Reconciling the Treaty/te Tiriti Through the Discourse of Civil Government/Kāwanatanga

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Abstract
This essay charts a middle course between the old, basically Pākehā orthodoxy that sovereignty was ceded by Māori in the Treaty of Waitangi, and the newer orthodoxy that Māori never ceded sovereignty to the British Crown. The essay argues instead that government was the main paradigm of the historic treaty: it was government or kāwanatanga that was ceded or agreed to by Māori. The Treaty, or te Tiriti, was designed to remedy the absence of a civil authority or government that could maintain public order amongst Pākehā settlers but also *between* tribes and settlers. Specific issues were external protection (from foreign powers) and internal regulation of Pākehā settlement, of major crimes, of the trade in land and goods, and of inter-tribal warfare. Internal tribal (hapū) regulation of whenua and custom (tino rangatiratanga) would be left largely intact. The essay is written against the background of the recent literature on legal pluralism in the British empire, but it primarily conducts a cultural-linguistic analysis of what civil government/ kāwanatanga in te Tiriti, article one, meant in British political tradition. It then argues that this core concept of government and other accompanying symbols or concepts, including monarchy and law (ture), constituted an emerging, hybrid (cross-cultural) political tradition during the 1830s-50s in New Zealand. This emerging tradition is reflected in both English and Māori language texts of the Treaty-te Tiriti, and thus, as an interpretive frame, also assists in reconciling the meaning of the two texts.

Introduction: Changing Discourses and Contexts[1]

This essay charts a middle course between the old, basically Pākehā orthodoxy that sovereignty was ceded by Māori in the Treaty making them individual citizens of an emergent colonial nation-state, and the newer orthodoxy that Māori never ceded sovereignty to the British Crown but retained it. Ironically, the basic error in both interpretations is that they ignore or downplay the Māori text: the old orthodoxy ignored it altogether by reading only the English version; the newer orthodoxy reads the Māori text but downplays, even ignores, the giving up of kāwanatanga/governorship/government in article one. The basic fault they both share however is a paradigm of sovereignty: the assumption that sovereignty, as an abstract notion of power – in most interpretations, absolute power – was the basic issue.[2]

The newer version, affirmed by the Waitangi Tribunal in its 2014 Paparahi o te Raki report, is focussed on whether sovereignty – defined in European terms as "authority to make and enforce law" – was transferred or ceded by Māori.[3] Again, and ironically for treaty scholarship since Ruth Ross' seminal 1972 article,[4] this takes the focus away from the actual words of the text in te reo Māori and the changes happening on the ground, in which the Queen was – quite obviously to militarily-attuned and status-conscious Māori rangatira – sending a Royal Navy captain as her governor to exercise real, substantive authority. The current interpretive field on te Tiriti is however variegated and shifting. Anne Salmond, whose 2010 Northland evidence largely reiterated her early 1990s Muriwhenua evidence – in essence that in Māori eyes the treaty was understood as an aristocratic alliance involving a chiefly gift exchange – has recently written that while "sovereignty" was not given up, chiefs were conceding real authority to the governor over their territories, to bring law and settle disputes.[5] (Of course, a chiefly gift-

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exchange is not incompatible with the idea that real authority was granted; but Salmond's emphasis in the earlier and more recent pieces appears different.[6])

This essay charts a middle course, then, between these two orthodoxies – old and new – by arguing that the main issue that the treaty was designed to remedy was the absence of a civil authority that could maintain public order amongst Pākehā settlers but also across or *between* tribes and *between* tribes and settlers. The idea that the governor was only to be a governor for Pākehā is a quite recent extension on the new orthodoxy.[7] This argument seems to ignore the Māori text and the evidence, although somewhat fragmentary and surviving mostly in English translation, that Māori recognised the governor's authority was to be real, significant and applicable to them – in some fashion.[8]

As the recent scholarship of Ned Fletcher and other empire scholars demonstrates, imperial authority was not inconsistent with plurality in government and law.[9] A very important idea therefore accompanied this concept of civil government, or kāwanatanga: that, as exercised by the Queen's governor, it was one that recognised other forms of customary authority and law, namely chiefly authority over or *vis-à-vis* tribes. I argue that this was consistent with the recent history and *realpolitik* of empire in which the Crown necessarily worked with other local, mostly elite authorities; more particularly, it was consistent with a new humanitarian reading of empire of the 1820s-30s, in which British traditions of constitutional authority and the rights and liberties of the subject were envisioned as applying to indigenous subjects of empire equally with white colonists. This humanitarian-evangelical reading of empire made it possible to see the Treaty-te Tiriti, in the words of its translator Henry Williams, as a *Magna Carta* or *Great Charter* of constitutional rights and liberties. This is the picture that this article attempts to delineate and describe in some detail. In doing so we may dismiss Ruth Ross' doubt that Williams "really believe[d]" that the Treaty was a Magna Carta that protected chiefly "Rank, Rights and Privileges".[10]

In the next section, the article explores a cultural-linguistic reading of what the kāwanatanga in article one meant in British political tradition, with one eye at least on the imperial context. In the section following, the article considers what I suggest was an emergent, hybrid political tradition during the 1830s-50s in New Zealand, in which the dominant concepts were ideas of kāwanatanga/government, law, monarchy and, to some extent, assemblies or whakaminenga that would serve as a vehicle to decide law. I argue ultimately that there was a developing or evolving political discourse, shared by prominent Māori and British leaders, that constituted or shaped a new public or political sphere of authority. This emergent discourse in turn undergirded changes in institutions – notably the acceptance of a British Resident, followed by the Queen's governor, and later expectations that Māori would participate in the General Assembly (which they did from 1867). This emerging political discourse is reflected also in both English and Māori language texts of the treaty, and by the wider context of other interacting texts and political contexts.

