

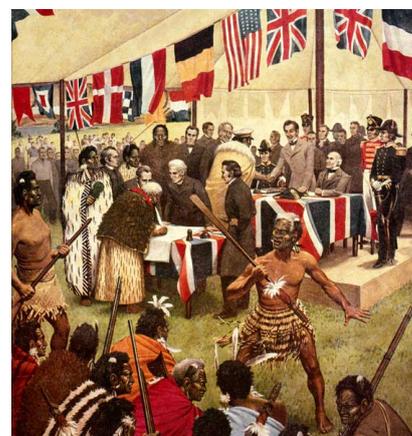
## Te Kaa: Session Three Readings

### Te Tiriti o Waitangi / The Treaty of Waitangi

New Zealand's founding document, the Treaty of Waitangi, was prepared over just a few days in February 1840. On the day that it was first signed, there were versions in English and Maori. About 40 chiefs signed the Maori version of Treaty of Waitangi on 6 February 1840. By the end of the year, about 500 other Māori, including 13 women, had put their names or moko to the document; all but 39 signed the Māori text. While some had clear expectations about what their agreement would bring, others chose not to sign the treaty.

#### The first signing

Lieutenant-Governor William Hobson expected the chiefs to take three days to mull over the Māori text of the treaty. He was surprised to be called to the meeting on 6 February, so he arrived at Waitangi alone and wearing plain clothes apart from his plumed hat. Former British Resident James Busby called up the chiefs, starting with Hōne Heke Pōkai. Each signing was followed by a handshake and greeting from Hobson: 'He iwi tahi tatou' (We are [now] one people). About half of the signatories on 6 February had also signed the Declaration of Independence in 1835.



Around 6 February, Henry Williams translated a copy of the Māori text back into English. This became the official text of the treaty in English. It was presumed that the Māori text and the retranslation into English had the same meaning, but Williams added a cautionary note on the copy of the official text that Hobson sent to Governor Gipps: 'I certify that the above is as literal a translation of the Treaty of Waitangi as the idiom of the language will allow.'

#### Later signings

Following the meeting at Waitangi, versions of the treaty circulated around the country for Māori to sign. Between February and September 1840, missionaries, traders and officials explained its terms at 50 or so signing meetings from the far north of the North Island to Ruapuke Island in Foveaux Strait.

#### The decision to sign

In 1840 Māori leaders decided for or against signing the treaty on the basis of its Māori text and after weighing various considerations. They wanted regulated settlement and support in controlling settlers and land sales. Trade and a cash income from employment opportunities would bring benefits to Māori communities. The new relationship would also enable them to avoid the intertribal warfare that had escalated in previous decades.

Although the chiefs were aware that a colonial administration would require some concessions to allow it to exercise power, they were assured by officials that their own authority was left in place by Article Two of the treaty (in the Maori-language version). This suggested that authority would be shared between the government and the chiefs. This shared authority would be enhanced by the other treaty articles, to Māori advantage.

### Reasons for not signing

Some chiefs had no opportunity to sign the treaty as there were apparently no treaty meetings in regions such as Taranaki and Wairarapa, and almost none in other areas such as Hawke's Bay. Sometimes chiefs were absent from meetings, and negotiators were too impatient to await their return.

Although a copy of the treaty went into the central North Island, Te Arawa and Ngāti Tuwharetoa chiefs refused to sign it. The impact of the European world on these inland tribes was less than on coastal iwi. Chiefs valued their independence and were not prepared to place their mana under that of the British queen. The powerful Waikato chief Te Wherowhero also refused to sign for this reason.

In districts where intertribal disputes were in progress, chiefs were not prepared to allow British interference. Tāraia of Thames and Tūpaea of Tauranga refused to sign the treaty because they wanted to retain full control over their affairs, and settle their own disputes.

