

# THE TREATY OF WAITANGI

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## INTRODUCTION

Lord Normanby instructed Captain Hobson to persuade the Maori Tribes of New Zealand, to surrender their sovereignty to the British Crown by their own "free and intelligent consent". They were to give up their national independence for the advantages of British Citizenship and protection from other European powers.

The Colonial office did not supply Hobson with a draft of the Treaty so it had to be drawn up in New Zealand. Hobson made some notes based on Normanby's instructions as the basis for the Treaty. They were given to two officers from H.M.S. Herald who met with James Busby the British Resident. Busby's draft together with Hobson's notes and those of the officers were combined to provide the first draft of the Treaty. This was given to Reverend Henry Williams to translate on 4 February 1840.

Hobson was not satisfied with the first draft so he spent two more days rewriting it. The result of these combined efforts was four versions of the Treaty, three in English and one in Maori. The Maori version is not a translation of the official version sent back to England.

## WORD TRAPS IN THE TREATY

Grave doubt exists as to whether Maoris were aware that they were signing away their mana (sovereignty) in the Treaty. This is because the word mana, the only Maori equivalent to the concept of sovereignty, was not used in the first clause. The word kawangatanga (governance) was substituted for mana. So the chiefs were asked to cede the governance of their lands to the Crown. The word kawangatanga confuses the issue because it is a missionary translation of governance, a word which appears in the order of the morning service i.e. "That all our doings be ordered by thy governance". Thus the word kawangatanga used in the missionary language of prayer appeared to be a harmless benign term when what it really stood for was mana. Had the word mana been used then the intention of the Treaty would have been absolutely clear to the chiefs present on the 5 February when the Treaty was explained to them.

The second clause of the Treaty in the official English version guaranteed the chiefs "the full exclusive and undisturbed possession of their lands and estates, forests and fisheries". But the Maori version of the Treaty does not say that. It says the Queen guarantees the chiefs, the tribes and all

the people of New Zealand the rangatiratanga (chieftainship) of their lands, homes and possessions. Although it was the Maori version that the chiefs signed, in disputes with the Crown over their rights to the undisturbed use of their lands, estates, forests and fisheries, subsequent generations of Maori leaders based their claim on the official English version.

#### TESTING THE MEANING OF THE TREATY

On 5 February Hobson had a preliminary meeting with the chiefs. He offered them British protection and read out the Treaty. Rev Williams read out the translation. Several chiefs spoke against the Treaty, Te Kemara said he did not want the Governor if it meant a loss of mana. Rewa told Hobson to go back to his own country and warned the signatories would be reduced to the condition of slaves. Others called for a return of lands stolen by the missionaries. Colenso records that a white man intervened in the proceedings to tell Hobson that the Maori speeches were not being correctly translated by Williams, "because they say a great deal about land and missionaries which Mr Williams does not translate to you".

In his rebuttal, Williams revealed that he had a vested interest in having the Treaty signed. He said missionaries had worked in New Zealand for many years. They had a prior claim and he wanted his land titles examined by a commissioner because "I have a large family of 11 children" for whom provision had to be made.

A number of chiefs spoke in favour of the Treaty, the most favourable being Tamati Waka Nene. He saw the coming of Europe as irreversible. The meeting ended with Te Kemara shaking hands with the Governor and a quantity of tobacco was handed out but no food. Hobson announced the meeting would resume on 7 February. But because there were no provisions for this meeting called by the Governor there was a danger some of the chiefs would have gone home without signing, so the missionaries advanced the meeting to the next day.

#### SIGNING OF THE TREATY

At 9.30a.m. on 6 February 1840 the missionaries arrived at Waitangi, there were already 3-400 people present. By 11.00a.m. there was no sign of Hobson, no one had informed him the meeting was on. He was hurriedly fetched and arrived not in uniform but in civilian dress. The only symbol he wore of his office was his hat.