This essay is therefore an exercise in a *cultural history of politics*, a political anthropology – or a political imaginary – as reinterpreted or reapplied to a new imperial-indigenous order of the 1830s-50s. Political history and anthropology of the Western and non-Western worlds demonstrate that ideas of authority are products of history and tradition, and usually religion. Britain was no exception. Constitutional ideas were a product of religious notions of law and authority.[11] In te ao Māori, the idea of the sacred or tapu was of course integral to customary social relations; among other concepts, tapu shaped and undergirded the power of rangatira/chiefs.[12] The framework of hybridity adopted here explores a developing intellectual

discourse drawing on European and Māori cultural traditions. This discourse can initially be explained with reference to the dynamic and shifting intellectual, social and political contexts of Māori-Pākehā relationships in this period. The discourse was hybrid in part because it employed reo Māori or "missionary Māori" to express European notions of authority in ways that Māori began to apply to their changing socio-political context – including the terms "ture" or law, and "rangatiratanga", which morphed to embrace a new notion of chiefly or political "independence".[13] These shifts in mātauranga Māori (traditional discourse) were primarily due to the presence of European traders, missionaries, and settlers, their ideas, and the entanglements resulting from new religious practices, from trade, and from intimate relationships. These entanglements exerted pressure on mātauranga to accommodate new ideas and tikanga (laws/practices) especially from the 1830s as Europeans became implicated in, or even the cause of inter- or intra-tribal warfare, and Māori were competing for the European trade at key centres such as Kororāreka (Northland) and the Kāpiti Coast (near Wellington). In Northland, this shifting political and discursive ground led to armed warfare in the 1830's 'Girls War', which flared up again in 1837 between northern and southern alliances of wider Ngāpuhi. More egregious cases such as the *Elizabeth* affair of 1831, in which a European ship was used as a trojan horse to attack Ngāi Tahu at Akaroa, resulted in a deputation from both Ngāi Tahu and Ngāpuhi to New South Wales asking the governor for redress.[14] As Māori incorporated outsiders different in custom and tikanga, uncontrollable events exerted pressures on old notions and institutions of political authority and political community; by the late 1830s, the old ideas and institutions were no longer adequate to regulate or control the new situation.

As scholars of empire and cultural encounter such as Tony Ballantyne and Vincent O'Malley have explored, such entanglements of minds, bodies and livelihoods, exerted change upon a dynamic Māori cultural world, in which Māori were active participants.[15] This article therefore situates its argument for a hybrid political discourse within the broader historiographical argument over the nature and extent of cultural, political, and social change in Māori society due to the engagement with Europe. Change in ideas and institutions was not inevitable, but Māori leaderships naturally began to see the need to adjust – not just to survive but to compete. This race to compete – in trade and the accoutrements of status and wealth – did not necessarily, or immediately, shift underlying cultural assumptions and mores of tapu (set-apart), mana (intrinsic spiritual authority) and utu (reciprocity/recompense), as the Waitangi Tribunal and scholars such as Anne Salmond have argued.[16] Nevertheless, new concepts and institutions made their mark and effected real modifications in tikanga: these changes included the new weekly rhythm of the Christian Sabbath, the message of forgiveness of enemies rather than a strict adherence to utu requirements, and, allied with this, the new kōmiti (missionary committees) which heard complaints or adjudicated on wrongs according to a new biblically inspired ture (law).[17] These new practices *did* adjust tikanga or imprint it with new priorities. Meanwhile, the biblical narratives and prayers, energised by literacy, were reinforcing these new tikanga of hohou rongo (Christian reconciliation), alongside new concepts of biblical law such as the Ten Commandments, and new notions of authority such as kingship and governorship. Such was the impact that some younger Christian chiefs started whole new communities (for example, Wiremu Tamihana Tarapīpipi Te Waharoa), although the typical pattern was changes in practices within existing kainga (settlements), or migration to mission settlements for a time (especially settlements such as Paihia, Waimate and Ōtaki). In summary, cultural change meshed with cultural persistence, though occasionally, as Lachy Paterson and others have recently highlighted, change in lifeways could be quite dramatic.[18] Hēnare Taratoa reflected changes occurring from the 1830s when he stressed, in 1859, the "three great benefits" received from the missions and colonial government: "the Gospel, Schools, and the Laws of the Queen…"[19] By the late 1850s – for better or worse – Te Rongopai me te Ture (Gospel and

Law) had for some time been conjoined in Māori mentalities, and this represented significant cultural change. This change has been labelled not inaccurately by one scholar as a "Māori modernity",[20] though it makes sense to speak of a transformation of "Māori tradition" rather than accentuate discontinuities with the indigenous past.

Civil Government in British History: A Political Anthropology of the Metropole

Linguistics, History, Anthropology

In the translation of article one by Rev. Henry Williams and his son, Edward, the concept of sovereignty was rendered as kāwanatanga (government/governorship). The orthodoxy since Ruth Ross has seen this as a sign of subterfuge, as fudging the strong idea of sovereignty by turning it into a weaker idea of government.[21]

I argue here that this interpretation is misguided. As revealed both by long-standing tradition and by the linguistic use of terms at the contemporary period, *government* was *the* primary category of political thought in the English/British tradition. Where the term sovereignty was used, it was often used alongside government or interchangeably with it. One feature of this interchangeability was the conflation of, or close relationship between, the concepts of monarch and governor. The Thirty-Nine Articles of Anglican doctrine from the sixteenth century onwards stated that the sovereign exercised "the chief government" within the realm. In 1840, the *Quarterly Review* (a leading Tory periodical) could still reiterate this conventional idea that the sovereign was "governor of the country".[22] Furthermore, political discourse was invested with religious language and sentiment, especially given "the Anglican consensus", which was resurgent during the American and French revolutionary periods. Scholars such as Hempton and Clark have emphasised how "the Church of England was an integral and indispensable part of the theory and practice of governing".[23] In summary, it was the concept and language of government that was most prominent in political discourse.

