

CHAPTER 4

HENRY WILLIAMS AND THE DRAFT TREATY

A 'literal' translation of Hobson's text into Māori was not achievable by Henry Williams – and probably not by anybody. The very idea of 'literal translation' is suspect, as any translation involves some element of interpretation.¹ Henry Williams was quite well aware of that and Claudia Orange acknowledges as much, when she quotes Henry Williams himself as saying: "In this translation it was necessary to avoid all expressions of the English for which there was no expressive term in the Maori, preserving the entire spirit and tenor of the Treaty."² As Orange notes, such words suggest that Henry Williams deliberately recast the wording to better express the intended sense "as translators often do".³ But he also had the opportunity to modify the draft English text prior to translating it, so as to make the subsequent translation easier. Hobson, between 6 February and 12 February (the date of his despatch to Gipps) provided not only a Māori text but also an authenticated English-language text. This authenticated text is in Freeman's hand, but is signed by Hobson and by Henry Williams, and bears the annotation "I certify that the above is as literal a translation of the Treaty of Waitangi as the idiom of the language will admit of. [signed] Henry Williams" (this is a genuine Williams signature); it was produced to accompany the *Martha* copy of despatch no. 40/8, by which time the collection of signatures stood at 52 from Waitangi and 78 from Hokianga, gathered on or before 12 February.⁴

The problem is that this English text is not, despite the assertion, a "translation". In fact it corresponds in every respect (aside from the odd lapsus calami) to the "official English text" of the

1 See B Biggs "Humpty-Dumpty and the Treaty of Waitangi" in *Waitangi Maori and Pakeha perspectives of the Treaty of Waitangi* (1989).

2 C Orange, *Treaty of Waitangi* (1987) pp 39-40, quoting Carlton, *Henry Williams* v 2 p 12.

3 C Orange, *Treaty of Waitangi* (1987) p 40.

4 PRO CO 209/7, 13-15. This ought to be the *Martha* copy, sent on 20 February, as the *Samuel Winter* copy was sent on 8 February, before the Hokianga meeting on 12 February which this note refers to. GBPP 1840 (560) pp 9-10, however does not contain the authenticating note and signature of Henry Williams. See also Archives New Zealand G 36 1, letter 8, for information on the transmission of these copies.

Treaty, also known from the Waikato Heads signed copy of the Treaty (at Archives New Zealand), and from the later bilingual transcript preserved at the Public Record Office, London.⁵ But this is, in fact, a pre-translation English draft text just slightly changed to give the date as 6 February, instead of the 5th. There is no authenticated "translation of the Māori text" from Henry Williams into English at all, unfortunately!

Recently, it has been asserted by Moon and Fenton that Henry Williams "decided to mistranslate the treaty" and that he indulged in what they term "conscious mistranslation of key concepts of the treaty".⁶ Moon and Fenton themselves, however, rely on a later translation of the Treaty text by Kawharu, which itself is a contrived and inauthentic re-translation of the original language.⁷ These "Williams mistranslations" lead Moon and Fenton to the conclusion that the second article of the treaty "promised to the Maori signatories the same sovereignty that they were supposedly ceding under the first article of the English version" – a patent absurdity.⁸ Henry Williams is then portrayed, by Moon and Fenton, as a devious manipulator:⁹

5 PRO CO 209/7 p 178, in Hobson's despatch no 7 to the Secretary of State. The duplicate of this despatch (at Archives New Zealand, G 30 /1 with enclosures A-K records "a certified copy of the treaty into English and native language with the names inserted of the chiefs who signed it" (pp 140-141) with documents in several hands including those of Kemp, Freeman and Grimstone, but a certified copy (in either Māori or English) is not present.

6 P Moon & S Fenton, "Bound into a fateful union: Henry Williams' translation of the treaty of Waitangi into Maori in February 1840" *Journal of the Polynesian Society* 111 (1): 51-63 (2002). "He did not deny that the English text of the treaty could be translated into Maori. Instead he deliberately stated that "... it was necessary to avoid all expressions of the English" for which he suggested there was "no expressive term" in Maori. It is these two segments that cast doubt on Williams' sincerity and intention to translate the English text of the treaty into a Maori text equivalent in meaning and function to the original and suggest there were other germane considerations." (p 55). Similar claims of deliberate mistranslation appeared in Moon's *Te Ara ki te Tiriti* (2002) pp 139-149.