## Text of The Treaty / Te Tiriti

<b>The Treaty of Waitangi</b>	<b>Translation of Te Tiriti o Waitangi</b> Translation by Professor I H Kawharu, published in Report of the Royal Commission on Social Policy, Wellington, 1988
<p><b>Preamble</b></p> <p>HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favor the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands .</p> <p>Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant-Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.</p>	<p><b>Preamble</b></p> <p>VICTORIA, the Queen of England, in her concern to protect the chiefs and the subtribes of New Zealand and in her desire to preserve their chieftainship and their lands to them and to maintain peace and good order considers it just to appoint an administrator one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queen's Government being established over all parts of this land and (adjoining) islands and also because there are many of her subjects already living on this land and others yet to come.</p> <p>So the Queen desires to establish a government so that no evil will come to Māori and European living in a state of lawlessness. So the Queen has appointed 'me, William Hobson a Captain' in the Royal Navy to be Governor for all parts of New Zealand (both those) shortly to be received by the Queen and (those) to be received hereafter and presents to the chiefs of the Confederation chiefs of the subtribes of New Zealand and other chiefs these laws set out here.</p>

<p><b>Article the first [Article 1]</b></p> <p>The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation <b>cede</b> to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of <b>Sovereignty</b> which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole sovereigns thereof.</p>	<p><b>The first</b></p> <p>The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give absolutely to the Queen of England forever the complete government over their land.</p>
<p><b>Article the second [Article 2]</b></p> <p>Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.</p>	<p><b>The second</b></p> <p>The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. But on the other hand the Chiefs of the Confederation and all the Chiefs will sell land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.</p>
<p><b>Article the third [Article 3]</b></p> <p>In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.</p> <p>(signed) William Hobson, Lieutenant-Governor.</p>	<p><b>The third</b></p> <p>For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties of citizenship as the people of England.</p> <p>(signed) William Hobson Consul &amp; Lieut Governor</p>

<p>Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof in witness of which we have attached our signatures or marks at the places and the dates respectively specified.</p> <p>Done at Waitangi this Sixth day of February in the year of Our Lord one thousand eight hundred and forty.</p>	<p>So we, the Chiefs of the Confederation of the subtribes of New Zealand meeting here at Waitangi having seen the shape of these words which we accept and agree to record our names and our marks thus.</p> <p>Was done at Waitangi on the sixth of February in the year of our Lord 1840.</p>
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## Differences between the texts

The Treaty of Waitangi has two texts. The Māori version is not an exact translation of the English. There has been much debate over the differences – how they came to be and what they mean. Some people argue that there are two treaties: te Tiriti, the Māori version, and the Treaty, the English version.

In October 1840 a copy of the treaty – both the Māori text and the official English text, authenticated by Hobson’s signature – was sent to the Colonial Office in London. Described as a fair copy for the record, it was authenticated by the lieutenant-governor. This is the only copy of the treaty that has the words 'Treaty of Waitangi' at its head. This version is the official treaty, and legally there is only one treaty.



## Differing opinions

Some people argue that the Treaty was prepared hastily and by amateurs who, intentionally or otherwise, used language that conveyed a particular meaning in Māori.

Walker notes that *Williams was not a disinterested party. He and other missionaries had a vested interest in ensuring that the Treaty was signed because of their substantial land holdings. They owned their lands at the pleasure of the chiefs, which might be withdrawn at anytime. Therefore besides their public proclaimed desire for law and order, the prospect of gaining secure title on fee simple from the Crown provided them with a strong personal incentive to ensure that the Treaty was signed.*

Others say that the instructions that Lieutenant-Governor William Hobson received from the British were careful, especially concerning land; Hobson and his advisors knew exactly what they were doing when they drafted the English text of the Treaty, and they had previous treaties to guide them.

The Māori text was translated quickly but by men who were familiar with the language. The missionary Māori language they used was known to the chiefs, and it conveyed key words and meanings. Henry Williams and the chiefs had spent much of the night of 5 February talking about the Treaty and its meanings.

Williams did not suggest any changes to the text, so some people see this as a sign that he did not think the Māori text was seriously misleading. Perhaps he chose certain words to gain Māori agreement, however ambiguous they might appear as a translation of English concepts.

Many people now focus on the differences between the English and Māori texts, especially with regard to the crucial question of sovereignty.

### Preamble

The English version states the British intentions were to protect Māori interests from the encroaching British settlement, provide for British settlement and establish a government to maintain peace and order.

The Māori text suggests that the Queen's main promises to Māori were to provide a government while securing tribal rangatiratanga (chiefly autonomy or authority over their own area) and Māori land ownership for as long as they wished to retain it.

### Article one

In the English text, Māori leaders gave the Queen 'all the rights and powers of *sovereignty*' over their land.