Definitions from the authoritative English dictionary of the day, Dr. Samuel Johnson's *Dictionary*, reflect these historical or conventional understandings.[24] The definition of "governour" is given from a leading theologian of English Protestantism, Richard Hooker, as "one who has the supreme direction", and, from Psalm 22, "one who is invested with supreme authority in a state". This is seemingly a reference to verse 28 of that Psalm, "For the kingdom is the Lord's: and he is the Governour among the people".[25] The Lord God/ Yahweh was, therefore, also identified as a governor in English vernacular translations of the Bible. The translation of this Psalm in *Te Rāwiri* or the Māori translation of the Book of Common Prayer was "No Ihowa hoki te rangatiratanga: a ko ia ano te kawana i waenganui o nga iwi" (Waiata 22)[26] – demonstrating that the concepts of kingdom, rangatiratanga and governor could also easily be conflated in a Māori language translation. A third meaning of governor is given in Johnson's *Dictionary*, from Shakespeare, as "one who rules any place with delegated and temporary authority"; it is this meaning of governor that has been emphasised in the new treaty orthodoxy – without recognising the wider and even primary uses of governor in the English language. Underlining this primary sense is the definition of "government" given first in Johnson: "form of a community with respect to the disposition of the supreme authority". Government, in other words, is how sovereignty is exercised. These themes will be elaborated on below.

A quantitative analysis of approximately 25,000 pages of leading British periodicals, texts, and parliamentary debates, mostly from the 1830s, supports a more conventional qualitative (or hermeneutical) intellectual history of British political language and mentalities. This digital

humanities analysis, of a small but representative corpus, helps to test for major patterns in language use, while it also acts as a finding aid for a wider range of instances of language use across a range of texts. Analysing more diverse sources in this way captures both conventional usage and more canonical debates such as those comprised in texts by J. S. Mill and T. B. Macaulay.[27] This text-as-data analysis dramatically illustrates the preponderance of references to "government" as compared with "sovereignty" (some *60 times* more) and the prominence of other key terms of political discourse – especially the terms "law", "constitution", "liberty", "crown", "rights", and "kingdom", in approximate descending order of frequency. Other notable uses, though less frequent, include the terms "sovereign", "governor", "privileges", "prerogative" and "charter" (all of these still occurring between *twice* and *15 times* more than "sovereignty"). Another feature of this analysis is that the frequency of terms across individual volumes is remarkably consistent: in other words, "government" is usually the most common term – rivalled only by "law" – and the other terms appeared in approximate proportion to their total frequency in the corpus.[28]

Both a qualitative and quantitative analysis of texts contemporary with the Treaty of Waitangi demonstrate, therefore, that the debate about political authority was usually about law and the constitution, or the purpose and functions of government.[29] If the term sovereignty hardly figures in British political language of the 1830s, abstract debates about sovereignty are almost non-existent. Perhaps the most theoretical political debate in this period was that between Thomas Babbington Macaulay and James Mill, in which Macaulay lambasted the speculative views on government of the senior Philosophic Radical of the time by subjecting them to his own notions of "inductive" reasoning or the actual histories of government.[30] This debate illustrates in fact that the English/British debate about political authority was about "government", not "sovereignty". Macaulay's positioning in the debate with Mill does appear in fact to draw on *longue durée* conceptions, J. G. A. Pocock writing that the classic English political idioms of the seventeenth century concerned "the origins and rights of government" in general and "the historic origins and vicissitudes of government in England" in particular.[31] It seems that these broad underlying paradigms remained dominant through the long eighteenth century even while Continental Europe was in the throes of its "popular sovereignty" revolutions.[32] As Macaulay quipped in the first Reform Bill debate in March 1831: "I distrust all general theories of government".[33] I argue that this distinct English paradigm or language of government – concerned not with abstractions but with precedent, custom and practical utility – is reflected in Williams' conflation of sovereignty with government in article one of the Treaty translation. Since a sovereign governed – and since the monarch was, linguistically speaking, both "King and Governor"[34] – then the sovereign's governors would also govern as his/her representatives in the wider empire. This was especially the case after the American Revolution when Crown authority was reaffirmed in the second British Empire and in which governors represented the monarch "in his personal, imperial and parliamentary character",[35] tending to become "proconsular despotisms".[36]

These English linguistic and metropolitan conceptions of sovereignty and government can be related back to the recent scholarship on empire, which emphasises the ongoing plurality of laws and customary regimes even as British administration was superimposed – with greater or lesser effects at the local level of village or local deliberative assembly (panchayat in India, rūnanga or kōmiti in New Zealand, for example) or in the reform of land tenure, tax regimes or the criminal law. Relatedly, the British discourse of imperial "protection" – including of indigenous custom or authority – was ambiguous or indeterminate, its expression reflecting the local situation as much as legal or religious principle (although the humanitarian influence at Westminster in the 1830s-40s tended to argue for more principled bases of British government

intervention).[37] As scholar of south India, Eugene Irschick, argues, legal reforms introduced by the British Government in India were often attempts to regularise or formalise existing Indian property and tax regimes (or an imagined past version of these) such that they can be understood as the products of a "dialogic process".[38] On the indigenous side of the equation, Christopher Bayly's important work, *Recovering Liberties*, shows how Indian intellectuals reconstituted the ideas of the British utilitarians and liberals, including J. S. Mill, to argue for their own participation within the introduced regimes of the imperial state and courts. They also did so in ways that made sense of older Indian ideas of political community and good government.[39] Parallels of these phenomena can be found at similar periods in New Zealand, as Māori argued for political participation in the settler assembly, or for Kāwanatanga (British Government) recognition of their own evolving institutions of legal adjudication (kōmiti or rūnanga) and even a native kingship.[40]

