its consequences. Some historians suggest that if Williams had believed, in the light of that discussion, that the Māori text was seriously misleading, he may have recommended changes before the signing. This did not occur. Other historians suggest that it

The power of God's word, 1856. Henry and William Williams calming hostile Maori by speaking extracts of the Bible in Maori. Artist: Unknown. ATL: PUBL-0151-2-013.



is possible that Williams chose ambiguous wording in order to secure Māori agreement, believing (as did most missionaries at the time) that Māori welfare would best be served under British sovereignty. The tendency today is to focus on the differences between the English and Māori texts, especially with regard to the crucial question of sovereignty, but at the time these differences did not seem to be of such significance. It may be that it was the oral discussion and Williams's explanation that mattered more at the time than any differences between the texts. It is also important to bear in mind that the Treaty was never intended to be a blueprint for the future colonisation of New Zealand. On the contrary, it was seen by the British as one of a series of preliminary steps to transfer sovereignty from a large number of sovereign individual chiefs to a centralised authority, which could then begin to exercise that authority in the interests of both the chiefs and their people and the settlers.

On 1 March, Hobson suffered a stroke and collapsed. Governor Gipps then sent Major Thomas Bunbury to New Zealand with a small detachment of troops, who arrived on 16 April. Bunbury sailed on the Herald as far south as Stewart Island, collecting further signatures. Altogether, there were about 50 meetings around the country over a seven-month period in 1840 – starting in February and ending in September.

More than 500 chiefs – including a number of women – gave their agreement on one of the nine Treaty copies that have survived. The originals are now held by and are on display at Archives New Zealand in Wellington. Because names can be difficult to decipher, it is not possible to give the exact number of Māori who signed. Almost all of the chiefs who signed the Treaty signed a Māori-language copy, except for 39 Waikato chiefs who signed an English-language version at Manukau Harbour and Waikato Heads (although a printed Māori copy might also have been available). Each copy was also signed by European witnesses, who varied from place to place.

The Treaty text

The written text of the Treaty in Māori differed from that of the Treaty in English. Some scholars have gone so far as to argue that there are really two treaties, "Te Tiriti", the Māori version, and "the Treaty", the English version. Legally, however, there is certainly just one Treaty, and the textual differences have to be harmonised by means of a number of standard techniques used to interpret documents. Current references to the Treaty in statute seek to bridge the differences by referring to the "principles" of the Treaty, these being the core concepts that underpin both texts.



The Treaty of Waitangi - The Waitangi Sheet. Archives New Zealand: IA 9/9.

Article 1

In the Māori text of the Treaty, the chiefs gave the Queen "te Kawanatanga katoa", the governance or government over the land.

In the English text of the Treaty, the chiefs gave the Queen "all the rights and powers of sovereignty" over the land and all the peoples in it.

Article 2

The Treaty in Māori confirmed and guaranteed "te tino rangatiratanga", which might be interpreted as the exercise of chieftainship, "tino" meaning full or entire and "rangatira" meaning a chief, over their lands ("wenua", now spelled whenua), villages ("kainga", although this word may have had a more extensive meaning at that time) and all property or treasures ("taonga katoa"). Māori also agreed to give the Crown the right to buy land from them should Māori wish to sell it. However, whether the Māori text clearly conveyed the full implications of the concept of Crown pre-emption (the exclusive right of land purchase) is uncertain.

Article 2 in English confirmed and guaranteed the "exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties". Furthermore, the chiefs agreed to "yield to Her Majesty the exclusive right of Pre-emption" over "such lands as the proprietors thereof may be disposed to alienate".

Article 3

In the Māori text, the Crown gave an assurance that Māori would have the Queen's protection and all rights – "tikanga" – accorded British subjects. This appears to be an accurate translation of the English.

The differences between the texts

The differences between the texts are significant and are given much emphasis today. Some historians suggest it is clear that the Treaty text, in using "kawanatanga" and "rangatiratanga", did not spell out the implications of British annexation. But it is not clear how much notice of the precise wording was taken at the time. The Treaty was principally a diplomatic and political instrument, intended to underpin or reflect an agreement with the Crown to embark on something wholly new, to create a nation-state in New Zealand where no functioning nation-state existed. In that sense, the Treaty indeed embodied a partnership in which the Crown would have its place and the chiefs and tribes would have theirs. Some historians argue that much of the modern scrutiny of the words and phrasing of the

Treaty derives from a later, textually-oriented, understanding of the Treaty, rather than an understanding derived from those who participated in the making of the Treaty in 1840. The Treaty was intended to be a broad-brush agreement or a compact in which various principles or understandings were implied, and this may well be its greatest strength. As is also emphasised by some scholars today, it is the spirit of the Treaty that matters most and that is supposed to override the ambiguities and differences of emphasis within the texts.

Ngāti Toa chief Te Rangihaeata addressing Sir George Grey at Waikanae, 1851.
Artist: Richard Aldworth Oliver.
ATL: PUBL-0032-02.