7 "As if to reinforce the point that the sovereign power of the chiefs was in no way threatened by the terms of the treaty – and thereby giving added incentive for the chiefs to sign the agreement – Williams again interpolated a term in the Treaty that, this time was completely at odds with the English version, in which sovereignty was ceded to the Crown. In the second article of the Maori version (in literal back translation into English) the relevant portion reads: "The Queen of England agrees to protect the chiefs . . . of New Zealand in the unqualified exercise of their chieftainship, over their lands, villages and all their treasures (Kawharu 1989; 321)". Moon and Fenton p 58, quoting Kawharu (ed.) *Waitangi: Maori and Pakeha perspectives* (1989) p 321, quoting Kawharu's "attempt at reconstruction of the literal translation" – which is the text which Kawharu would have liked to exist (with its interpretation of "taonga" as "treasures" rather than as "property" as was plainly intended) see Kawharu *op cit*, p 320 footnote 8). The Kawharu translation of "tino rangatiratanga" ("high chieftainship" is the expression intended by Williams) as "unqualified exercise of their chieftainship" is another mistranslation (see below).

8 Above n 7, 58.

9 Above n 7, 59.

This formidable achievement, done with such precision and care that no-one present at Waitangi on 5 and 6 February 1840 even noticed it, could only have been executed by someone who was extremely fluent in Maori and English. In both Article the first and Article the second, the Maori text was cunningly manipulated to give the impression that it was a competent translation of the English version of the treaty. Yet, in the critical area of the transfer of sovereignty Williams succeeded in devising, in the Maori text, a meaning that was fundamentally at odds with the English version.

But, as John Laurie has observed in his critique of Moon's argument, their case is one of advocacy rather than history.¹⁰ Williams was not selected to translate the Declaration and the Treaty (in 1835 and in 1840 respectively) on account of his fluency or oratorical skill, but because he was the senior missionary present. His long supervision of the affairs of the Church Mission at New Zealand, and perhaps above all his knowledge of the desires of the Church Missionary Society, in its long campaign against colonisation, fitted him well for the task. Thus writes Laurie: "There were actually no existing Maori words which Williams could use to express the concepts of ownership, citizen rights and sovereign power in a state system."¹¹ The spirit and sense of the whole document had to be addressed, rather than the word-by-word or clause-by-clause approach of legal pettifoggers. The second article of the treaty merely assures the chiefs that their property would remain theirs. No surrender of 'mana' was envisaged, and the term 'mana' is not mentioned in the Treaty. That term is not an appropriate translation of 'sovereignty' in 1840, even if it was mentioned, in a parenthetical sense for 'authority', in 1835. The allegation by Moon and Fenton of a "litany of verbal misrepresentations" is nonsense. Walter Mantell, who did understand 19th century Māori, was closer to the mark when, in 1869, he described Henry Williams's translation into Māori as "execrable".¹² This was an 'execrable' translation of the original English.

Henry Williams himself, in an unpublished memorandum called "Early Recollections" (compiled for his son-in-law Hugh Carleton "some years since" relates; "On the 4th of February, about 4 o'clock pm, Captain Hobson came to me with the Treaty of Waitangi in English, for me to translate into Māori, saying that he would meet me in the morning at the house of the British Resident, Mr Busby".¹³ Little information has come down to us about the process of the translation except brief remarks about modifications to the Māori text on the morning of the following day, 5 February. Henry Williams probably provided his translation on 5 February, as a means of explaining the nature of his alterations to Busby's terminology. There was a small dispute, on 5 February, over whether to use 'huihuinga' (gathering) or 'whakaminenga' (Busby's term for 'Confederation') and

10 J Laurie "Translating the Treaty of Waitangi" *Journal of the Polynesian Society* v 111 (3) (September 2002) p 255.

11 Above n 10, 257.

12 *NZPD* 1869 v 6 p 261.

13 H Carleton, *The life of Henry Williams, Archdeacon of Waimate* (1874, 1877) v 2 p 12.

Busby seems to have won that dispute, because the formal disestablishment of the imaginary corporate body was necessary. It would be acknowledged so it could be dismissed.

From the point of view of the official party on 5 February, the two texts were supposed to be equivalent legally and linguistically, but in reality they were not. The composers of the two final texts (Māori and English) had done the best they could, given the urgency of the matter and the fact that the most able translators (William Williams and Robert Maunsell) were not available. The translation of the draft treaty and its purported back-translation both by Williams, placed him in the crucial position to express both the intentions of Hobson and to assess the likely effect of the Lieutenant-Governor's words on the chiefs. It is highly likely that when Williams received the final Hobson draft, he recognised that some aspects of it would not prove conducive to a rapid cession.

By 5 February Hobson's "regarding with Her Royal Favour" had already replaced Freeman's "regarding with deep solicitude"; and "the Native Chiefs and tribes of New Zealand and anxious to Protect their just rights and property" (the idea added by Busby) had been introduced into the preamble by Hobson. The reference to the advantage of settlement ("to secure to them the enjoyment of Peace and good order") had been introduced in advance of the reference to extensive emigration (the "extensive settlement of British Subjects therein" had been toned down). Next, the negative and threatening tone of "and being desirous to avert the evil consequences which must result both to the natives of New Zealand and to Her Subjects from the absence of all necessary Laws and Institutions" had been changed to become a reference to an anticipated boon: "a settled form of civil government with a view to avert the evil consequences".