Political anthropology confirms the same plurality or heterogeneity evident in imperial history and complicates any simplistic notion of how government or sovereignty is constituted or legitimated. Brenda Chalfin, for example, states that, "An ethnographic approach to the state… makes it possible to view the many faces of sovereignty as intersubjective and historically derived rather than abstract or wholly formalized figurations of power". She quotes international relations scholar, Richard Ashley, that sovereignty is "a practical category whose empirical contents are not fixed but evolve".[41] Similarly, Lauren Benton, a leading scholar of imperial legal pluralism, concludes that:

> European sojourners and settlers who inhabited the world of the long sixteenth, seventeenth, and eighteenth centuries mainly thought of empires in terms closer to those of Bodin: as the products of the uneven extension of sovereign rule, embodied in the law. Territorial control was a contingent element of imperial rule, not a property firmly associated with sovereign jurisdiction, and subjecthood was defined by a set of political and legal relationships shaped by strategic manoeuvring and interpretation, and subject to challenge. As a result, a volatile legal politics involved political actors in establishing and protecting their ties to sovereigns and to local political communities, and in defining and redefining the geographical extent of crown, semiprivate, and corporate authority. To claim sovereignty implied certain responsibilities for the administration of justice, with obligations flowing in both directions…'[42]

Such was the reality of sovereignty or government in both the British metropole and the empire as both interacted with local or indigenous authorities, creating a patchwork of layered or mixed authority, or a kind of complex, informal federalism. The construction of "complex imperial sovereignties" continued into the nineteenth century, argues Benton.[43] Imperial governance thus evolved in particular, contingent historical contexts such that imperial (or colonial) sovereignty, as with metropolitan sovereignty, was never absolute or monolithic, despite what the theories of Thomas Hobbes might suggest.[44]

Civil Government as the Basis for Political Society

I next want to explore in more detail the notion that government or "civil government" is the foundation of political society, or a new order of "civility" which is characterised by law and order enforced through public institutions. It is the nature of those public institutions at central and local levels that I am particularly interested in – in terms of their configuration in contemporary Britain of the 1830s-40s – because, while the imperial context was important, I contend that it was the English/British context and history that was still fundamentally shaping the political mentalities of British actors within empire.

This fundamental notion of civil society or government is also part of the conceptual background against which the language of the English and reo Māori texts of the Treaty of Waitangi make sense. In 1840, Queen Victoria sought the sovereignty of Nu Tireni/ New Zealand for the very purpose of establishing "civil government" – as the preamble stated in both versions:

> 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 …
>
> Na ko te Kuini e hiahia ana kia w[h]akaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana… [I. H. Kawharu backtranslation: So the Queen desires to establish a government so that no evil will come to Māori and European living in a state of lawlessness.[45]]

Of course, in the reo Māori text of the treaty, viewed as a whole, the concept of sovereignty was folded into that of government. That this was a viable translation option is supported by the current argument: that civil government was the primary paradigm of political thought rather than sovereignty. The wording of te Tiriti, then, reflects the main purpose of British intervention in New Zealand: to establish *civil government* for the protection of Māori and the regulation of British settlement, as Ned Fletcher has also recently argued.[46]

The foundational idea, implicit in the Treaty drafting, is that society can only exist on the basis of a governing authority. Such a conception did not necessitate an original contract, or Lockean notion of authority. The critical notion was more basic: only once political authority or government is constituted – in whatever form or manner – can civil society come into existence. Without such authority there is no law or public order and, in many versions, no property. In sum, without such public order there can be no society or political community – for which common synonyms in the early-modern era were "commonwealth" or "republic" (*respublica*), or "state".[47]

Jose Harris explains that in early-modern and modern British political thought, it was the "the state itself [that] had been an important element in either shaping or actually constituting civil society".[48] The constitution of a central government, above the level of local authorities, "personal fiefdoms and private armies", enabled a political community to come into existence. Under such a properly constituted civil government, disputes would be subject to legal adjudication rather than being the precursors to civil war.[49] As Thomas Hobbes had memorably argued in *Leviathan,* without such a sovereign government, human beings would remain in a state of nature or a war of all against all. Hobbes' version was drastic, emphasising the absolute nature of sovereignty, but he was affirming a basic conception of Western civil history – the history of civil society, government or "commonwealth".[50]

The form of civil government in British history or political philosophy was conventionally seen as a balance between monarchy, oligarchy, and democracy – that is, King, Lords, and Commons. In this political imaginary, the source of law was the king at court surrounded by his councillors. In many versions, divine law and/or natural law was the ultimate source of law; in other versions – not incompatible with the first – the common law or customs of the realm were the standard of legitimacy.[51] Decisions were made by the king, law was declared, but only on advice of his/her counsellors. This morphed in time into the Crown-in-Parliament, especially after the Glorious Revolution of 1688-9. The concept of the king being still figuratively "in Parliament" while law was made was part of the ongoing mythos of the

constitution. The king also retained some prerogative powers to himself, including, relevantly here, the right to conduct foreign relations and enter into treaties, and grant charters or monopolies to his subjects for certain purposes – often overseas trade or settlement.