Hobson announced he was ready to take signatures but no further discussion would be allowed. Williams read the Treaty and called on the chiefs to sign. No one moved. Colenso then asked Hobson if he was of the opinion that the Maoris understood the articles they were about to sign, because they ought to understand it to make it legal. Hobson replied "If the natives do not know the contents of this Treaty it is no fault of mine. I wish them fully to understand it....they have heard the Treaty read by Mr Williams." Busby then quoted Hone Heke who had said the previous day "The native mind could not comprehend these things, they must trust to the advice of the missionaries".

When the chiefs did not respond to Hobson's invitation to sign the Treaty Busby

lift on the idea of calling the names of chiefs out singly. Hone Heke was first and he was followed by 4. others. Hobson shook hands with the chiefs saying "He iwi tahi tatou" (we are one people). He then asked Colenso to distribute a bale of blankets and a cask of tobacco. One chief who signed that day was Iwikau of the Tuwharetoa tribe. He had visited Auckland on a musket-buying expedition when he heard of the meeting at Waitangi. The opportunity to acquire presents merely by putting a mark to a piece of parchment was too good to miss so he went and signed. On his return to Taupo his brother Te Heuheu bade him to return the blankets because he refused to surrender his mana to the Queen of England.

Copies of the Treaty were then taken around the country for other chiefs to sign. Te Rauparaha signed twice and would have signed a third time if anyone was foolish enough to present him with a blanket for doing so. In Hobson's view the Waitangi document was the de facto Treaty and subsequent copies were testimonials of adherence.

The New Zealand Company which was not in favour of the Treaty worked to overturn it. Wakefield described the Treaty as "a fraud on ignorant savages". J.Somes in a letter to Lord Stanley Secretary of State described it as "a praiseworthy device for amusing and pacifying the savages for the moment" while the Company got on with the business of settling the country.

It seems the view of the New Zealand Company is borne out by Hobson's actions after Waitangi. Despite the show of Treaty signing, Hobson issued two proclamations of sovereignty over the whole of New Zealand on 23 May 1840. The first proclaimed sovereignty over the North Island on the basis of the Treaty - despite the fact that three major confederations of tribes in the centre of the island, Tuwaretoa, Waikato and Te Arawa refused to sign. The second proclaimed sovereignty over the South Island by right of discovery i.e. on the ground it was territorium nullius i.e. without owners.

THE TREATY AS A LEGAL DOCUMENT

A treaty is defined in the Oxford Dictionary as a formally concluded and ratified agreement between (nation) states. Therefore the orthodox view of lawyers is that the Treaty of Waitangi is not a Treaty of international law, because the chiefs who signed were not rulers of an independent state. However, there are opposing views that chiefs did exercise sovereignty over their tribal domains, but having ceded their rights to the Queen their sovereignty was extinguished.

The Treaty of Waitangi has never been ratified or enacted by the New Zealand Legislature. It was made by the Executive (the Crown) and is therefore not part of domestic law made by the New Zealand Government. Once the formal machinery of Parliament was established the Government passed laws which contradicted the Treaty. For instance the Fisheries Act, Mining Act, Public Works Act, Petroleum Act, Town and Country Planning Act just to name a few.

Therefore, whenever Maoris have brought claims against the Government on the ground that their rights as promised under the Treaty of Waitangi had been transgressed, they have been consistently rejected by the courts.

REDRESS SOUGHT IN ENGLAND

Maoris concluded that the Treaty was not at fault so the remedy must be sought

in England by lodging grievances directly with the Queen. In 1862 a deputation of chiefs led by Parore of Ngaa Puhi went to England seeking protection for Maoris under the Treaty from the evils brought on them by the Government (e.g. the New Zealand Land Wars, confiscation of Maori land and the invasion of Parihaka). They sought a Royal Commission to abrogate these evils and to restore unlawfully confiscated lands. Lord Derby the Secretary of State stonewalled to petition saying he would put it before the Queen who would be pleased to receive it.