Finally Hobson introduced himself as a functionary "properly authorized to Treat" for the Queen's authority and the "Confederated and Independent chiefs of New Zealand" were invited to "concur" – rather suggesting "take it or leave it". They were not invited to "treat" for what might be ceded. There was really no attempt to traverse possible amendments, put forward by chiefs, at any point. The die had been cast. Intermediate between Hobson's first attempt at his preamble – on the first two pages of his holograph sheet – is the reconsidered paragraph "Her Majesty therefore being desirous to establish a settled form of civil Government [. . .]". The potentially alarming reference to the "evil consequences which must result" appears on the third page of the sheet (left column, substituting from rejected wording in the right hand column). We do not know precisely the date on which this sheet was written (it may have been either 4 or 5 February) but it must have been prepared before the translation took place, so 4 February is the more probable.

I 'WAKAMINENGA' V 'HUIHUINGA'

The document on the table on 5 February (and which according to Colenso had been under discussion between Henry Williams, Busby and Hobson during the levée: "engaged within translating the treaty, and arranging other preliminary matters") was essentially still in English, whether it was Freeman's "Her most gracious Majesty, Victoria" version or Hobson's "Her Majesty Victoria" version. At some point in the proceedings Henry Williams adopted the term

"wakaminenga" (given its last hurrah at Busby's wish) to recognise the status of the Confederated chiefs, and this was the word used when the translation was read to the gathering shortly after.¹⁴ The MS draft for the Māori text was altered at this point, necessitating the preparation of a fresh transcript with the alteration.

But the agreed English version had been simplified at the point of translation. The formal reference to the Royal Style (correctly 'Victoria, Queen of the United Kingdom of Great Britain and Ireland') was altered, when translated, as "Wikitoria, te Kuini o Ingarani" (ie 'Victoria the Queen of England'). The same simplified form of the Royal Style appears in the English text of the articles themselves. But many other simplifications were also made, and the character of these simplifications can readily be established from half a dozen back-translations from the Māori text into English which appeared in the next few years. These are given in the Appendix as documents 7-13. The full text of the Māori preamble is given below, broken into short sections to enable easy comparison of the six contemporary back-translations:

Ko Wikitoria te Kuini o Ingarani i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga me to tatou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira – hei kai wakarite ki nga Tangata maori o Nu Tirani – kia wakaaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te wenua nei me nga motu– na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere na nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata maori ki te Pakeha e noho ture kore ana.

Na kua pai te Kuini kia tukua a hau a Wiremu Hopihana he Kapitana i Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aianeī amua atu ki te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era atu enei ture ka korerotia nei.

"Ko Wikitoria te Kuini o Ingarani" (Victoria the Queen of England) is agreed on by all six translators.

"I tana mahara atawai" is a general expression of the Queen's benevolent intentions and, although alternative expressions in other back-translations vary considerably, they all convey similar ideas. The earliest of these, by Davis, has "her gracious remembrance" but Busby has "her gracious consideration", an Anonymous version in Clendon's papers has "her merciful regard" and Gordon Brown has "affectionate remembrance" while S McD Martin has "her kind remembrance", and E J Wakefield has "gracious remembrance".

14 H Carleton, *The life of Henry Williams, Archdeacon of Waimate* (1874, 1877) v 2 p12.

"Nga rangatira me nga Hapu o Nu Tirani" (the chiefs and the *hapū* (subtribes) of New Zealand): Davis has "Native chiefs and tribes in New Zealand" but Busby has "chiefs and people of New Zealand". Anonymous, and also Brown, Martin and Wakefield all have "chiefs and tribes of New Zealand". The anomalous variant is Busby's with "people" rather than "tribes". This has been made much of by the polemicist Ross Baker, but Baker makes the elementary error of thinking that "people of New Zealand" meant both Māori and Europeans – which was certainly not Busby's understanding.¹⁵

"I tana hiahia . . . to ratou wenua" Davis has "and through her desire to preserve to them their chieftainship and their land" but Busby has "and her desire to preserve to them their land". Anonymous has "her desire also to reserve to them their chieftainship and their lands" (with 'rank as chiefs' as a correction). Brown has "desires to point out to their chieftainships in their lands &c" and Martin has "and by her desire to preserve to them their chieftainship and their land" and Wakefield has "in her desire that the chieftainships and their lands". Again it is Busby's version which omits reference to 'chieftainship', an omission which is particularly surprising, unless he thought that sovereignty and chieftainship were inseparable.