The reasons for signing and not signing

To fully understand the Treaty of Waitangi, it is important to consider not only the objectives of the British Government and Crown officials but also of Māori. What did the 500 or so Māori chiefs from all over the country who signed the Treaty hope to obtain? And why did some chiefs not sign it?

Chiefs based their decision to sign the Treaty (or to refuse to sign) on the terms of the Treaty presented to them, the Māori text, on explanations given by Crown representatives and advisors, and on their own assessment of the benefits to be gained by agreement. The latter two factors varied. Those who agreed to sign, therefore, did so for reasons that varied from one region to another. Many who did sign were fearful or uncertain of the outcome.

One issue on which there seems to have been real confusion was Crown pre-emption (the exclusive right of land purchase). On only one occasion, it seems, when Captain Bunbury took the Treaty to Tauranga, was this discussed comprehensively. It is possible that those who explained the Treaty to Māori did not themselves fully understand the implications of this legal doctrine. Māori in some areas believed that they had agreed only to a right of "first refusal", that is, if the Crown was unable or unwilling to buy a particular piece of land at a price the Māori owners regarded as fair, then it could be sold freely to private buyers. As a matter of law, however, the pre-emption doctrine is not a right of first refusal: it means that land held under customary title can be sold only to the Crown or not at all.

Generally, those charged with explaining the Treaty to Māori stressed the advantages of bringing British subjects under the control of the Crown, something the chiefs had been asking for since 1831. They played down the impact of the British acquisition of sovereignty and its likely consequences for Māori. The second article seemed to assure Māori that the position and authority of the chiefs was recognised and protected by the British Government. Missionary assurances that the Treaty would be of benefit to Māori were significant in overcoming the caution

that many chiefs felt. To some chiefs, and especially amongst the Northland tribes, the Treaty was seen as a sacred bond or covenant directly between the chiefs and Queen Victoria. Many who signed were devout Christians who did not differentiate between the Crown and the teachings of Christianity.

Māori who signed had clear expectations of how this new covenant with the Crown would bring benefits. There would be a sharing of authority in the land, which would enhance the mana of the chiefs. The country would be protected from acquisition by other foreign powers. A kawana (governor) like the one in New South Wales would control Europeans, especially European land buyers, who were causing difficulties in some areas. He would also transact land if Māori wanted settlers, as some did, especially where the ownership of land was disputed. The Treaty would bring settlement and more markets for Māori produce and more goods to buy, and it would increase demand for Māori to provide services essential to settlement, such as rush cottages and access tracks. Some chiefs noted that the contact period since 1769 had changed the Māori lifestyle, that change would continue, and that the clock could not be turned back.

Taraia Ngakuti te Tumuhua. Taraia did not sign the Treaty, 1860-1872.
Photographed by Unknown. ATL: PA2-2820.



Final formalities

As far as British law and practice was concerned, it was not the signing of the Treaty that transferred sovereignty to Great Britain but rather certain formal actions taken later in the year. The Treaty, however, provided the prerequisite for the proclamations of sovereignty.

The New Zealand Company, without any sanction from the British Government, had carried on with its plans. In late 1839 and early 1840, before the Treaty was signed, it entered into a number of land purchase deeds signed at Port Nicholson, Kapiti and Queen Charlotte Sound, with the aim of purchasing from Māori a huge area of the North and South Islands. It had then, also without government approval, sent a fleet of emigrant ships to Port Nicholson, establishing the new settlement of Wellington.

It was this that led Hobson to decide that it was necessary, as a matter of urgency, to proclaim sovereignty over the whole country so as to leave the settlers at Port Nicholson in no doubt that they were bound by British Government policy and were not entitled to regard themselves as forming an independent colony. Hobson took this step while the various Māori texts of the Treaty were still being taken around the country for signing. On 21 May 1840, he proclaimed British sovereignty over the North Island "by cession" and over the South Island "by discovery". However, the Treaty was certainly taken to the South Island, and in June Captain Bunbury, unaware of Hobson's actions, separately

proclaimed British sovereignty over the South Island by cession.

The last formal steps were taken later in the year when the boundaries of the colony of New South Wales were formally altered to include New Zealand. For the time being New Zealand formed part of New South Wales, although in 1841 it was re-established as a separate Crown colony in its own right.

While these last formal steps were being taken, the practical effects of the Crown's authority were beginning to become clear. Some aspects of it were welcomed by Māori, others were not. The chiefs in the Bay of Islands were unhappy that Crown officials collected revenue from ships coming into the Bay but prevented the chiefs levying duties on the ships themselves as they had done before 1840. They were also unhappy about the regulations controlling the felling of kauri trees. Nevertheless, they tended to cooperate with British military and civil authorities over the control of petty crime and over trespass on Māori land. In Wellington and Nelson particularly, the Crown's control of settler encroachment checked the sporadic violence that had broken out when Māori had refused to vacate their pā and cultivations to make way for the New Zealand Company's subdivisions. Māori leaders also cooperated with the Land Claims Commissions that were set up to investigate the legal validity of pre-Treaty land purchases, attending the hearings and testifying as to their understandings of the early deeds.