Local forms of authority also remained important in the English system, and more widely in the British Isles. Locally, authority was exercised by aristocrats, gentry, local manorial courts, leet courts, and the like. The growth of centralized King's courts developed later, although sheriffs or Justices of the Peace in the counties or shires were the King's local representatives. Political authority at the centre provided an overarching system, but local courts, laws and customs were multiple. Juries drawn from the local population, especially if they were part of the landed classes or freeholders (and even established tenants in the case of manorial courts), were the standard expectation in criminal and civil proceedings and in local trade or agricultural disputes.[52] There was also the core administrative role of the parish, not just for church functions but for the administration of poor relief and other social functions. Local government was a hodgepodge of councils, corporations and other bodies, mostly elitist or unrepresentative (at least according to later democratic conceptions).[53] Such a picture did not begin to change until the 1830s, when local government started to become more systematised or rationalised through legislative reform.[54]

The localities were represented in the central Parliament. Until well into the nineteenth century, it was aristocratic or propertied classes, a small minority, that were represented. Although representation began to change in the 1830s, via the Great Reform Act 1832 and propelled by industrialisation and urbanisation, the English system remained largely hierarchical, traditional and landed. The Crown-in-Parliament remained at the centre, both symbolically and constitutionally.[55] "Sovereignty of the people" was a French idea, and one that the British united against in defending their empire of liberty against some admixture of anarchy, republicanism, and Catholicism in the Napoleonic wars[56] – wars in which treaty translator Henry Williams fought.

This *ancien régime* or old-world system was still largely in place at 1840, when the Treaty of Waitangi was entered into. Aristocratic authority, or more broadly, the man of property, the gentleman, comprised the ruling structure. Increasingly, the professional, mercantile, and manufacturing classes – the nascent middle class – were becoming part of this governmental order and included within the designation "gentlemen". Chiefs in Nu Tireni were viewed by (some) Englishmen as akin to gentlemen, the landed class. Their role as leaders of distinct groups or tribes was also appreciated.[57] Consider the British parallels here: in Britain, the landed classes were still community leaders – by their birth or whakapapa, or customary status, and sometimes for their achievements. (And, lest the picture be skewed, there was some upward mobility in this hierarchical society through the creation of peers or conferral of titles that was based on achievement in fields such as literature, war, business, or science).

This account of British political ordering – of civil government – *circa* 1830s, helps to us to reconcile te Tiriti-the Treaty: it does so by clarifying the meaning or intent of the English drafters – as Ned Fletcher has done admirably for the imperial context especially. But we also need the British domestic context and history of civil government; at least, we need British *mentalities* or *imaginaries* concerning this history. Critically, British mentalities present us with a picture of Crown-in-Parliament, in which authority was formed of a "balanced" or "mixed" constitution of King, Lords and Commons, whilst also exercised by the King's Courts at the centre and by local courts and magistracy in the localities. To draw tighter the parallels, we could describe this British system in the language of te Tiriti at 1840: at the centre there

was kāwanatanga, in the localities there was rangatiratanga or landed gentry; that rangatiratanga was also represented in the central kāwanatanga. This "domestic constitution", including the relationship between centralised and localised authority, also played out in the wider empire between imperial administrators and local, indigenous principalities and chieftainships ("the Kāwanatanga is Māori too" may be a modern, Aotearoa New Zealand application.[58])

Civil Government in Nu Tireni: an Anthropology of the Emerging Hybrid Political Order, 1830s-50s

Such parallels invite an extension of this political anthropology of the British political order to the construction of imperial authority in Nu Tireni in the 1830s-50s period. In New Zealand, the imperial government established in 1840 cannot be conflated with the idea of a monolithic settler government that came two decades or more later. In fact, British authority (or "sovereignty") was never really monolithic in the nineteenth century; it had to govern with the consent of many stakeholders, including Māori.[59] Certainly, in the 1840s-50s, the governor had to govern with the consent of rangatira and tribes. How was this consent obtained? I want to suggest that political discourse, ideas and symbols did much to generate this consent; although military power was part of this matrix, and was used at key junctures, other mechanisms were creating legitimacy or manufacturing consent. A better way to say this may be, as suggested above, that a shared discourse of politics was starting to emerge across British and Māori leaderships that helped to undergird the new colonial-imperial order of things.

Anthropologist Clifford Geertz wrote influentially in the 1970s on the symbolics of power, specifically on the role of enchantment or charisma, tradition or mystique, in legitimising authority. Geertz argued that:

> Thrones may be out of fashion, and pageantry too; but political authority still requires a cultural frame in which to define itself and advance its claims, and so does opposition to it. A world wholly demystified is a world wholly depoliticized.[60]

Geertz considered that usually this charisma was identified with a central person or institution – in the old world, it was usually a monarchy or chieftainship of some description. The contest over political power tended to take place over this political centre and its symbolic apparatus.

Employing this insight, we could ask about the legitimating symbols or ideas of authority in 1830s-50s New Zealand. What symbols or ideas held true for both Pākehā and Māori – or at least most Pākehā and many leading Māori? If such can be identified, they would form a longer arch story – beyond 1840 – in which the meaning of both language texts of the Treaty for each constituency were being reconciled in practice.

Kings, Governors and Ture/Law

The idea of two constituencies – "Māori and Pākehā" – is of course questionable based on diverse encounters, of variable length, between Europe and hapū/iwi over the preceding decades. Nevertheless, by the time the Treaty of Waitangi was entered into in 1840, northern tribes, and to a reasonable extent Ngāi Tahu in Te Waipounamu and other coastal hapū had been discussing European ideas of authority for some two generations. Māori had boarded whaling and sealing vessels and travelled all the way to London, and some had travelled with missionaries and seen the monarch himself – notably Hongi Hika and Waikato with Thomas Kendall. Engagements with Australian governors dated from Te Pahi's visit in 1805-06 and the frequency of these visits to New South Wales increased once Samuel Marsden began

purposefully hosting visiting chiefs and teaching them both the "arts of civilization" and conventional English traditions concerning governors, kings, and juries.