"a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki" Davis has "and to preserve peace and quietness to them" but Busby has "and to maintain peace and order amongst them". Anonymous has "and that peace may continue to them, and quiet also" and Brown has "that they may keep in peace and live in comfort", Martin has "and let peace ever remain to them and to live in quietness" and Wakefield has "should be secured to them and that obedience should also be held by them, and the peaceful state also".

"kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira" Davis has "has thought it right to send them a gentleman" but Busby has "has been pleased to appoint an officer". Anonymous has "has considered it a right thing to send hither a chief" and Brown has "thinks it right to send an English chief" while Martin has "she has thought it a right thing to send here one chief" and Wakefield has "she has considered it a just thing, to send here some chief". Busby's refusal to recognise his successor as a 'chief' may only be semantic, but everyone else seems to have recognised that Hobson was to become a chief treating with other chiefs.

"hei kai wakarite ki nga Tangata maori o Nu Tirani" Davis has "to be her representative to the natives of New Zealand" but Busby says nothing about representation. Anonymous has "as a negociator with the native people of New Zealand" Brown has "to advise with the natives of New Zealand" and Martin has "as an overlooker of the aboriginal men of New Zealand" and Wakefield has "to be a person to arrange with the native men of New Zealand". 'Kaiwakarite' was subsequently

15 The expression "people of New Zealand" has been much promoted, in a series of works, by the pamphleteer Ross Baker, of the "One New Zealand Foundation", to make a political point, albeit one fundamentally mistaken. See eg Baker's *From treaty to conspiracy: a theory* (1998) and his *He iwi tahi tatou we are now one people – New Zealanders* (1992).

used for 'Judge', but it is not a very appropriate term to have chosen. It is quite possible, however, that Henry Williams was intending to draw a biblical reference to judges as lawmakers. The variety of translations chosen in these six versions does, at least, suggest that there was room for confusion as to Hobson's level of authority. Perhaps this is also signified by his ambiguous status as (briefly) 'Consul' (as distinct from 'Resident' – Busby's status), and 'Lieutenant-Governor' (but 'Kawana' in Māori, which might invite confusion with 'Governor Gipps'). So 'representative' or 'negociator' or 'advisor' or 'overlooker' or 'arranger' – it was anybody's guess what his function was, especially as the arrangements were necessarily provisional, at least until British sovereignty was officially asserted by proclamation in the future.

"kia wakaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te wenua nei me nga motu" Davis has "Let the native chiefs in all parts of the land and the islands consent to the Queen's government" but Busby has "to treat with them for the cession of the sovereignty of their country and the islands adjacent to the Queen". Anonymous has "Let the native chiefs consent to the government of the Queen at (or over) the places of this country, and the islands", Brown has "that they may accept the government of the queen over all their lands and islands" and Martin has "that they, the native chiefs may consent to the kawanatanga of the Queen in all places of the land and the islands" (Martin has an explanatory footnote: "Kawanatanga is not a native word; it has been used by the missionaries since the arrival of Captain Hobson to express 'Governorship'"). Wakefield has "that the Governorship of the Queen may be assented to by the native chiefs in all places in the land and of the islands". Busby is the only person to use "sovereignty", but 'government' and 'sovereignty' were not the same thing. It would hardly be helpful to speak of the 'governorship of the Queen' in the same breath as the 'governorship of Hobson'. "Wahikatoa" the 'word' employed by Richard Taylor, is actually 'wahi katoa' (all the places) and was correctly given in the later transcripts.

"Na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere na nei." Davis has "Now, because there are numbers of people living in this land, and more will be coming" but Busby has "Seeing that many of Her Majesty's subjects have already settled in the country, and are constantly arriving". Anonymous has "Because also a considerable number of the people of her nation have dwelt in this land and are coming hither." Brown has "Because there will be thousands of the Queen's subjects to reside in the lands, and they are coming." Martin has "because a great many people of her tribe have settled in this land and are still coming." Wakefield has "Because too many together are the men of her tribe who have sat down on this land and are coming hither." Only two of the six specifically mention the Queen's 'subjects' (nga tangata o tona iwi) but all understand the sense of the expression and all emphasise the large scale of the intended immigration of the Queen's 'iwi'.

"Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata maori ki te Pakeha e noho ture kore ana" Davis has "The Queen wishes to appoint a Government, that there may be no cause for strife between the natives and the Pakeha who

are now without law" but Busby has "And that it is desirable for their protection, as well as for the protection of the natives to establish a government amongst them." Anonymous has "Now the Queen is desirous that the government should be made strait (settled) that the evils may not accrue to the native people and foreigners who are living without law." Brown has "The queen is desirous of establishing a government that all the evils now upon the natives from the English living in idleness and lawlessness may be removed." Martin has "Now the Queen is desirous to explain the Kawanatanga, that no evil may result to the aborigines or to the Europeans living without law" and Wakefield has "Now, it is the Queen who desired that the Governorship may be arranged that evils may not come to the native men, to the white who dwells lawless."

"Na kua pai te Kuini kia tukua a hau a Wiremu Hopihana" Davis has "It has therefore pleased the Queen to appoint me, William Hobson" and Busby has "Her Majesty has accordingly been pleased to appoint me William Hobson". Anonymous has "Now the Queen has been pleased to appoint me William Hobson" and Brown has "Now the Queen is pleased to send me William Hobson", Martin has "now it was good for the Queen to let go me, William Hobson" and Wakefield has "Now the Queen has been good that I should be sent, William Hobson".

"he Kapitana i Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani, e tukua aianei amua atu ki te Kuini" Davis has: "a Captain in the Royal Navy, Governor of all parts of New Zealand, which shall be ceded now or at a future period to the Queen" Busby has "a captain in the Royal Navy to be governor of such part of New Zealand as may now or hereafter be ceded to Her Majesty". Anonymous has "a captain in the Royal Navy to be governor for all the places of New Zealand which shall now or hereafter be let go to the Queen" and Brown has "Capt RN as Governor for all the land of New Zealand, which will at another time be given to the Queen." Martin has "he Kapitana o te Roia Nawi (footnote: "is some kind of gibberish which cannot be translated") as Kawana for all the places of New Zealand given up now and after to the Queen" and Wakefield has "a Captain in the Royal Navy, a Governor for all the places in New Zealand that are yielded now or hereafter to the Queen".

"e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era atu Rangatira atu enei ture ka korerotia nei" Davis has "She offers to the Assembly of the Tribes of New Zealand, and to all the other chiefs the following laws" and Busby has "and proposes to the chiefs of the confederation of the native tribes of New Zealand and the other chiefs to agree to the following articles". Anonymous "She says to the chiefs of the confederate tribes of New Zealand and the other chiefs these terms (or laws) here mentioned", Brown has "The Queen says to the collection of the tribes of New Zealand and all the other tribes these are the laws we have spoken of". Martin has "saying she is to the chiefs of the assembly of the tribes of New Zealand and other chiefs besides these laws spoken" and Wakefield has "She says to the chiefs of the Assemblage (Confederation) of the tribes of New Zealand, and other chiefs besides, these laws which shall be spoken now."

While there are some peculiarities of individual transcripts, the common foundation of these back translations is evident enough. It can be paraphrased as follows:

Victoria, the Queen of England in her gracious consideration for the chiefs and tribes of New Zealand, and through her desire to preserve to them their chieftainship and their lands, and to preserve peace and order among them, has thought it fitting to send a gentleman to be her representative to them. Let the native chiefs in all parts of the land and the islands consent to the Queen's government. Now the Queen is desirous that a government should be established so that evils may not occur to either the native people or to foreigners who, alike, are living without law. It has therefore pleased the Queen to appoint me, William Hobson, a Captain in the Royal Navy, Governor of all parts of New Zealand, which shall be ceded now or at a future period to the Queen. She offers to the Assembly of the Tribes of New Zealand, and to all the other chiefs the following laws.

This simplified text can be compared with the rather constipated 'official English text' authenticated by Williams and Hobson, and the even more formal text of the preamble earlier devised by Freeman.

II 'TE TINO RANGATIRATANGA'

Much confusion has resulted from a neologism "tino rangatiratanga" which was introduced into the text at the point of translation. It is worth spending some time to clarify this point. The signal phrase "te tino rangatiratanga" occurs once only in the Māori text of the Treaty, but it has been invoked repeatedly, at least over the last decade. The phrase "te tino rangatiratanga" and the phrase "tino rangatira" are not authentic Māori expressions. In fact "tino rangatira" is a piece of missionary Māori, coined by William Williams in 1833, when he was asked to translate into Māori a letter announcing the appointment of James Busby as British Resident: *Letter of the Right Honourable Lord Viscount Goderich and address of James Busby . . .* (translated as *Ko te pukapuka o te tino rangatira o Waikautā Kōrerihā me te kōrero o Te Pūhipi ki ngā rangatira o Nu Tirani*).¹⁶