A view of the feast given by the Governor to the natives, 13 February 1840.
Artist: Richard Taylor. ATL: E-296-q-169-3.



Kororāreka, 1840.
Artist: Louis Auguste Marie Le Breton. ATL: PUBL-0028-183.



Breakdown of the Treaty relationship

The following brief account is intended to give a summary of the events from 1840 until the modern Treaty period, commencing in the 1970s. This is fully covered in another booklet in this series: The Story of the Treaty - Part 2.

To what extent was the precise wording of the Treaty of importance in this early period? The indications are that the text was less important than the broader relationship between Māori and the Crown recognised by the Treaty. The chiefs expected to have their mana and their property rights respected, and when this happened they were prepared to cooperate with the Queen's representatives. For its part, the Government showed some willingness to depart from the details of the Treaty text if they thought Māori wished it. In 1844, Governor FitzRoy temporarily waived Crown pre-emption in order to allow direct purchasing of Māori land by settlers. By the Native Exemption Ordinance, FitzRoy modified

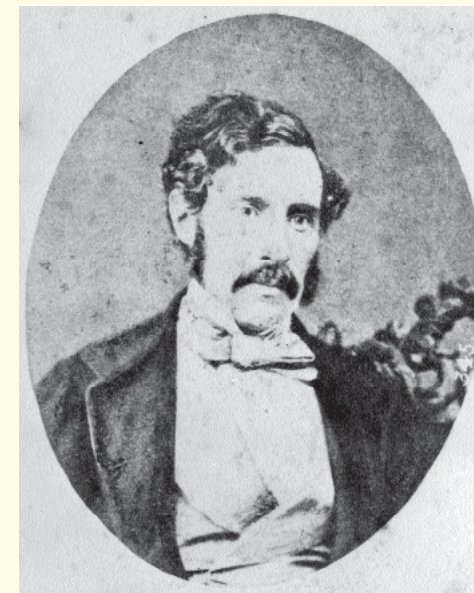
the law of criminal justice to involve the chiefs in its administration, a matter of practical necessity at the time but one not unwelcome to the chiefs. Governor Grey continued FitzRoy's policies with his Resident Magistrates Ordinance of 1847. Some aspects of tikanga (Māori customary practice) came to be recognised in this way, although formally the British persisted with their policy of "amalgamation" of both peoples under one system of law.

In the 1850s and 1860s there were new developments that led to a deterioration in race relations. The New Zealand Constitution Act 1852 led to the establishment of a parliament by and for the settlers and from which Māori were effectively excluded. Māori saw power shifting from the Crown, with whom they had been working, to the settlers. This created growing Māori anxiety. In response, Māori developed their own movements for a separate Māori parliament, for a Māori king or for powerful district runanga (councils).

Robert FitzRoy, circa 1850.
Artist: Unknown. ATL: 1/1-001318.



Sir George Grey, 1850-1858.
Photographed by Unknown. ATL: PA2-2509.





The 1860s was a disastrous decade for Māori. The Crown deliberately used armed force to drive through land purchases, crush Māori autonomy movements and confiscate land in the Waikato, Taranaki and other areas. For all practical purposes, the settler-dominated parliament and parliamentary governments effectively became "the Crown". However, a Māori sense of a compact with the British Government and with the monarchy, as such, long persisted and still exists to some extent.

Various institutions such as the Native Land Court, which was created by legislation in 1862, while claiming to give effect to the Treaty, contributed to the process of unravelling many of the safeguards of the Treaty. The Native Land Court was effectively established to assist in the colonisation of New Zealand by converting Māori land into an individual form of title, allowing ready sale to settlers. The individualised form of land title issued by the Court undermined tribal authority and allowed individual Māori to sell their interests piecemeal,

making land easier to buy. The Crown itself compromised its position by becoming involved in increasingly dubious land purchases.

Māori found they could not plead the Treaty in New Zealand courts in defence of their lands and waters. Formally, the Treaty was not part of domestic law; it was enforceable only to the extent that the Government chose to give it effect in statute (this is still the formal legal position). Thus, from the 1870s through to the 1970s, there grew a steadily increasing demand by Māori – including many of the "loyalist" Māori who fought on the side of the Crown during the wars of the 1860s – for "ratification" of the Treaty to give it real effect in support of Māori rights, and to form the basis of redress for injuries done in breach of its terms or its principles. This deep and long-standing movement eventually found expression in the Treaty of Waitangi Act 1975 and its subsequent amendments, which set up the Waitangi Tribunal to inquire into Treaty claims.

Māori Parliament Building, Maungakawa, between 1890 and 1899.
Photographed by Unknown. ATL: PAColl-0940-1.