A second deputation of chiefs led by King Tawhiao went to England in 1884. The spokesman Te Wheoro said "I came to England with Tawhiao to lay our wrongs before her gracious majesty, for we are weary of laying our grievances before the New Zealand Government." Again the deputation asked for a commissioner from England to investigate the wrongs listed in the petition. On 23 June 1885 Lord Derby replied to Tawhiao the English Parliament was sympathetic to the Maoris so it would use its good offices with the Colonial Government to have their grievances considered.

The last attempt to gain redress in England was made by Ratana in 1924. The New Zealand High Commissioner obstructed Ratana from getting an audience with the King or the British Prime Minister. Eventually Ratana evolved a new plan. On 25 November 1932 he presented a petition to Parliament with 30,128 signatures seeking to have the Treaty ratified. Parliament held the petition over year after year. Thirteen years later in 1945 the petition was considered by the Maori Affairs Select Committee of the House. The outcome of Ratana's effort was a recommendation from the committee that the Treaty be published as a "sacred affirmation" with copies to be hung in all schools of the dominion.

#### SUMMARY

- 1) The Treaty of Waitangi as the cornerstone of a nation is a flawed document. Its inaccurate use of language and translation disguised its meaning so that the chiefs were misled into signing away their mana.
- 2) Clearly chiefs like Hone Heke did not understand the Treaty but because he trusted the missionaries he signed on their advice.
- 3) Missionaries like Henry Williams had a vested interest in getting Maori approval for the Treaty. Stable government would mean confirmation of title to the land he had acquired from the Maori. The blame for the faulty translation of the Treaty must lie with Williams. We will never know whether the substitution of kawanatanga for mana was intentional or accidental.
- 4) The failure of Hobson to provide food for the chiefs who journeyed to Waitangi at his invitation should have been a symbolic warning of what the Governor stood for. He came to take and not give.
- 5) Hobson had a vested interest in the Treaty because it confirmed his status as Governor of the colony. His impatience to have it signed surfaced when he was questioned by Colenso and he was prepared to blame the missionaries if the meaning of the Treaty was not clear to the chiefs.
- 6) The first to condemn the Treaty as a fraud was the Wakefield Company. This opinion is borne out by the obvious flaws in the Treaty and the subsequent judgments by the Courts that it is outside domestic law and therefore has no validity in law for the protection of Maori rights set out in its second clause.

- 7) The use of gratuities seduced some chiefs to sign a document they did not understand. This is certainly true of chiefs such as Iwikau of Tuwharetoa and Te Rauparaha of Ngaati-Toa. An exchange of a mark on a meaningless piece of paper for a blanket was too irresistible a bargain to pass by.
- 8) When the protected rights promised under the Treaty were transgressed by Land Wars, land confiscations and land laws designed to separate Maoris from their lands, three deputations of chiefs sought redress by journeying to England and lodging their petitions before the monarch. In each case they were referred back to the New Zealand Government.
- 9) Finally Ratana concluded the answer was to have the Treaty ratified. Parliament's response to Ratana's petition with 30,128 signatures was to have the Treaty published and hung in schools as a sacred affirmation. Everything the Government has done since then has been a cosmetic change of this nature, i.e. expanding the annual pomp and ceremony at Waitangi on 6 February and declaring it a national holiday.
- 10) Even the Treaty of Waitangi Tribunal established in 1976 in response to stepped up Maori protest activity is a cosmetic concession. The Tribunal is non-retrospective, it does not hear grievances under the Treaty prior to 1975 when the Act was passed.

#### CONCLUSION

The historic circumstances surrounding the drafting and signing of the Treaty of Waitangi constitute an irretrievable muddle. Under the Treaty the Maori people lost what it promised to protect. For this reason the new wave of Maori activists are denouncing the Treaty as a fraud, a sentiment that was expressed by the New Zealand Company 142 years ago.

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