The 'tino' as employed here means 'high' in the sense of 'eminent' and was employed in the same sense in 1836, when another Secretary of State for the Colonies (Lord Aberdeen) wrote to "his highness Titore", thanking that 'high chief' of Ngāpuhi for a gift of spars and a valuable *mere pounamu* which Titore had sent as a gift to King William IV. King William sent, as *utu*, a suit of armour for "his highness Titore" and Busby oversaw the presentation of the gift, which still survives, along with the covering letter. The phrase was also used in the first sentence of Busby's 'declaration of independence' of October 1835 (as translated from the original English by Henry Williams: "Ko matou ko ngā tino rangatira o ngā iwi o Nu Tireni . . ."). The intended meaning is "high chief" and the expression is naturally modified to become "tino rangatiratanga" ie high chieftainship. And that is how the phrase ended up in the Treaty of Waitangi, also prepared by

16 See Parkinson & Griffith, *Books in Māori 1815-1900* (2004) p 42, entry *BiM 20* for details.

Henry Williams, with input from Busby. No Māori had anything to do with the formulation of either the English or Māori texts of the document, and the same is true of the Treaty five years later.

Māori in general and Ngāpuhi in particular were averse to the idea that any chief was 'higher' in rank than any other – such matters being matters of whakapapa – and even the suggestions that Hongi Hika (Ngāpuhi) or Murupaenga (Ngāti Whatua) were of exceptional status was rejected when Marsden had made that suggestion in the 1820s. The high Tory elitist Busby, however (described as an 'artful humbug' at the time), persisted in this idea of 'high' chiefs (*high* because he had given them that status) and so he inserted it into his 'declaration'. In his English text of the Declaration he referred to "We the hereditary chiefs . . . and heads of tribes" and Henry Williams (knowing that 'hereditary' was not quite correct) altered 'hereditary' to 'tino' (high) in his translation, to conform to the precedent. No attempt was made after Waitangi to establish any form of governing council of chiefs, lest that inflame chiefly rivalries. The first further step in that direction was the Kohimarama Conference (te Kawenata o Kohimarama or 'Covenant of Kohimarama') of 1860.

The phrase 'tino rangatira' rarely occurred in other contexts, but was later appropriated by the government ('*kawanatanga*' another neologism = governorship) emphasising the distinction between governor- and chief- during the governorships of Hobson, FitzRoy and Grey. Hobson, and FitzRoy, from 1841 were styled 'Governor and Commander in Chief in and over the colony of New Zealand' and 'te tino rangatira o tenei Koroni o Nui Tirenī' in their proclamations in Māori. Grey called himself 'te tino rangatira, Kawana Kerei' or 'Governor-in-chief of the New Zealand islands' in proclamations and in the prefaces and dedications of such works as *Robinson Crusoe* (1852), *Pilgrim's Progress* (1854) and *Nga Moteatea* (1853), when he had a lieutenant-governor as subordinate.

The title also appears in 1860, in the titles of Grey's successor (eg "He Panuitanga. | Na Te Kawana Colonel Thomas Gore Brown, Tino Rangatira, aha, aha, na te Kawana o tenei Koroni").¹⁷ It occurs occasionally on other titles as in the title "te tino rangatira o nga meera" (Chief Postmaster) in 1862, and in 1864 Wī Tako Ngatata is addressed as "ko te tino rangatira o te mahi Kingi ki Kapiti" (the chief of the Māori King's works at Kapiti) at the time Ngatata renounced his support for the Kīngitanga.¹⁸ By this time, however, the 'high' chiefs, and rangatira generally had lost most of their political influence, except over tribal matters. The expression 'tino rangatira' had practically disappeared by 1870, and was only used by pākehā for the whole of that period. The plain fact is that 'tino rangatiratanga' or 'high chieftainship' is synonymous with governorship after 1840. The traditional authority of tribal chiefs, their 'mana motuhake' to use the expression adopted by the Kīngitanga, was firmly distinguished from the 'tino rangatiratanga' of the governor. Faced with this

17 *Books in Māori 1815-1900* entry BiM 509 and in the title of the commanding officer in Taranaki "te tino Rangatira o nga Hoia" (the high chief of the soldiers).

18 See *Books in Māori 1815-1900* entry BiM S14 no 14.

established usage, Kawharu's mistranslation of 'tino rangatiratanga' as "the unqualified exercise of chieftainship" is not merely erroneous, but preposterous. It was made explicit from the start of the Governorship that chieftainship – or 'the power of chiefs' – was qualified, to prohibit certain traditional usages (slavery, cannibalism etc) which were deemed intolerable by the Crown.¹⁹