In the Māori text, Māori leaders gave the Queen 'te kawanatanga katoa' or the complete *government* over their land.

The word 'sovereignty' had no direct translation in Māori. Chiefs had authority over their own areas, but there was no central ruler over the country. The translators of the English text used the Māori word 'kawanatanga', a transliteration of the word 'governance', which was in current use. Had the word 'mana' been used (which was used in the 1835 Declaration of Independence), Ranginui Walker claims no Māori would have signed. Māori believe that they kept their authority (mana) to manage their own affairs and ceded a right of governance to the Queen in return for the promise of protection.

The question arises as to who was sovereign over New Zealand. The British Crown claimed sovereignty on the basis of the English version but this was not the version that was signed by the majority of chiefs. The Treaty of Waitangi they signed confirmed their own sovereignty while ceding the right to establish a governor in New Zealand to the Crown.

It is widely accepted that the use of the words 'kawanatanga' and 'tino rangatiratanga' (in Article 2) contributed to later differences of view between the Crown and Māori over how much authority the chiefs would retain and how much the governor would have. There can be little doubt that the chiefs who signed the Treaty expected to enter into some kind of partnership and power sharing in the new system.

### Article two

In the English text, Māori leaders and people, collectively and individually, were confirmed and guaranteed 'exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties'. Māori also agreed to the Crown's exclusive right to purchase their land. Some Māori (and British) later stated that they understood the Crown to have a first option rather than an exclusive right to buy.

In the Māori text, Māori were guaranteed 'te tino rangatiratanga' or the unqualified exercise of their chieftainship over their lands, villages, and all their property and treasures. It is notable that Forests and fisheries were excluded, but it can be surmised that they were included in the catch all statement *me nga taonga katoa* (and all their treasures). Māori also agreed to give the Crown the right to buy their land if they wished to sell it. The Maori text did not clearly convey the implications of exclusive Crown purchase.

### Article three

In the Māori text, the Crown gave an assurance that Māori would have the Queen's protection and all rights (tikanga) accorded to British subjects.

This article guarantees equality between Maori individuals and other New Zealanders. Many are concerned that as long as socio-economic disparities exist, the provision is unfulfilled.

### Waitangi Tribunal

Since 1840, laws passed by parliament and government actions have sometimes damaged Māori interests. The Treaty's promise of government protection was often not kept. Many attempts by Māori to have their concerns addressed by the government got either no response or an inadequate one. This left many Māori with a sense of grievance.

The government recognised that reconciliation of the Crown and Māori was needed to restore good relationships. In 1975, it established the Waitangi Tribunal, a permanent commission of inquiry to start working through Māori

concerns.

### **Purpose of Waitangi Tribunal**

The Waitangi Tribunal was first set up to hear claims relating to Crown actions only after 1975. Then in 1985 the Tribunal's powers were extended to cover Crown acts and omissions dating back to 1840.

The role of the Tribunal is set out in section 5 of the Treaty of Waitangi Act 1975 and includes:

- inquiring into and making recommendations on well-founded claims
- examining and reporting on proposed legislation, if it is referred to the Tribunal by the House of Representatives or a Minister of the Crown
- making recommendations or determinations about certain Crown forest land, railways land, state-owned enterprise land, and land transferred to educational institutions.

### **Principles of the Treaty**

In fulfilling this role, the Waitangi Tribunal has exclusive authority to determine the meaning of the Treaty in the two texts and to decide issues raised by the differences between them. References to the Treaty in law try to bridge the differences by referring to the “Principles” of the Treaty, or the core concepts or spirit that underpin both texts.

When inquiring into Māori Treaty claims, the Waitangi Tribunal must determine whether any Crown act or omission was, or is, inconsistent with the principles of the Treaty. Each Tribunal panel must determine not only whether the Crown has acted in breach of Treaty principles, but also which principles should apply to the claims before it.

For this reason, the Waitangi Tribunal does not have a single set of Treaty principles that are to be applied in assessing each claim. Over the years, however, some core principles have emerged from Tribunal reports, which have been applied to the varying circumstances raised by the claims.

These principles are often derived not just from the strict terms of the Treaty’s two texts, but also from the surrounding circumstances in which the Treaty agreement was entered into.

