

*Interpreting the Treaty of Waitangi:  
The Maori Resurgence and Race Relations  
in New Zealand*

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The Treaty of Waitangi, signed in 1840 by the first British governor and some five hundred Maori chiefs, has recently provided the basis for a wide range of radical, but by no means new, demands. Labour governments since 1975 have given the treaty greatly increased statutory recognition, seeing it as a sure foundation of racial partnership and harmony. The superior courts have carried that recognition further than many Labour politicians would have wished. Yet the most radical Maori activists assert that the Maori-language version of the treaty, the version their ancestors signed, has still not been implemented. On 6 February 1990, at Waitangi, the sesquicentennial commemoration of the treaty was again the scene of vociferous and now familiar protest, this time in the presence of Queen Elizabeth II. The unusual occurrences included the hurling of a T-shirt at the Queen by a protester who evaded the security screen and, more important, a declamation by one of the formal speakers, the Anglican Maori Bishop of Aotearoa. "You have marginalised us," Bishop Vercoe told Her Majesty, and demanded that the treaty be honored (*NZH*, 7 Feb 1990).

Just what is meant by honoring the treaty is a matter of the greatest concern to New Zealanders of both races. The treaty and its application are in the news almost every day and the subject of constant discussion in schools, universities, private and government organizations, and countless homes. Amid fears of deepening racial division, even the threat of violence, many Pakeha (white New Zealanders) blame the Labour government and its careless legislation for unleashing Maori demands that are unrealizable and will result in increased bitterness. But a survey of the origins of the treaty and the Maori view of its importance will reveal that the

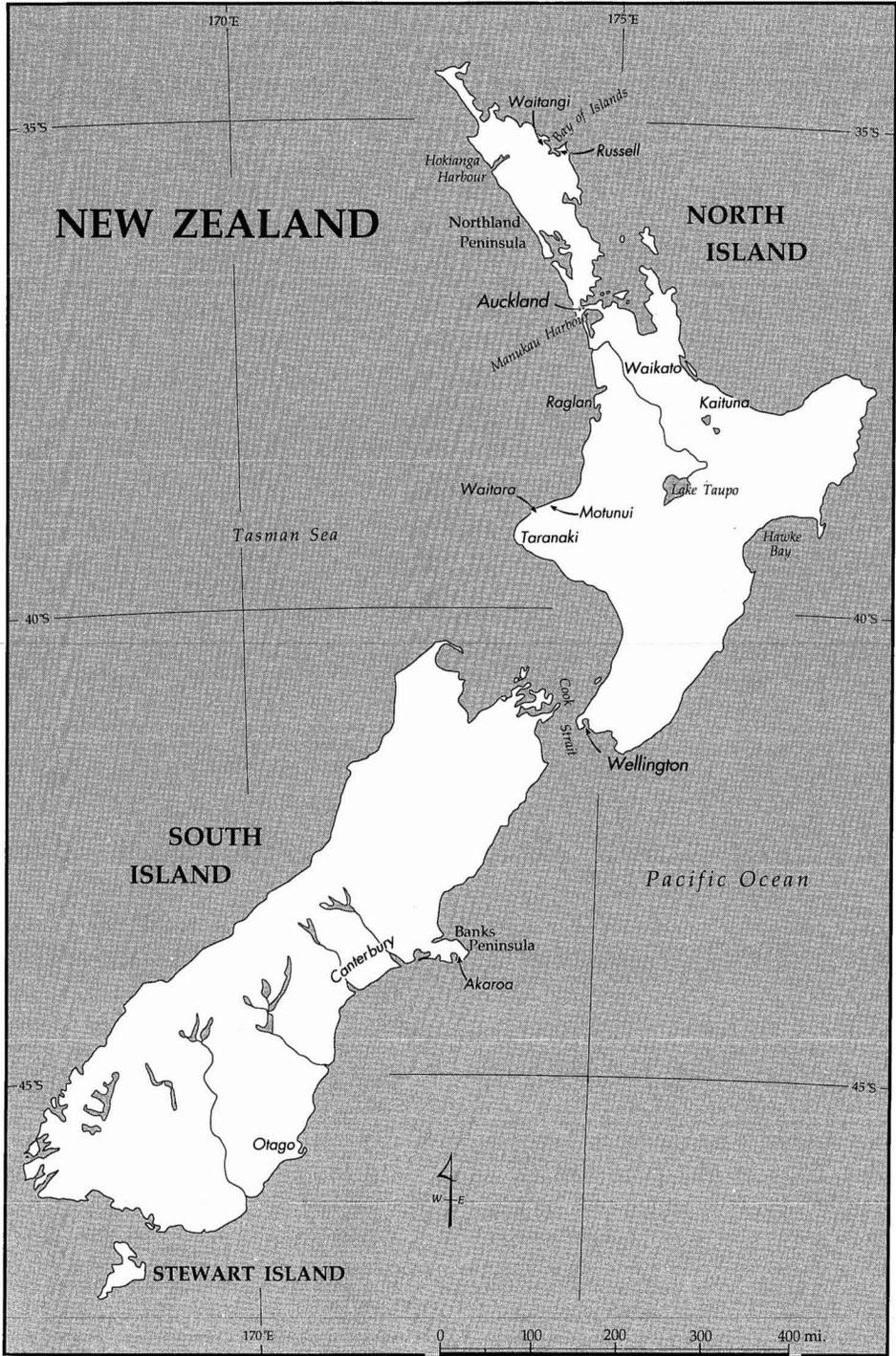
Maori demands are of long standing. Labour's attempt to meet them, in the face of Maori demographic upsurge and strength of protest, is by no means totally wrongheaded. The great question is whether there is enough common ground between Maori and Pakeha for the attempt to succeed.

### THE TREATY AND ITS ORIGINS

The Treaty of Waitangi was one of a long sequence of treaties the British made with indigenous authorities to regulate matters where British nationals had already extended their influence and were about to increase it (McHugh 1987, 11–63). A crucial point of decision for the British authorities was whether the local authority was able to exercise effective control in its territory and enforce law sufficiently to protect the legitimate interests of foreign nationals as well as its own subjects. If this were so, the British tended to recognize the local sovereignty and work through it; otherwise (though often reluctantly because of the known difficulty and cost of government), they acquired sovereignty themselves and frequently coupled their treaties with an exercise of force. In all cases, the key issue was the status of the land rights both of the indigenous people and of the settlers.

Following the foundation of the British colony in New South Wales (NSW) in 1788, British subjects increasingly visited New Zealand or formed small settlements there to kill whales and seals, to cut timber, to dress flax, and, from 1814, to convert the Maori to Christianity. The British at first appointed some missionaries and some Maori chiefs as justices of the peace with authority (theoretically) to fine British subjects or arraign them before NSW courts. British statutes of 1817, 1824, and 1828 sought to strengthen the jurisdiction of these courts over offenses by British subjects in New Zealand. In the 1830s, British warships made periodic visits to enforce a crude gunboat justice. In 1831, some northern chiefs, at the missionaries' suggestion, petitioned for the protection of the British flag against a supposed French threat. The outcome was the appointment of James Busby, a member of a prominent NSW family, as British Resident at Waitangi in the Bay of Islands (map 1), though without any supporting force or even a magistrate's commission (Tapp 1958; Adams 1977).