There is a single late and remarkable exception to the avoidance of the phrase 'tino rangatira'. This is contained in the English text of the petition of "a number of the Maoris resident in what is known as the Hot Lakes District to Queen Victoria."²⁰ The Māori text, headed 'Ki tona mana haika ariki tapairu tauanui' ('to the most permanently exalted in place as in rank, to Her Most Royal Majesty Victoria, Queen of the United Kingdom of Great Britain and Ireland, and of her colonies of Australia and New Zealand, and all her dependencies, and Empress of India' using the later form of the Royal Style) still calls the Queen "Te tino rangatira, kia kuini Wikitoria, kuini o Kereiti Piritona me Airana" (The high chief, Queen Victoria, Queen of Great Britain and Ireland). The Queen is also addressed as "the bright and shining Kahurangi, the noble shelter-affording rata and the bond of union with your Maori subjects". The rare expression *ariki tapairu* is a title of honour for the most senior woman in a lineage.²¹ That the Queen herself could be addressed as the 'tino rangatira' by Māori tends to show that activist appropriation of the term in the 1980s and following rests on unstable ground. According to Mason Durie "The history of tino rangatiratanga is so closely linked with the search for kotahitanga that each has become critical to understanding the other." The search for political autonomy, most recently reflected in the current Māori Party, emerged from the Kotahitanga (Unity) movement in the 1880s, and successive governments have refused to acknowledge it. While "Maori have never accepted that the Treaty of Waitangi required an abandonment of tino rangatiratanga" the use of that term in the sense of autonomy is entirely at odds with its usage in 1840 and the decades following. The term lost its original signification, and was

19 See Normanby's Instructions to Hobson, 14 August 1839: "they must be carefully defended in the observance of their own customs, so far as these are compatible with the universal maxims of humanity and morals. But the savage practices of human sacrifice, and of cannibalism must be promptly and decisively interdicted. Such atrocities, under whatever plea of religion they may take place, are not to be tolerated within any part of the dominions of the British Crown" (GBPP 1840 [238] v XXXIII p 40).

20 AJHR 1892 A1 pp 9-10 (English only). The petition is for the establishment of a representative council but the government's ministers said that there were already four Maori in the House of Representatives and two in the Legislative Council "who take an active interest in general politics, and especially in all measures affecting their people and have every facility for influencing legislation as far as is desirable or for their own good." The reply (at AJHR 1892 A2 p 18) states that the Queen received the petition but, as responsible government had been conceded to the Parliament of New Zealand, "Her Majesty cannot interfere in the manner suggested" by the petitioners.

21 See H W Williams, *Dictionary of the Maori language* 7th ed p 15 under Ariki. It is also found in the formal name of the present Māori Queen, Te Arikinui Tapairu Dame Queen Te Ata-i Rangi-Kahu Koroki Te Rata Mahuta Tawhiao Potatau Te Wherowhero [Piki Mahuta], the 6th Māori ruler.

used for something quite different when the National Maori Congress emerged in 1990.²² Durie acknowledges that "there is, then, no single definition of tino rangatiratanga and little comfort can be derived from linguistic origins or simplistic notions about an 1840 understanding of sovereignty."²³

On 5 February, at the commencement of the meeting with the chiefs, no text of the Treaty was ready to be signed, but from Hobson's point of view that did not matter. He had expected that several days were to be taken up in deliberations over whether to accept the 'Treaty'. Bishop Pompallier arrived uninvited at about half past ten and went directly into the room where the levée was being held. As the Governor's party proceeded to the platform outside, there was a sectarian squabble over ecclesiastical precedence – this led to the Governor's being seated in the middle of the table, with Busby on his left and Pompallier on Busby's left, while Henry Williams was on the Governor's right with the other Church Missionary Society men behind (Colenso, Taylor, and Clarke) with a good opportunity to hear the proceedings and to take notes.²⁴ Colenso gives a 'verbatim' report of Hobson's words in English: "Here His Excellency read the treaty in English, and the Rev H Williams read the translation of the same, which had been prepared in the New Zealand Language, to the natives."²⁵

Colenso assumes that the English text was 'the Treaty', and the Māori text was the translation of it – and this was probably the common contemporary understanding. But which draft English text? Was it the text Hobson had delivered to Williams, or was it the version with the lately improved preamble, which became the 'official English text'? It is probable that the 'official text' ("Her Majesty Victoria") was used, but with the date expressed as 5 February (as Hobson expected a three-day discussion). The texts starting "Her most gracious Majesty" and dated 5 February could surely not have been used after that date, except by mistake. Unfortunately, such mistakes can and do happen, and, as will be explained below, such a mistake seems to have happened in this case, sometime later. But anybody half fluent in Māori, hearing that text and the simplified version given in the paragraph above, would easily have noticed that the two versions did not correspond very well. And these differences were magnified in the more technical passages of the three short articles.

22 For further discussion of the use of the term 'tino rangatiratanga' see Mason Durie, 'Tino rangatiratanga' in M Belgrave and others *Waitangi revisited* (2005) pp 3-19.