### **The approach of the Te Tau Ihu Tribunal**

By way of example, in its 2008 report, the Tribunal inquiring into the historical claims of the Te Tau Ihu district (the northern South Island) provided the following account of the Treaty principles it considered were appropriate to the inquiry. They may differ from those in other inquiries.

#### **Partnership**

In the words of the president of the Court of Appeal, ‘the Treaty signified a

partnership between the races’ and each partner had to act towards the other ‘with the utmost good faith which is the characteristic obligation of partnership’. The obligations of partnership included the duty to consult Māori and to obtain the full, free, and informed consent of the correct right holders in any transaction for their land.

### **Reciprocity**

Above all, the partnership is a reciprocal one, involving fundamental exchanges for mutual advantage and benefits. Māori ceded to the Crown the kawanatanga (governance) of the country in return for a guarantee that their tino rangatiratanga (full authority) over their land, people, and taonga would be protected. Māori also ceded the right of pre-emption over their lands on the basis that this would be exercised in a protective manner and in their own interests, so that the settlement of the country could proceed in a fair and mutually advantageous manner.

### **Autonomy**

As part of the mutual recognition of kawanatanga and tino rangatiratanga, the Crown guaranteed to protect Māori autonomy, which the Turanga Tribunal defined as ‘the ability of tribal communities to govern themselves as they had for centuries, to determine their own internal political, economic, and social rights and objectives, and to act collectively in accordance with those determinants’. Inherent in Māori autonomy and tino rangatiratanga is the right to retain their own customary law and institutions and the right to determine their own decision makers and land entitlements.

### **Active protection**

The Crown’s duty to protect Māori rights and interests arises from the plain meaning of the Treaty, the promises that were made at the time (and since) to secure the Treaty’s acceptance, and the principles of partnership and reciprocity. The duty is, in the view of the Court of Appeal, ‘not merely passive but extends to active protection of Māori people in the use of their lands and waters to the fullest extent practicable’, and the Crown’s responsibilities are ‘analagous to fiduciary duties’. Active protection requires honourable conduct by, and fair processes from, the Crown, and full consultation with – and, where appropriate, decision-making by – those whose interests are to be protected.

### **Options**

The Treaty envisaged a place in New Zealand for two peoples with their own laws and customs, in which the interface was governed by partnership and mutual respect. Inherent in the Treaty relationship was that Māori, whose laws and autonomy were guaranteed and protected, would have options when settlement and the new society developed. They could choose to continue their tikanga and way of life largely as it was, to assimilate to the new society and economy, or to combine elements of both and walk in two worlds. Their choices were to be free and unconstrained.

### **Mutual benefit**

When the Treaty was signed, both settlers and Māori were expected to

obtain or retain the resources necessary for them to develop and prosper in the new, shared nation state. As we shall see, Lord Normanby's instructions (and those of the New Zealand Company to its agent) stated that the true payment for Māori who parted with land would be the rise in value of what they retained, which would enable them to participate fully in the benefits of settlement. The colonisation of New Zealand was thus to be for the mutual benefit of both Māori and settlers, and the retention of sufficient Māori land and resources was acknowledged as a critical factor in achieving that.

### Equity

The obligations arising from kawanatanga, partnership, reciprocity, and active protection required the Crown to act fairly to both settlers and Māori – the interests of settlers could not be prioritised to the disadvantage of Māori. Where Māori have been disadvantaged, the principle of equity – in conjunction with the principles of active protection and redress – requires that active measures be taken to restore the balance.

### Equal treatment

The principles of partnership, reciprocity, autonomy, and active protection required the Crown to act fairly as between Māori groups – it could not unfairly advantage one group over another if their circumstances, rights, and interests were broadly the same.

### Redress

The Tribunal, in its Report on the Crown's Foreshore and Seabed Policy, found: Where the Crown has acted in breach of the principles of the Treaty, and Māori have suffered prejudice as a result, we consider that the Crown has a clear duty to set matters right. This is the principle of redress, where the Crown is required to act so as to 'restore the honour and integrity of the Crown and the mana and status of Māori'. Generally, the principle of redress has been considered in connection with historical claims. It is not an 'eye for an eye' approach, but one in which the Crown needs to restore a tribal base and tribal mana, and provide sufficient remedy to resolve the grievance. It will involve compromise on both sides, and, as the Tarawera Forest Tribunal noted, it should not create fresh injustices for others.

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Ka whawhai tonu matou, Ranginui Walker