These were some of the first political discussions about a European civil society or government, and Marsden was also intent on such kōrero when in New Zealand. He famously proposed to Hongi Hika that he might become King of New Zealand, but Hongi dismissed the notion. Marsden in effect introduced the concept of civil society or government in his early, recorded discussions with rangatira: at its core was the idea that although the British monarch governed the whole island, he was also subject to law; and, in particular, the task of adjudicating on crime rested with a jury of "twelve gentlemen".[61]

Thus, ideas of rule by kings (or a crown) and governors, assisted by juries, were part of the political lexicon of at least northern iwi by 1840, and probably, via other trade and internal iwi networks, of other rangatira and hapū. Te Heuheu (Tūkino II, Mananui) of Ngāti Tūwharetoa, although he had had limited personal contact with Europeans by 1840, understood te Tiriti to propose that his tribal, chiefly authority was in some way to come under that of Queen Victoria: his lack of comfort with this idea meant he refused to sign. (His younger brother, Iwikau, signed, but this was repudiated by Mananui, saying that he would not subject his mana to a woman or Queen).[62] Pōtatau Te Wherowhero, later to become the first Māori king, also did not sign, along with other leading chiefs of Waikato-Tainui.[63] High-ranking rangatira, therefore, appear to have understood that the exercise of authority (mana) by the British monarch or her governor "over" Māori chiefs was integral to the Treaty proposition – regardless of the fact that the word mana was not used in Te Tiriti. As Claudia Orange suggested in 1987: to Māori rangatira it was obvious that the Kāwana possessed his own inherent mana.[64]

Of course, other tribal leaders in Ngāpuhi and in other areas did sign, and while they were assured of their ongoing chiefly authority as heads of tribes – perhaps through article two, along with the various formal and informal kōrero that took place – there was little doubt that the Governor was to exercise real authority; that he would be "up high" in the language of some speeches. The recorded debates from Northland and the smatterings from other signing locations suggest that key issues for rangatira were the position of chiefs in relation to the governor and whether their lands and customs would be preserved.[65] Waka Nene of course invited the Governor to be "a father, a judge, a peacemaker",[66] while Panakareao, at Kaitāia, used the metaphor of shadow of the land – seemingly to indicate the essential protecting nature of the Queen's authority that he envisioned.[67] As Te Maire Tau has pointed out, in order to protect something it is necessary to exercise real authority over it (or "if you can protect me, you can command"); by such authority "the substance" of tribal control over whenua, kainga and other resources would be guaranteed.[68] Such was Panakareao's hope and the clear intent of key figures promoting or interpreting the treaty, missionaries and Captain Hobson included. Panakareao also explained the Governor's authority in terms of the person guiding the movement of a ship.[69] This significant metaphor implied that a new type of waka or political society had come into being: a new pan-tribal political order – a commonwealth, to use the older English notion – made possible by the exercise of an intervening or mediating kāwanatanga.[70] In some Māori minds, also, it seems the concept of the Governor's shoring up of tribal land against erstwhile enemies was part of the attraction: thus protection meant protection from not just the "tribe of Marion" – as per the 1831 letter to Britain – but also protection inter-tribally.[71] Te Maire Tau articulates the position with acuity, citing *inter alia* Ngāi Tahu authority, that without a supra-tribal authority, "Māori were not operating within any civil condition", and that, "[t]he reasons for the Treaty of Waitangi then, at least from the eyes of Maori, were to invite the British Empire to impose law and order in New Zealand,

which must of course include the introduction of a civil society".[72] In essence, British kāwanatanga would protect Māori rights or rangatiratanga.[73]

There were other components to this emergent hybrid political discourse. The notion of ture or law (or common law) was a significant feature. It was prominent in the 1835 Declaration, whereby the Assembly of rangatira were to meet annually to make laws/ture for "the dispensation of justice, the preservation of peace and good order, and the regulation of trade".[74] These powers of law making and government/kāwanatanga they reserved to themselves exclusively – in their collective capacity.[75] Despite the Declaration's intent, the text of te Tiriti in 1840 suggested that the Queen's governor was needed because Māori and Pākehā were still living in a state of lawlessness: "e noho *ture kore* ana" (emphasis added). The articles of the treaty themselves were referred to as ture.[76] Thus, the rangatira invited Kuini Wikitoria to introduce *ture* via the establishment of *kāwanatanga* throughout the territories of the tribes, as article one provided.

The introduced concept of law was underlined prominently by the scriptural and prayer book translations into te reo Māori of the 1830s. The word "ture" was first adapted by the missionaries at Tahiti from the Hebrew torah.[77] The new language of law – along with government and kingship – was comprised in the texts of Morning Prayer and Evening Prayer, which prominently included the Psalms, and in scriptural narratives and stories.[78] In these texts, ture mostly stood for God's law, which if people followed they would be blessed or receive life (oranga). Daily prayers for peace (marietanga) were closely allied with the idea that believers would be protected by te Atua/God from their enemies.[79] In the service of Evening Prayer, used almost every day on the mission stations, God was referred to as "the governor of princes"/ "te Kawana o nga piriniha" as well as "te Kingi o nga kingi, te Ariki o nga ariki" (King of kings, Lord of lords). These expressions occurred in the prayers for those in authority, which in the 1830s were expressed to be "ki nga rangatira maori" (for the native chiefs).[80] This phenomenon needs to be underlined in the context of the political anthropology of the metropole I have sketched above: in Nu Tireni in the 1830s, there were *daily prayers* to te Atua for peace and preservation from enemies, and prayers for rangatira, in which God was referred to as Kingi, Ariki and Kawana – and there was no hierarchy of roles in these usages.