All of these arrangements expressly recognized New Zealand as not being among the British possessions. This was not quite the same as recognizing Maori sovereignty—a recognition increasingly confined to authori-



ties capable not only of issuing edicts but of regularly enforcing them. The Maori were in fact perceived somewhat ambivalently. Chiefly authority and status were clearly discernible, as elsewhere in Polynesia, but Maori society nevertheless was turbulent and warring. It was hoped that missionary influence would lead to more orderly and regular government. On the basis that the Maori were "semicivilized," Busby was instructed to organize the northern tribes into some form of settled legislature, executive, and judiciary (Ward 1974, 24).

Busby had little success. But partly to provide a national flag and register for small ships then being built in the harbors and estuaries of northern New Zealand, he proposed that the local chiefs petition the British king for a flag and for its recognition. The NSW governor agreed, and in 1834 a meeting of chiefs, amid some confusion and dissatisfaction, chose a flag from a selection of three designed in Sydney; the flag was duly gazetted, and the Admiralty directed its vessels to honor it (Orange 1987, 20). The following year, in response to the attempt of a French adventurer, de Thierry, to establish a sovereign state over land he had allegedly purchased at Hokianga, Busby persuaded thirty-four chiefs to sign a "Declaration of Independence" (*He Wakaputanga o te Rangatiratanga o Nu Tireni*) and a request to King William IV to protect the infant "Confederation of the United Tribes of New Zealand" (Orange 1987, 21). The declaration and request were duly acknowledged by the Colonial Office, and though the confederation never formally assembled—indeed, the chiefs fell to intertribal warfare—Busby continued to collect signatures from eminent chiefs to the declaration of independence.

In 1837 a series of events caused the Colonial Office to resolve on a further extension of British authority. In England, the New Zealand Association of Edward Gibbon Wakefield proposed the formal colonization of New Zealand. NSW entrepreneurs trading in New Zealand had, from time to time, secured deeds of sale from Maori chiefs in respect of large areas of land; from 1837, they greatly increased their activity, laying claim to much of the Northland peninsula and to huge areas of the South Island. In 1837 also, tribal warfare convinced Busby and the missionaries that the Maori would never be amenable to their influence without the backing of an armed force, capable of enforcing law. In December 1837, the British government decided to secure sovereignty over parts of New Zealand likely to be settled; a colonization "organised and salutary" was deemed preferable to one that was "desultory, without Law." By August 1839, when Captain

William Hobson was finally sent forth to establish the new colony, Wakefield's ships had already sailed for the Cook Strait area, and Hobson was authorized to seek the sovereignty of "the whole or any part" of New Zealand (Ward 1974, 30–31).

In drafting Hobson's instructions, James Stephen, permanent under secretary in the Colonial Office, reflected on the relationship between sovereignty and title to land in a tribal, prestate society. Basically, Stephen doubted that a distinction could be made between them; a tribe's or a chief's control of land amounted to a form of local sovereignty, and (unlike the situation in a nation-state) there was no larger, supratribal authority in which sovereignty could be vested. Given the extent of land selling believed to have gone on in New Zealand, the chiefs, thought Stephens, had thereby largely divested themselves of such sovereignty as they had possessed, and "it may be questioned whether strictly speaking the necessity exists for further negotiation with them on the subject" (Stephen, draft instructions, Colonial Office Papers, CO 209/4, 239, cited in Ward 1974, 42). But Britain had formally recognized New Zealand as a sovereign and independent state, "so far at least as it is possible to make that acknowledgment in favour of a people composed of numerous dispersed and petty tribes who possess few political relations to each other and are incompetent to act, or even deliberate, in concert" (Lord Normanby's Instructions to Hobson, 14 Aug 1839, cited in Orange 1987, 30). For this reason, a policy of frank and open dealing required that Britain negotiate with the chiefs for the cession of sovereignty. But Hobson was provided with no draft treaty and was authorized to take possession of the South Island by right of discovery.

If this aspect of treaty making was regarded rather lightly by the British, control of the land trade was not. In NSW, Governor Gipps was concerned to end the upsurge of speculation in Maori land. On his arrival in Sydney in December 1839, Hobson, who *had* been provided with a draft proclamation regarding land, discussed the matter with him. On 18 January, while Hobson was still crossing the Tasman Sea, Gipps issued a proclamation to the effect that all pre-1840 land claims would be subject to investigation by a Land Claims Commission and future purchases would be by the Crown only. A similar proclamation was made by Hobson (already commissioned as lieutenant governor as well as consul) on his arrival at the Bay of Islands. The Crown's preemptive right of purchase was to become a feature of the treaty, only then drawn up.

The drafting process and the differing versions in English and Maori (neither a precise translation of the other) have been the subject of close analysis in recent New Zealand historiography: the differing understandings of the British and the Maori both reflect and fuel the controversy that has raged from the outset and rages today. (See Orange 1987, 32–59; Ross 1972; McKenzie, 1985. Maori and English texts of the treaty are printed as appendix 2 in Orange 1987.)

By Article 1 of the English version, “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” ceded to the Queen of England “all the rights and powers of Sovereignty” that the “Confederation or the Individual Chiefs” exercised over their “respective Territories as the sole sovereigns thereof.” This sort of formulation, and its near equivalent in Maori, together with the collection of signatures of chiefs throughout the land over the next five months, suggests that the British saw the compact as one with the many distinct groups or even individuals, rather than with “the Maori people” as a collectivity. This makes somewhat problematic the modern tendency to refer to the Maori in the singular as “the treaty partner” with the British Crown, a formulation that underlies the modern Maori demand for coequal power with the Pakeha. Given the very tenuous nature of the confederation, the New Zealand government of today can reasonably draw at least as much support from the treaty documents for its current policy of devolving responsibility to the many tribal authorities as can the proponents of a single Maori “nation.”

More serious though is the controversy over key terms in the Maori-language version of the treaty. The neologism *kawanatanga*, from the transliteration of “governor” (*kawana*), was used to equate to the “sovereignty” that the Maori ceded in the English version. It could scarcely have conveyed to the chiefs the full implications of “sovereignty.” It may in part have been selected by the missionary translator Henry Williams and the British officials, instead of *mana* or *rangatiratanga* (the term used in the 1835 Declaration of Independence), words that more correctly denoted chiefly authority, to win Maori acquiescence in the treaty. Indeed, no chief (*rangatira*) would have wittingly signed away his *mana* or *rangatiratanga*. However, Article 2, in the English version, confirmed the chiefs and tribes and “the respective families and individuals thereof” in “the full exclusive and undisturbed, possession of their Lands and Estates, Forests, Fisheries

and other properties” so long as they wished to retain them; the Maori version of this clause confirmed the chiefs and people in the *tino rangatiratanga* of their lands and *taonga* ‘valued possessions’.