23 Durie, above n 22, p 6.

24 Richard Taylor comments of Pompallier that "he is a mild good looking man having more Xty in his looks than in his heart if the reports of him be correct". (R Taylor, journal entry for 5 February) in ATL qMS-1985 p 188.

25 W Colenso, *Authentic and genuine history* (1890) p 17. In one of his corrections to his draft (p 10) Colenso marked in the margin "Get English Copy" against "Here His Excellency read the Treaty (English) & Mr W read the Native Translation to the Natives." Unfortunately Colenso did not secure a copy of the English text.

III SUMMARY OF THE PROCESS OF DRAFTING

The first attempt at 'framing' a draft treaty was Freeman's (Freeman 1). There are (or were) probably just two holograph drafts in English in Busby's hand (Appendix document 2 and 3 = Easton's BD1 and BD2). The first extant draft by Busby is that dated "3rd Feby 1840" ("draft of the Articles of a Treaty with the Native Chiefs submitted to Capt. Hobson"²⁶). Busby retained this copy and he sent his second draft to Hobson, this being the extant document at Archives New Zealand (Easton's BD2, see Appendix document 3). The third draft prepared by Hobson and Freeman (Appendix document 4 = Easton's HB, allegedly lost) was sent to Henry Williams for translation on 4 February but at least one duplicate of it was retained in the official papers (before it too was lost). This, however, became the progenitor for at least three transcripts, made by Henry Williams, Grimstone and Clendon between March and July 1840. Then, probably on 4 February, Hobson and Williams simplified the preamble again, to better express official intentions in language the chiefs would be able to understand, and Williams then translated the result. The official text and the purported translation of it, in which difficult ideas were even further simplified, was then read aloud and debated.

Over the brief period of 29 January to 6 February the draft Treaty went through several alterations, many minor and several major. What will seem odd to most present-day readers is that the variations in the three articles of the Treaty are trivial; Busby's text of the three articles hardly changed from 3 February to the 6th. It was the expression of the preamble which caused the difficulties, as the officials struggled to express the British Government's philanthropic intentions, while trying to ensure that harmony was preserved between the Māori and the settlers, all the while avoiding controversial or unfamiliar language which might conflict with a general tone of reassurance. And the expression had to be clear and as simple as practicable, as unfamiliar concepts were traversed. Hobson and Williams had to persuade the signatory 'sovereign chiefs' to renounce, and, in a sense, to retrospectively illegitimise the 'infant state' the chiefs (or more particularly, Busby) had sired.²⁷

It was important, however, that the chiefs accept that they were not losing anything as a consequence of the new legal and diplomatic arrangements for the transfer of all sovereign power to the Queen. Therefore it was essential that all the existing property rights of the 'sovereigns of the soil' be transferred in an orderly and regulated manner, especially those rights concerning lands and

26 Auckland Museum Library, AR MS 46 (6).

27 For the use of the term "infant state" by Busby (who took it from Christopher Pitt's 1740 verse translation of the *Aeneid*, lines 757-760: "Trojans be bold; against my will, my fate. / A throne unsettled, and an infant state / Bid me defend my realms with all my pow'rs / And guard with these severities my shores.") See also Parkinson, *Our infant State* (PhD thesis, 2003) p 241, where it is noted that these words were also used by Niccolò Machiavelli in *The Prince* Chapter XII: "Res dura, et regni novitas me talia cogunt, Moliri et lati fines custodet tueri."

resources. This is the point of the second article of the Treaty. The third article simply declared that by virtue of the acceptance of the fact that Victoria was their lawful sovereign, the chiefs would be amenable to British law in the same way as their British settlers. But is it doubtful that any of this was explained in detail; it would have been rather obvious to the Queen's subjects that new institutions would be far-reaching. The chiefs of the north had been asking for the introduction of British customs for some five years, and were certainly ready for a more effective display of British civilisation than had been hitherto available through the former British Resident. But while nobody seems to have paid much attention to the content of the third article at the time, it was problematic later.

But from the point of view of the English settlers, while they too welcomed the beginning of British legality and civil order, they were disturbed by the form this order might take if it would result in their becoming a satellite of the penal colony of New South Wales. Their own 'sovereignty of the soil' (howsoever obtained, whether directly from a 'sovereign chief' or from a subsequent purchase of land already alienated) was on the verge of being confiscated by a land commission and they were not happy about it, notwithstanding its inevitability. For them, therefore, the English text was important, as it would determine their co-operation (or non-cooperation) with the new authorities. This issue would cause great offence as the commission retrospectively disposed of 'unfair' established contracts. The formulation of the messages to the chiefs, and to the settlers, took far more scrutiny than the message contained in the three articles. This is why so much attention was given to the message contained in the preamble and in Hobson's speeches.