A close analysis of all these texts is not possible here; but it is critical to point out how widespread the use of these prayer services was by the early 1840s. There were smaller print runs in the earlier 1830s, most of which probably travelled only through the North. Between 1839 and 1842, however, William Colenso printed 47,000 of the "small" prayer book (essentially Morning Prayer and Evening Prayer only) at the Paihia mission press; these were then distributed around the country. By mid-1840, over 11,000 copies had already been distributed, including as far as Kāpiti and Whanganui (500 copies) in February 1840.[81] Around 5000 copies of the complete Psalms, with many references to the law of God and the story of Israel were printed in the same period and distributed.[82] By the mid-1840s, CMS numbers alone put Māori attending regular services at 35,000 people.[83] Given best estimates of the Māori population at 1840 are between 70,000 and 90,000, this was almost saturation point for these texts, even excluding Wesleyan and Catholic print production.[84]

In terms of scriptural narratives, several stand out. One thousand copies of the gospel of Luke had been printed and distributed in 1836, to stations as far south as Rotorua and Tauranga, while 5,000 copies of the New Testament were printed at Paihia during 1836-37; by 1840, perhaps 3000 copies of these New Testaments had been distributed throughout the North, and to Waikato, Tauranga, Opotiki, Rotorua, Tūranga and East Cape, while a chief from Taupo had

received one in June 1838 and, in late 1839, Katu Te Rauparaha and Matene Te Whiwhi had taken a copy each back to Kāpiti.[85] We can suppose from this distribution and the evidence of avid Māori reading that the story of Pontius Pilate, the Roman governor, and his role in condemning Christ to the cross, was reasonably well known through much of the island by 1840. Hōne Heke, in the 5 February Waitangi debates, referred to the treaty as akin to the New Testament or covenant/kawenata. In a Ngāpuhi oral tradition, the kōrero (discourse) of rangatira was that they would agree to a governor like Pilate, but not a King like Herod.[86] Nevertheless, it was obvious from the story that Governor Pilate had power over civil life and death, while the Jewish leaders (akin, perhaps, to rangatira) exercised some real authority in this process. In other indigenous recollections, the Māori chiefs were significantly compared under te Tiriti with the Barons of England under the famous Magna Carta, an agreement which protected property and liberty in accordance with law (ture).[87]

One substantive expression of the new ture was the practise of subjecting crimes to a trial by jury. Forms of jury trial had begun to be conducted on mission stations before 1840. Even as early as 1806, the rangatira Te Pahi brought back some gallows from New South Wales, which he apparently used on some New South Wales convicts.[88] Jury trial or other forms of hearing or adjudication of wrongs constituted a substantive shift in Māori political consciousness: besides the procedural aspects, it became a matter of addressing the actions of *one individual*, rather than the real possibility that one criminal act or "hara" could spark a rebalancing or utu campaign involving whole hapū groups. This dynamic was, I suggest, still front of mind for rangatira in 1840 due to the recent turmoil (still not entirely concluded) of the musket war period. The role of missionaries as mediators in tribal warfare perhaps prefigured the type of role that rangatira envisaged for the Governor: as a mediator, though one who came richly attired as a Royal Navy captain and supported by a man-of-war and guns. In short, the language of ture, the idea of positively stated law codes, and the practices of trial by law were taken up by many hapū and iwi groupings during the 1840s-50s and beyond, as the literature has highlighted.[89]

Rangatiratanga, Assemblies and the Political Press

We can summarise the political imaginary (anthropology) so far discussed: the symbols of the new post-1840 political order were British monarch, governor and ture/law. In addition, and significantly, there was another trio of political powers or institutions: first, rangatira or tribes, who would retain control of tribal estates, villages and other resources/taonga. Second, there was an inchoate notion that the governor would continue to meet in assembly with chiefs, as he did at Treaty signings and in early years following Waitangi. Admittedly this was only a suggestion at 1840. But the concept of assemblies or whakaminenga to make laws was becoming part of Māori consciousness, through the text of He Whakaputanga (1835) and perhaps more significantly, exposure to the governor's councils in Australia and even the British parliament. Stories of these parliaments and councils also no doubt filtered back through tribal hui and debate. He Whakaputanga had suggested regular or annual assemblies. In the late 1830s, responding with alarm to colonisation proposals, Henry Williams and other missionaries proposed to the CMS in London the idea that a British military force, under a governor, would support the law-making authority of such a chiefly assembly. This was in line with the Declaration's annual parliament of chiefs and Busby's more evolved 1837 protectorate proposal to the Colonial Office. All such proposals were versions of a supra-tribal political order or civil government which could back up its decisions with force – a coercive authority not enmeshed in kin networks or customary obligations.[90]

The idea of law-making assemblies has had a long afterlife in Māori society. The settler parliament first met in 1854; Māori MPs were admitted to this assembly as early as 1867. Alongside this central system were the provincial governments from 1853, while the 1852 Constitution Act also allowed for the possibility of parallel Māori districts in which custom would remain in force. Wiremu Tamehana was probably seeking Crown backing for such a Māori district and law-making assembly on his fateful, failed visit to Governor Gore Browne in mid-1850s Tāmaki-Makaurau (Auckland). By the early 1860s, Bishop Selwyn, with insight or foresight beyond most of his peers, thought the Kīngitanga might form a provincial authority whose decisions were given the *imprimatur* of the governor.[91] None of this was to be, although there were many attempts, some partially successful, at constituting tribal authorities or committees through legislation, including the land incorporations from the 1890s.[92] Māori were themselves of course evolving their own institutions of rūnanga and kōmiti throughout the nineteenth century.[93]