It is certain that the chiefs did not, at the time, fully apprehend the extent of the authority that the new government would eventually exert over them and would not have signed if they had. Orange has correctly pointed out that the missionaries and officials urged upon them the positive aspects of government, not its negative or restrictive aspects. Yet, though their presentation was scarcely impartial or farseeing, the British at Waitangi were probably not deliberately devious. They had no wish to diminish the authority (*mana*) of the chiefs over their own families and tribes; the missionaries hoped rather to exert an influence through them as they embraced Christianity and accepted missionary tutelage. Moreover, convinced that the Maori had no traditional allegiance to any larger polity than their local chiefs and tribe, the British authorities considered it entirely appropriate to coin the new word *kawangatanga* for the new thing, national sovereignty, while remaining perfectly content to recognize local chiefly authority (see the opinion of Sir William Martin, New Zealand’s first attorney general, cited in Ward 1988, 172).

Be that as it may, it is clear from their statements (eg, “the shadow of the land goes to the Queen, the substance remains with us”) that the chiefs in 1840 understood the guarantee of their *tino rangatiratanga* to be a treaty recognition of their “full chieftainship” and their acceptance of British *kawangatanga* as a kind of overarching authority, intended mainly to protect their chieftainships and their lands (Ward 1974, 42–44). By Article 3 of the treaty, the Queen extended to the Maori the rights and (in some translations, the duties) of British subjects and promised them her protection (Kawharu, cited in *NZ Maori Council v A–G* 1987, 32–33).

## THE TREATY 1840–1975

How little the treaty making meant to the question of national sovereignty, in British eyes, was demonstrated by the fact that on 21 May, without waiting for the interior and southern chiefs’ consent to the treaty, Hobson declared British sovereignty over New Zealand, in respect of the North Island by cession, the South Island and Stewart Island by right of discovery. In fact, because a French warship had arrived to escort a small colony of French settlers to Akaroa on Banks Peninsula, Hobson also sent

a warship south to land a magistrate at that harbor. The basis in international law by which New Zealand became British has been debated extensively, but the weight of legal opinion is that it was by settlement and act of state, rather than by cession in the treaty (McNeil 1989, 132, 184).

Maori leaders, however, made very clear from the beginning the limits to their acceptance of government authority. Certainly they cooperated with officials to a considerable extent in the regulation of crime involving members of both races. They also attended the Land Claims Commission and appeared to appreciate its efforts to see that only equitable pre-1840 land purchases were approved. The requirement that the New Zealand Company virtually renegotiate its shoddy land purchases in Cook Strait was a very real protection of the Maori, and company officials railed against the treaty, which they had assumed to be but "a temporary device to amuse and pacify savages." Yet the chiefs too were resentful of increasing restriction, such as new customs duties, collected by the government not themselves, and controls on the cutting of increasingly precious kauri timber. The Crown's preemptive right to purchase land, though protective, apparently denied the Maori the opportunity to accept the higher prices that private traders tantalized them with. As far as matters internal to Maori communities were concerned, the officials had limited involvement, although some Maori leaders allowed them to mediate and minimize violence.

By 1844 resentment of government authority led the volatile Hone Heke, the first to sign the treaty, to begin open defiance, including his successive assaults on the symbol of British sovereignty, the flagstaff at Russell (formerly Kororareka). Most chiefs stood aside from Heke's rising, but there was widespread sympathy for him, especially in central North Island.

The advent of a new governor, George Grey, in 1845, and a new secretary of state for colonies, Earl Grey, saw the Crown's treaty undertakings even more severely tested. Earl Grey, sympathetic to the New Zealand Company, provided a constitution in 1846 in which "waste," that is, uncultivated land, was to be registered as Crown land. The treaty promises regarding lands, forests, and fisheries were invoked by the missionaries and officials in New Zealand to defeat this proposal. After some vacillation, the Colonial Office took the view, and held to it, that the Maori customary claim to hunting and gathering rights in land (though not yet in tidal fisheries) was recognized (Adams 1977, 204-209). This undoubtedly kept the peace in New Zealand for another thirteen years.

Moreover, in the most important legal interpretation of the period, *Regina v Symonds* (1847), Chief Justice Martin and Justice Chapman also supported Maori customary rights, as recognized in the treaty, but also as recognized by two hundred years of British law applied in North America and elsewhere (McHugh 1987, 242–243).

Though the Maori were thus enabled to continue to cooperate with government, other aspects of Grey's administration made them feel that their *rangatiratanga* was far from secure. Grey ceased negotiating with, and treacherously seized, the mighty Te Rauparaha, who threatened the company settlements in Cook Strait; Grey also abolished the Protectorate Department, whose efforts had been crucial to the involvement of Maori in government and respect for their points of view; he pursued an aggressive land purchase policy that saw most of the South Island acquired with little regard for the repeated instructions and undertakings to make "ample reserves" for the Maori. The decisive move toward settler self-government in the 1852 constitution (which left the Maori unfranchised) was further cause for alarm.

In this context, Maori leaders began to discuss various proposals for their own supratribal authority. Under the skillful leadership of Wiremu Tamihana Te Waharoa of Waikato, these resulted in 1858 in the selection of the high chief Te Wherowhero as the first Maori King.

The goals and symbols of the King movement are extremely significant in relation to recent Maori objectives. The moderate leaders like Tamihana envisaged a coequal relationship between the Queen and the Maori King, in which *rangatiratanga* and *mana motuhake* (self-determination) would be preserved alongside the Queen's mana and the law of God (Orange 1987, 142–143). With Tamihana and his kind, it might just have been possible to have negotiated some kind of semiautonomous Maori province in the Waikato district, under section 71 of the 1857 constitution, which provided for the declaration of "Native Districts" where British law would not fully run. But Tamihana himself sought to extend the King's mana throughout the land to restrain land selling; other King supporters, in a clear assertion of ethnic nationalism, believed that Maori anywhere, even in Auckland, should be able to claim their nationality and the jurisdiction of the King's law. In two or three cases, the King's police or soldiers even physically enforced this claim.

To the governor and the settlers, this was tantamount to treason or rebellion. Even the moderate settlers and the Anglican clergy saw the movement as threatening their fundamental "one people" view of the

treaty. More directly, the King movement threatened to prevent further land selling.

For these reasons, the government reacted very aggressively. In 1860, Governor Browne, on the advice of Native Secretary Donald McLean, attacked the leading *rangatira* Wiremu Kingi over the Waitara block in Taranaki, asserting, wrongly, that the chief was the agent of a Kingite “Land League” rather than a senior chief defending his tribal patrimony. In 1863, after a tenuous truce in Taranaki, George Grey, returned for a second governorship, invaded the Waikato district to suppress the King movement, which was seen as the root of rebellion.

In the ten-year war that followed, the British forces, involving some ten thousand troops and settler militia, plus Maori auxiliaries, achieved a limited victory, with the Maori capacity to resist government authority severely eroded. The settlers consolidated their supremacy through legislation in the parliaments of 1862–1867—legislation that, in the settlers’ interpretation, gave effect in domestic law to provisions of the treaty. The Native Land Acts of 1862 and 1865 recognized Maori customary title and set up a Native Land Court (with Maori assessors) to decide contested claims. Successful claimants were awarded Crown grants that replaced customary titles. A Native Rights Act of 1865 confirmed that Maori were British subjects able to sue and be sued in the Supreme Court—and to be charged with treason if they took up arms, instead of being treated as foreign belligerents. A Native Schools Act of 1867 laid the basis for primary schools, teaching in English, in every major Maori village. A Maori Representation Act, 1867, enfranchised all adult Maori males and gave them four seats in parliament. The Resident Magistrates Act of 1867 continued existing provisions whereby Maori chiefs, as salaried assessors, helped the itinerant resident magistrates administer the law in rural districts—although the act also made clear that it was British law that was being applied, with only temporary modification to take account of Maori custom (Ward 1974, 200–223). Many chiefs who had been neutral or assisted the Queen’s forces in the war, and even some former “rebels,” thought that these arrangements offered a reasonable guarantee of their *rangatiratanga* and cooperated with the restoration of civil administration in their areas.

Goodwill was destroyed, however, by the vicious effect of the Native Land Acts, which converted the complex of customary rights into highly negotiable titles that Pakeha agents cosseted, cajoled, and bribed for over the next half-century, setting Maori against Maori, and remorselessly

relieving the North Island Maori of most of their land. This, more than war and confiscation, was the destruction of Maori *rangatiratanga* (Ward 1974, 224–263).

In Pakeha law, appeals to the treaty no longer availed the Maori; in a now notorious decision of 1877, Chief Judge Prendergast ruled that insofar as the treaty “purported to cede the sovereignty of New Zealand it must be regarded as a simple nullity for no body politic existed capable of making a cession of sovereignty” (*Wi Parata v the Bishop of Wellington*, cited in McHugh 1987, 268–269). Therefore, unless given express recognition as domestic law, treaty provisions were of no effect.

Most Pakeha New Zealanders thus regarded the matter as settled and took little notice of the treaty for one hundred years. They got on with developing the land, and many had little contact at all with Maori. Others, who associated with Maori at school, in sports teams, at work, and in the armed forces of two world wars, were not unjustifiably proud of New Zealand’s racial integration and saw few major problems save the lack of improvement in Maori health and educational attainments.

Not so the Maori. In a recent book of the greatest significance to New Zealand’s national debate, Claudia Orange has shown how the treaty, the circumstances of its making, and its terms, especially in the Maori version, have been a continuing focus of Maori aspirations for greater status and advancement in the land of their birth. Heke’s rising in 1844 had been accompanied by renewed references to the flag of 1834 and the 1835 declaration of independence. The King movement, though inclined to see the treaty as a Ngapuhi tribe affair, also flew the 1834 flag, and some of its leaders, like Tamihana, were willing to view the treaty as a possible basis of coequal Maori and settler status (Orange 1987, 143, 157). In 1860, Governor Browne and Donald McLean convened a great conference of chiefs at Kohimarama in Auckland and expounded the treaty to them afresh. But whereas the government saw the treaty as supporting their stand against Wiremu Kingi in Taranaki and the King movement in Waikato, the chiefs saw it as the confirmation of their *mana*, still to be enjoyed under the protecting authority of the Queen. They were by no means convinced of the rightness of the government’s actions in Taranaki, though they generally stood aloof from the King movement (Orange 1987, 149).

In the 1870s, many who had cooperated with the resident magistrates or founded schools or participated in elections for the four Maori seats, became disillusioned as the sleazy land buying of government and private

agents wrecked their efforts at farming and dislocated their society. Diverse organizations, such as the Repudiation Movement in Hawke Bay, the treaty movement among the Ngapuhi people, and a series of "parliaments" convened by the Ngati Whatua tribe at Orakei in Auckland, all debated the treaty and focused on the recognition of *rangatiratanga* in the Maori-language version. The various movements combined in the 1880s and 1890s in a *Kotahitanga*, or unity movement, seeking a separate Maori parliament to govern the Maori and an end to the Native Land Court. The King movement cooperated too in the drive for a *mana motuhake*, a quest for self-determination through implementation of the treaty. A succession of emissaries went to London to demand this of the British Crown (Ward 1974, 264–275; Orange 1987, 185–204).

When these requests were rebuffed by both the British and the New Zealand governments, the *Kotahitanga* was prone to accept an alternative strategy, urged by Maori university graduates of the Young Maori Party, led by Apirana Ngata. Ngata urged a cessation of efforts to contest the question of sovereignty and acceptance of the national parliament and the legal-administrative framework. This strategy appeared successful when Ngata and his senior colleague James Carroll (a member of the Liberal government) secured legislation to reform the worst features of the Land Court and extend to local Maori committees power to regulate matters relating to health, hygiene, and consumption of alcohol (Williams 1969). During the 1920s, Ngata's good relations with Prime Minister Gordon Coates saw the beginning of state funding for Maori land development and the setting up of commissions of inquiry into such matters as confiscation of land in Taranaki and Waikato and the inequitable purchases in the South Island. The Sim Commission of 1927 and the government of the day accepted responsibility, though the level of compensation was low (Butterworth 1972).

Ngata's strategy, though of real and lasting benefit, came only slowly to the thousands of Maori subsisting in poverty and poor health in scores of rural slums, still largely adhering to a worldview based on traditional spiritual forces. These Maori still turned to politico-religious movements such as the Pai Marire and the Ringatu (Binney 1979, 15–45) and, most widely supported of all, the movement launched by Tahupotiki Wiremu Ratana in the 1920s. The Ratana movement, a visionary and healing movement at the outset, soon turned to the practical matters of economics and politics. Ratana and his lieutenants (who began to contest and win the Maori seats

in parliament) called for the treaty to be given statutory authority and collected thirty thousand signatures on a petition to that effect (Orange 1987, 233). The emergent Labour Party, which took office in 1935 and held it till 1949, formed an alliance with the Ratana movement, which was thus able to carry its demand into the Labour caucus. The Maori people's magnificent effort and very heavy casualties in World War II, plus Labour's dependence on the Maori members for its majority after 1946, saw more substantial payments made for urgent land confiscations and South Island land claims. The Maori people also benefited from Labour's welfare, education, employment, and housing programs for all New Zealand's needy citizens. But the government was not prone to do more as regards the treaty; on the contrary, it was still capable, on utilitarian grounds, of the most ruthless land acquisitions, including that of the remnants of Maori land at historic Orakei, Auckland.

Nevertheless, the boom years of the 1950s witnessed Maori urbanization and, at first, increasing prosperity. A major survey and a report by Mr J. K. Hunn (1960) concluded that New Zealand's racial "amalgamation" or "integration" was almost complete; the Hunn Report looked to more effort in education and housing but a winding up of the legislation for discrimination, including positive discrimination. However, the loss of their culture, language, land, and identity was unacceptable to the Maori people at large—all the more so because the urban Maori were largely unskilled or semiskilled and most at risk as the boom ended and unemployment rose. Notwithstanding their advancement in white-collar employment and the professions, the burgeoning Maori population, with a birth rate three times that of the Pakeha, were increasingly aware that they were on the margins of a white-dominated, urban-industrial economy. Thus it was that just as Pakeha New Zealand was congratulating itself on harmonious racial integration, Maori protest was about to burst forth anew.

If the Hunn Report lit a slow fuse, a 1967 act compulsorily amalgamating or extinguishing fragmented and minuscule interests in Maori land affronted traditional values and fueled the explosion of protest that followed. Young urban Maori formed new groups to lobby, march, and protest in now familiar ways. Maori formed links with black decolonization movements abroad. The annual Waitangi Day ceremonies began to be disrupted.

Once again calls arose from the most serious and responsible Maori

organizations for a ratification of the Treaty of Waitangi, as the Maori understood it, in the Maori-language version. Among these organizations was the New Zealand Maori Council, mostly composed of successful farmers and business people, created by a National Party government in 1962. Among them also was the prestigious and patiently toiling Maori Women's Welfare League, headed by Mrs (now Dame) Whina Cooper.

In 1975 Whina Cooper led a vast Land March, from the far north to the parliament in Wellington, to demand preservation in Maori title of remaining Maori tribal land. The Labour Party was in office again from 1972 to 1975. In its last days and with the footsteps of the land marchers ringing in its ears, it passed the Treaty of Waitangi Act—an act drawn and presented by Matiu Rata, the minister for Maori Affairs. Henceforth, any Maori individuals or groups who considered themselves to be adversely affected by an action of the Crown or its agencies could bring a claim before a new tribunal, the Waitangi Tribunal, to seek recommendations for redress.

### THE TREATY SINCE 1975

The object of the 1975 act is “to provide for the observance and confirmation of the principles of the Treaty of Waitangi”; the Waitangi Tribunal, chaired by the chief judge of the Maori Land Court, is to make recommendations on claims relating to the practical application of the principles of the treaty. The tribunal can review and make recommendations on any act, regulation, policy, or practice of the Crown that a Maori complainant considers has injured his or her rights under the treaty. The tribunal can also, on its own initiative, challenge any law it deems likely to breach the treaty.

The National government did little to highlight the tribunal, and at first few claims were brought to it. Instead, direct action intensified, with occupations of former Orakei land at Bastion Point, Auckland, and of a golf course in the town of Raglan, former Maori land taken for an airstrip during the war and never returned. On Waitangi Day, demonstrations produced minor violence. Radical Anglican clergy were often present.

From 1983, however, under a Maori chief judge, Edward Taihakurei Durie, the Waitangi Tribunal began to develop the principles of the treaty in relation to Maori customary rights in a claim objecting to pollution by

industrial discharges off a fishing reef at Motunui, Taranaki (Waitangi Tribunal 1983). The Motunui Report achieved wide support from Pakeha concerned about the environment, and the Muldoon government acted on it. Tribunal recommendations on pollution of a river at Kaituna and the Manukau Harbour and on the status of the Maori language as a *taonga* 'valued thing', guaranteed in the treaty, had repercussions for all New Zealanders (Orange 1987, 250). In such matters, the tribunal could not easily separate developments before 1975 from those after it.

The decade of the Muldoon government's office, 1975–1984, saw New Zealand deeply polarized over such matters as the massive police and military dispersal of Bastion Point occupiers and the violence accompanying the South African rugby tour of New Zealand in 1981. The intellectual leadership of Maori protest became increasingly efficient and vocal and included sons and daughters of some of the most "integrated" Maori in the land. In 1984, Ms Donna Awatere presented a fundamental challenge to the government in a book (which promptly sold out) claiming that Maori sovereignty had been preserved by the Maori version of the treaty (Awatere 1984). Social, racial, and civil rights issues thus assumed even greater prominence than economics.

In this context, young urban Labour planners and relatively inexperienced politicians somewhat blithely undertook in their February 1984 election platform to extend the jurisdiction of the Waitangi Tribunal retrospectively to 1840. Second, they proposed a Bill of Rights that would "incorporate the provisions of the Treaty of Waitangi following full discussion with the Maori people about the best way in which this can be brought about" (House of Representatives 1985, 36). There was close correspondence between Labour's views and those of many Maori leaders. A widely representative national *hui* (meeting) at the King movement's principal *marae*, Turangawaewae, in September 1984, demanded a law to require all legislation to be consistent with the treaty, and other major meetings also sought a constitutional status for the treaty (*ibid*).

It was with confidence then that Geoffrey Palmer, attorney general in the Labour government that took office in late 1984, secured in 1985 the amendment that extended the tribunal's jurisdiction retrospectively to 1840. Because the tribunal could review all actions of the Crown, including acts of the legislature and actions done with the authority of colonial law, the Labour government had, at one stroke, and rather more totally

than it seems to have realized, opened the whole of New Zealand's colonial history to scrutiny, on terms laid down by Maori. This was something of an epistemological revolution if nothing else.

Palmer then circulated a White Paper and draft bill for a Bill of Rights, which also sought to give effect to long-standing Maori viewpoints. The preamble to the draft bill stated (among other things) that "it is desirable to recognise and affirm the Treaty as part of the supreme law of New Zealand."

Clause 4 stated: "(i) The rights of the Maori under the Treaty of Waitangi are hereby recognised and affirmed. (ii) The Treaty of Waitangi shall be regarded as always speaking and shall be applied to circumstances as they arise so that effect may be given to its spirit and true intent." As in the Treaty of Waitangi Act, the English and Maori versions were to be regarded as of equal authority, but (according to an explanatory note) "having regard to the historical circumstances, the Maori version may be considered the primary one." In support, the White Paper quoted from the tribunal's Motunui Report:

The Treaty was also more than an affirmation of existing rights. It was not intended to merely fossilise a status quo, but to provide a direction for future growth and development. The broad and general nature of its words indicates that it was not intended as a finite contract but as the foundation for a developing social contract. (Waitangi Tribunal 1983, 61)

Article 4 would put paid in the future to views such as that of Prendergast in the *Wi Parata* judgment:

This Bill will put it beyond challenge that, henceforth, not only is the Treaty of Waitangi part of our law but that it has a superior status to general legislation. The rights that it recognises will prevail over inconsistent legislation (existing and future) by virtue of Article 1. (House of Representatives 1985, 75-76)

Elsewhere the White Paper stated:

If the Bill of Rights is enacted Governments, courts and Parliament will no longer be able to claim that these rights are only moral rights and have no substance in law, or that they can be overridden, expressly or impliedly, by the ordinary process of legislation.

One consequence will be that under Article 23 all legislation must be interpreted as far as it can so as to make it consistent with the Treaty. But if it is impossible to reconcile any particular legislation with the rights of the Maori

under the Treaty the legislation will under Article 1 be to that extent set aside as being of no effect. This is subject only to the limits allowed in Article 3—limits that can be demonstrably justified in a free and democratic society. (House of Representatives 1985, 37)

In the event, the Bill of Rights was *not* proceeded with as drafted. It was widely opposed as unduly restrictive on the normal organic evolution of statute law and precedent and likely to produce complex and costly litigation. Only a watered down version, without the treaty and without entrenched clauses, was introduced to parliament in 1989 and immediately opposed as worthless (CS, 11 Oct 1989). However, as a result of the White Paper, the question of treaty rights was debated nationally and the problem of the precise nature of those rights brought into sharp focus. Maori aspirations, including the claim to effective sovereignty through the proposed guarantee of *tinio rangatiratanga*, were greatly encouraged.

Meanwhile, a greatly enlarged Waitangi Tribunal had begun to receive claims retrospective to 1840. To manage them all, dozens of small matters were aggregated into somewhat fewer formally recorded claims, and these Chief Judge Durie sought to deal with on a tribal basis. Some forty-six claims relating to historic grievances had been formally registered by the end of 1986, and the tribunal began to hear the enormous volume of evidence and submissions collected in respect of Muriwhenua, the Northland peninsula. This was, after all, the home region of the treaty; it was also the stronghold of Matiu Rata, the founder of the Treaty of Waitangi Act, who had resigned from the Labour Party over alleged tardiness in addressing Maori demands and founded a new party, significantly entitled Mana Motuhake.

As the tribunal was working, the government was beginning the huge task of privatization of New Zealand's substantial public sector—transferring its assets to a series of corporations such as the Coal Corporation of New Zealand, the Forestry Corporation, and the Land Corporation. Although the former minister of the relevant government department was at first the sole shareholder, the corporations had a statutory requirement to pursue profitability, and this could involve sale of assets or private sector control of them through contracts affecting interests in the corporations. The 1985 Waitangi Act amendment had led to widespread expectations that the Maori would be compensated by very substantial transfers of Crown lands, forests, and other assets, for the Crown owned some four million hectares of land and forests plus many urban properties. Now the

State-Owned Enterprises Act of 1986 threatened to put these assets beyond the disposition of the Crown. A spate of claims affecting Crown lands and forests thus came to the tribunal, while the tribunal itself challenged the legislation as possibly being in breach of the treaty. Two amendments were quickly drawn up and accepted by the government and parliament with little debate. A fairly elaborate section 27 provided that where claims had already been lodged over land affected by the State-Owned Enterprises Act, the land would still be subject to such claims and the government, by Orders-in-the-Council, could give effect to tribunal recommendations regarding them. A general section 9 declared simply: "Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi."

In early 1987, the New Zealand Maori Council brought a case to the High Court and thence to the Court of Appeal for a ruling on the effect of these amendments, particularly in relation to state forests being transferred to the Forestry Corporation. The court's judgment, in June 1987, dramatically enhanced the authority of the treaty and the tribunal. Chief Justice Robin Cooke and his colleagues concluded:

The wording of section 9 is plain and unqualified. In its ordinary and natural sense the section has the impact of a constitutional guarantee within the field covered by the State-Owned Enterprises Act. . . . What is now our responsibility is to say clearly that the Act of Parliament restricts the Crown to acting under it in accordance with the principles of the Treaty. It becomes the duty of the Court to check, when called on to do so in any case that arises, whether that restriction has been observed and, if not, to grant a remedy. Any other answer to the question of interpretation would go close to treating the declaration made by Parliament about the Treaty as a dead letter. That would be unhappily and unacceptably reminiscent of an attitude, now past, that the Treaty itself is of no true value to the Maori people. (*NZ Maori Council v A-G* 1987, 21, 28)

The judges then set about elucidating the principles of the treaty. They used for guidance many of the statements in earlier decisions of the Waitangi Tribunal. But whereas these previously had the standing only of recommendations, now they had the force of judicial precedent. Cooke noted first that it was the principles of the treaty, not its actual words, that were to be applied; moreover, it was well known that the English and Maori versions did not necessarily convey the same meaning. The basic terms of the bargain of 1840, said Cooke, were that

the Queen was to govern and the Maori were to be her subjects; in return their chieftainships and possessions were to be protected, but sales of land to the Crown could be negotiated. These aims partly conflicted. The Treaty has to be seen in embryo rather than a fully developed and integrated set of ideas. (*NZ Maori Council v A-G* 1987, 34–35)

The treaty signified a partnership between races, and each party thus had a duty to act with the utmost reasonableness and good faith toward the other.

The relationship between the Treaty partners creates responsibilities analogous to fiduciary duties . . . the duty of the Crown is not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable . . . practicable means reasonably practicable . . . the duty to act reasonably and in good faith is not one-sided. For their part the Maori people have undertaken a duty of loyalty to the Queen, full acceptance of her Government through her responsible Ministers, and reasonable co-operation. (*NZ Maori Council v A-G* 1987, 37)

A duty to grant redress was also accepted:

If the Waitangi Tribunal finds merit in a claim and recommends redress the Crown should grant at least some form of redress. (*NZ Maori Council v A-G* 1987, 37–38)

A duty on the Crown to protect Maori interests arose from Article 3 of the treaty. However:

The principles of the Treaty do not authorise unreasonable restrictions on the right of a duly elected Government to follow its chosen policy. Indeed to try to shackle the Government unreasonably would itself be inconsistent with those principles. The test of reasonableness is necessarily a broad one and necessarily has to be applied by the Court in the end in a realistic way. (*NZ Maori Council v A-G* 1987, 40)

The court was pursuing a complex balance in all of this, and it was not immediately apparent what the effect would be. Ministers and officials feared that the whole privatization policy would be jeopardized, all assets being subject to as yet undetermined claims. The Maori feared that the fine words would amount to nothing very substantial.

Considerable reassurance was given to the Maori in a further amendment to the State-Owned Enterprises Act in 1988, whereby the Crown

committed itself in general terms to giving effect to tribunal recommendations in respect of the transferred land, buying the land back if necessary. This in effect enabled the transfers to go ahead. Yet the Tainui tribes of Waikato district became concerned when the Crown began to transfer to the Coal Corporation the huge assets of coal in the Waikato basin, the very land confiscated after the wars of the 1860s and the subject of tribunal claims by Tainui. To guard their interests, the Tainui Trust Board, led by Mr Robert Mahuta, Waikato University academic and scion of the main Kingitanga family, brought an action the point of which was largely to determine that coal was an "interest in land" for the purposes of the State-Owned Enterprises Act. The Court of Appeal found for the plaintiffs, and again Chief Justice Cooke waxed eloquent.

The principles of the treaty as outlined in the Maori Council case are, he said, "of limited scope and do not require a social revolution." They have no effect on private titles lawfully shared, nor does partnership mean that every asset has to be shared equally. Neither was it inconsistent with the treaty for the Crown "to decline to be bound in advance to the precise terms or extent of any Waitangi Tribunal recommendation." But the Sim Commission of 1927 had acknowledged the injustice of the confiscation, and the compensation given to Tainui then appeared trivial now. Direct negotiations with the Crown had been proposed by Tainui, and Cooke endorsed this "suggestion." Coal should not be excluded in advance from the negotiation. "Token acknowledgments that the Treaty has been honoured cannot be enough." Non-Maori had to adjust to the fact that preparation had to be made for past and continuing breaches of the treaty.

On the Maori side it has to be understood that the Treaty gave the Queen government, Kawanatanga, and foresaw continued immigration. The development of New Zealand as a nation has been largely due to that immigration . . . the history and economy of the nation rule out extravagant claims in the democracy now shared. (*Mahuta and Tainui Trust Board v A-G* 1989, 31-39)

The Court of Appeal has clearly set itself up as the watchdog and interpreter of the Treaty of Waitangi. By such a careful balance as Cooke has outlined, it seeks to steer the country through the mounting racial tension. To the government, it seemed that Cooke was going too far and making policy; nevertheless, it has accepted the "suggestion" to negotiate. Nineteen-ninety is an election year, and the outcome of the negotiation will

have a considerable bearing on how the voting public of New Zealand view the treaty and the processes that Labour has unfolded since 1985.

The relationship among the Waitangi Tribunal, the superior courts, and the routine processes of government has also been revealed in relation to fish. Whereas, after 1840, the Crown had recognized an ongoing Maori customary right over land, it had generally considered that Maori retained no customary right below the high-water mark of the sea, except in a few explicitly recognized cases. However, the Muriwhenua (Northland) claim to the tribunal focused on traditional fishing rights, so important to a Polynesian people. The tribunal agreed with the claimants that these fishing rights, explicitly mentioned in the English version of the treaty, had never been properly extinguished or compensated; the Crown had failed to protect either traditional Maori fishing or commercial fishing, which had fallen into the hands of large and often overseas companies.

Meanwhile the Maori Council had again brought a case in the High Court based on the recognition of traditional rights in common law, statutes, and the treaty, specifically in respect of the virtual exclusion of Maori from the fishing quotas, worth some NZ\$50 million a year, defined for the various species as part of the government's effort to balance commercial fishing and conservation. This too had ended up in the Court of Appeal, where the judges ordered the claimants and Crown to come to a negotiated agreement. The Maori negotiators started from the position that the whole of New Zealand's fisheries were still theirs, under the treaty, but that they should share them fifty-fifty with the Crown. But the government, implicitly rejecting much of what the claimants and the tribunal had said, would concede no more than 10 percent of the fishing quotas, to be transferred to a Maori Fisheries Commission at the rate of 2.5 percent a year for four years. Half of this is to be developed for maximum economic return by the commission, half to go direct to Maori people, having regard to local traditions and needs. The Maori Fisheries Act 1989 gives effect to this.

The Muriwhenua people, meanwhile, had sought a ruling from the Court of Appeal that the tribunal's report should be binding on both parties. This the court declined, Cooke reaffirming the view (which Chief Judge Durie had asserted all along) that the tribunal had no power of determination but was more in the nature of a commission of inquiry. He deferred a High Court hearing on Muriwhenua's fishing claim, to await

the tribunal's report on the Ngai Tahu tribal claim (which also concerned traditional fishing rights) and the working out of the new Maori Fisheries Act. The act, he said, was not a final settlement of the issue; it would need to be renewed in a few years because the treaty was a "living instrument" by which Maori rights could be constantly measured (*NZH*, 23-25 Feb, 1 Mar 1990).

This view of how the treaty is to be applied is also firmly held by Chief Judge Durie, in contrast to the "final settlement" approach used in Canada and the United States to settle Indian fishing claims (Durie 1986, 236). In New Zealand too the government had sought closure, or at least a long moratorium, on Maori fishing claims; the Pakeha community generally is prone to tolerate an expensive rectification of past Maori grievances only if it really does put an end to them. The Maori have resisted this, believing that any "settlement" can be quickly outmoded by economic and technological change, as were the Sim Commission's 1927 recommendations.

Meanwhile, from October 1987 to October 1989, the tribunal had been hearing the massive evidence on the Ngai Tahu claim, relating to grievances arising out of the purchase of land for the Otago and Canterbury settlements and later over the rest of the South Island. At time of writing, the tribunal has not reported, but Maori allegations of unfulfilled promises to make ample reserves have been admitted by the Crown, and the chairman of the tribunal hearing the claim has recommended that the Crown not sell its surplus land in the South Island in case it is involved in the eventual compensation (*Press*, 11 Oct 1989).

The events of 1985-1990 have appeared revolutionary to many white New Zealanders. No longer is it a matter of localized environmental issues. The greatly enhanced status of the treaty, the decisions of the Court of Appeal, the involvement of the tribunal in the disposition of national resources, particularly at a time of severe economic constraint, have awakened strong feelings. To many, the tribunal seemed to be running amok and Maori demands to be extravagant. But to other whites, the justice of many Maori claims was self-evident, as was the need to develop a strategy to meet the huge and growing problem of an uprooted, urban Maori population, underemployed, undereducated, and crime prone. Direct action by aggrieved Maori could not be ruled out; indeed, occupations of property have occurred in several more instances, not always ending without minor violence and police intervention.

The principal strategy to meet Maori needs is to abolish, by 1995, the

cumbersome and paternalistic Department of Maori Affairs and transfer its budget and development funds to Maori tribal authorities—the Iwi Authorities, now in the process of being set up under legislation of 1989. If the hearing of historic or current grievances by the tribunal, accompanied by direct negotiation by tribal groups with the Crown, results in a further controlled and constructive transfer of resources as in the fisheries agreement, many New Zealanders would see this as a useful process. The Opposition National Party seems also to accept it in principle; the shadow minister for Maori Affairs, a Maori, Mr Winston Peters, who gained enormous popularity among the Pakeha electorate for his early criticisms of the tribunal, has now muted them. The clearer definition of the role of the tribunal by the Court of Appeal will ease the apprehensions of many Pakeha. Maori claims to the tribunal have also fallen off since the flurry occasioned by the State-Owned Enterprises Act; the current director, Mr Buddy Mikaere, is not anticipating more than ten in 1990 (*NZH*, 20 Feb 1990). However, indications that a National government might legislate to debar further claims would precipitate a spate of claims before the elections, due in October 1990.

Mr Geoffrey Palmer, who succeeded Mr David Lange as Prime Minister in 1989, recently reaffirmed the government's intention to press ahead with the tackling of unresolved grievances and to negotiate settlements that see more Maori "in jobs not in jail." He cited the statistics of claims before the tribunal as of November 1989: 16 heard and reported, 10 heard with reports in preparation, 3 in process of mediation, 21 being researched for hearing, and 52 awaiting initial appraisal. The task would take time, but was not indefinite. A new ministerial task force would direct the handling of treaty issues. "The process is slow and not without pain," he said. Its results "will not be nearly as dramatic as some Maoris expect nor as some non-Maoris fear." And in an implied rebuke to Chief Justice Cooke, Mr Palmer added, the process depends on the correct balance between parliament, the executive, and the courts:

There has arisen in New Zealand a feeling that somehow all the fundamental decisions about how the Treaty of Waitangi will be honoured will be made by the courts. This is not the case . . . the courts interpret the law, they do not legislate, they do not govern. The Executive governs. (*NZH*, 2 Jan 1990)

These remarks were clearly intended to appeal to the Pakeha electorate in an election year. But the determined assertion that the government is in

control, reassuring to the Pakeha, runs the risk of confirming Maori suspicions that their seeming guarantees under the treaty and recent law are precarious and that Pakeha governments will succumb again to white self-interest and prejudice.

This is the context of the highly significant speeches at Waitangi before Elizabeth II on 6 February 1990. On the one hand, Sir Graham Latimer, chairman of the New Zealand Maori Council, could affirm cheerfully that it was an occasion for celebration because New Zealand had had the courage to tackle its problems and that Maori people had access to machinery for redress of grievances—the tribunal, the courts, and parliament. By contrast, Bishop Vercoe voiced the protesters' demand for something much more far-reaching:

You have marginalised us . . . what we are trying to establish is that my *tino rangatiratanga* is the same as your *tino rangatiratanga* . . . I want to say to the Government: don't produce principles of the Treaty—the Treaty is already there. (NZH, 7 Feb 1990)

This is going back to the understanding of the chiefs when they signed in 1840—a demand for at least coequal status with the Pakeha. The careful nuancing of Maori and English versions by the legislature and the Court of Appeal seem to give something less, in the bishop's view. Similar views have been expounded in a recent book, *A Question of Honour: Labour and the Treaty, 1984–1989*, by the Auckland law lecturer Jane Kelsey (1990). Whereas the New Zealand Maori Council's draft revision of the Maori Affairs Act accepts “the exchange of sovereignty for the protection of *rangatiratanga*” and defines *rangatiratanga* as “the custody and care of matters significant to the cultural identity of the Maori people in trust for future generations” (New Zealand Maori Council 1983), Ms Kelsey defines it as “the absolute authority of the Maori people collectively over their lives and resources.” *Kawanatanga*, which the chiefs ceded, is seen in her view as operating within limits determined by the chiefs. This was the 1840 Maori understanding as expressed in Nopena Panakareao's words “the shadow of the land goes to the Queen, the substance remains with us.” In those terms, the Maori have the right to political and economic autonomy under the treaty, and Labour's policies and even the vaunted decisions of the Court of Appeal fall far short of that. Distribution of economic and political power is the crux of the matter for Kelsey

(as it was for Donna Awatere before her). Her book, reflecting considerable Maori opinion, is a claim to effective sovereignty, at least at the local level. As Orange has shown, this has been demanded by successive Maori organizations since 1840, and it has found renewed expression in recent demands for separate Maori judicial institutions and young Maori refusing to accept the jurisdiction of the regular courts (a move denounced by the veteran Dame Whina Cooper) (*NZH*, 8 Mar 1990). Other leaders seek the return of tribal land on which to recreate locally sovereign Maori communities (Hohepa 1990).

More in line with Maori Council views is a book by Mr Hiwi Tauroa, former race relations conciliator under the 1971 Race Relations Act, called *Healing the Breach* (1990). Mr Tauroa earlier achieved celebrity by publicly arguing for the abolition of the special Maori seats in favor of full Maori participation in the general electorates. Like Ngata before him, Tauroa now urges rectification of grievances within the existing framework. He urges real inclusion of Maori within the state institutions, not division of state power on racial lines as Kelsey urges.<sup>1</sup>

In the political arena, Mr Matiu Rata of the Mana Motuhake Party has sought to steer a course in dangerous matters by proposing eight Maori "provincial governments" with defined powers subject to the overall sovereignty of the New Zealand parliament. These elected regional bodies, he said, would have more appeal to young Maori than would the Runanga Iwi (tribal councils) being developed by the government in concert with the New Zealand Maori Council (*NZH*, 10 Apr 1990).

## CONCLUSION

The racial situation in New Zealand in the election year 1990 is very sensitively poised. The most senior Maori spokespeople in the land have voiced warnings. The governor-general, the Most Reverend Sir Paul Reeves, former Anglican Archbishop of New Zealand, has urged the legislators to defy the inevitable white backlash and push ahead with relieving Maori people of the sense of injustice. "If we don't take the justice option," he said, "we run the risk of reaping the whirlwind." Mr Matiu Rata and Mr Robert Mahuta have also warned of possible violence if the thousands of young Maori "have-nots" are allowed to brood on their situation ("Four Corners" 1990). Dame Mira Szaszy, successor to Dame Whina Cooper as

head of the Maori Women's Welfare League, has continued to press for a constitutional status for the treaty, otherwise she fears that Maori claims will be attended to only piecemeal (*NZL*, 5 Feb 1990, 5).

Mr Palmer and Mr Lange have implicitly rejected the demands of Bishop Vercoe and Dame Mira. The prime minister said that the primary problem with the treaty was its vagueness. Its principles do need to be elucidated, and its "operational consequences" are far from clear (*NZH*, 7 Mar 1990). For his part, Mr Lange rejected the treaty as sufficient in itself to constitute the basis of a solemn compact. "Did Queen Victoria for a moment think of forming a partnership with a number of signatures, a number of thumb prints and 500 people?" he asked. This was echoing, in unfortunately sarcastic language, the 1839 view of the Colonial Office about the capacity of a tribal people to exercise or transfer national sovereignty. Mr Lange also said, "It [the treaty] can become the Magna Carta of New Zealand but it is not going to become that from Dead Sea scroll eschatology examination"—a reference presumably to radical efforts to make claims for power based on the Maori text and the term *tinio rangatiratanga* (*NZH*, 7 Mar 1990).

For the Labour leaders, therefore, sovereignty is not at issue. They have even moved a long way from their promotion of a constitutional status for the treaty in the draft Bill of Rights in 1985. But they hold to the view (since elaborated by Chief Justice Cooke) that the treaty is an agreement in embryo, a living document the meaning of which will be unfolded by the two peoples in democratic partnership.

The New Zealand public are not altogether wrong in concluding that the Labour government in 1984–1985 was naive and careless in encouraging Maori expectations that it and the nation are not prepared to accommodate. Nevertheless, the government has also courageously set out to deal with the historic bases of division between Maori and Pakeha, long and sometimes bitterly nursed by the Maori and too often cloaked by Pakeha self-satisfaction. The government will no doubt push ahead with "the justice option" and seek to negotiate major settlements with Tainui and Ngai Tahu before the election.

For its part, the National Party has shown an inclination to review proceedings under the Waitangi Tribunal, turning it into a body to research Maori needs and grievances at the government's direction but not to make recommendations. Mr Winston Peters, National's spokesman on Maori affairs, has also stated that a National government would stop the courts

from using the treaty partnership “myth” as a basis for legal decisions (NZH, 7 May 1990). Whether the majority of Maori will accept such a course as sufficient remains to be seen. If a substantial proportion do not, New Zealand’s social order must be in serious peril. For it is certain that the Pakeha majority (and other immigrant groups such as the one hundred thousand Pacific Islanders) will not concede now, any more than they did in 1863, that sovereignty is at issue or that the national institutions should be fundamentally divided. Nor will the Maori demographic upsurge lead to a majority or near-majority Maori population as has sometimes been asserted. But the 1990 election will be emotionally charged with respect to the racial question, and every statement by leaders and opinion-makers of either race will be very important. The sesquicentennial of the Treaty of Waitangi may be the year when New Zealand turns its most dangerous corner since the Anglo-Maori wars or when, through a failure of either race to understand and come to terms with the other, the seeds of conflict are sown for the next generation.

### Note

1 Other 1990 publications are Richard Mulgan, *Maori, Pakeha and Democracy*, Oxford University Press; Peter Cleave, *The Sovereignty Game*, Institute of Policy Studies, Victoria University Press; and Andrew Sharp, *Justice and the Maori*, Oxford University Press.

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