The third prong of this second trio was the press or, more generally, "the public sphere", or "the fourth estate". As Belich points out, this was a key political institution imported from the Home country. The colonist press held public authority to account; native presses by the early 1860s were seeking to do the same. Before then, there were any number of Māori leaders petitioning governor, Crown and settler parliament, making public speeches, and writing political tracts setting out their concerns and expectations.[94]

If we were to boil down all of the above to a picture – in a Geertzian, anthropological manner – what did political authority in the colony from 1840 *look like*? The governor was the centre of the new order, representing the Crown and the ture; but alongside him, or around about him, were the rangatira, who legitimised his authority and also benefitted from it. They also legitimised Pākehā settler authority too, to a degree, as an 1849 banquet in Wellington portrays.[95] It can be debated how "up high"/ki runga the governor's pedestal was, but in this early period it was not too many notches above that of rangatira themselves – in the perception, arguably, of both the governor and the rangatira. In some circumstances of the new imperial-colonial order, the authority of rangatira was bolstered by the governor's recognition; this had some adverse results in the 1850s and later periods, including cases in which chiefs transacted land sales privately on behalf of tribal groups, rather than through a more *respublica* process. Governor Grey oversaw the New Zealand political scene particularly adeptly from 1845 to 1852, while Donald McLean played a best supporting role as Chief Land Purchase Commissioner (and Native Secretary from 1856).[96] When, however, the political centre of the colony shifted from the governor to the settler parliament – partially from the mid-1850s, and then more substantively by the mid-1860s – this *aristocratic or gentlemanly nexus* dissolved, and rangatira were pushed away from the centre of power into the outlands of authority.

These political shifts within the imperial-colonial constitution help to explain why Māori turned to their own kingships, assemblies and law codes from the mid-1850s, with the Kīngitanga leading the way, followed later in the 1880s-90s by the Māori parliament movement and Kotahitanga. Still, the idea of the centre of authority being the governor, representing the Crown, and supported by the ture and courts did not go away. Some rangatira, from some tribal areas, continued to act as court assessors, receive government pensions for war service, and even sit in both lower and upper houses of the General Assembly.[97] By the 1890s, it was the settler premiers, not the governor, who often received most attention from Māori, particularly those with obvious charisma or mana such as Richard Seddon.[98]

Conclusion

We should return to the original question of translating or interpreting te Tiriti-the Treaty. By interleaving or interweaving British political history with imperial history, we can better imaginatively reconstruct a world of the 1830s-40s in which politics was interwoven with religion, and law or custom with history. When such political history and its various languages were inflected with a strong humanitarian-evangelical influence at Westminster and its imperial peripheries, we can reconcile the two texts of the Treaty and see it as Māori Magna Carta, which – in the view of at least some contemporaries – protected rights and gave New Zealand the chance of being a new-England or neo-Britain. This projected political imaginary appears ably summarised in lines I now borrow liberally from Shakespeare's John of Gaunt, in *Richard II*:

> This royal throne of kings, this scepter'd isle
> This earth of majesty, this seat of Mars,
> This other Eden, demi-paradise;
> This fortress built by Nature for herself
> Against infection and the hand of war;
> This happy breed of men, this little world;
> This precious stone set in the silver sea,
> Which serves it in the office of a wall,
> Or as a moat defensive to a house,
> Against the envy of less happier lands;
> This blessed plot, this [*whenua*], this realm, this [*Niu Tireni*] …

In summary, the historic treaty, while in European terms was in part about obtaining "sovereignty" at international law, should be interpreted more richly – especially via the Māori language text – within the paradigm of government or kāwanatanga. Such an authority was the purpose of "sovereignty". Māori leaders agreed that the Crown could exercise this government in order to remedy the absence of a civil authority that could maintain internal order amongst Pākehā settlers, *between* tribes and settlers, and *between* tribes – as to trade, crime and warfare in particular – and, externally, protect the country from foreign powers. Alongside this "national" government, the internal tribal (hapū) regulation of whenua and custom (tino rangatiratanga) would be left basically intact. This treaty compact or "Magna Carta" of indigenous protection was made possible – or consented to by Māori leaderships – in conditions of increasing trade, religious and familial entanglements. And it was made possible due to a hybrid European and indigenous discourse which emerged in Nu Tireni/New Zealand during the 1830s and more strongly into the 1840s-50s. This hybrid discourse was the intellectual and cultural setting in which te Tiriti o Waitangi made sense. As Māori embraced Europe in various ways, while resisting it in others, they became co-creators of, as Bayly puts it, "new schools of thought" that "spoke to a common global modernity",[99] while they also strongly asserted their own agency or rangatiratanga.[100] This hybrid discourse also imprinted itself on colonial politics generally: we should remember that the administration of Crown Kāwanatanga in the nineteenth century was conducted in relation to Māori populations through engagement and negotiation with indigenous leaderships and *in te reo Māori* (Māori language). Thus, as Richard Price has written, "indigeneity echoed through the official networks of policy makers and the ruminations of political and legal theorists".[101] As an eminent New Zealand authority has phrased this: "the Crown is Māori too".[102]

[1] An earlier version of this essay was presented at the New Zealand Historical Association Conference in 2021; a reframed version was given at a symposium at St John's Theological College in 2022. I acknowledge with thanks all those who offered feedback on these papers and subsequently in correspondence and also to the anonymous reviewer(s).

[2] This article, given its primary argument that the two language texts reconcile, will use "Te Tiriti" and "the Treaty" interchangeably in referring to the agreement or compact that was entered into via the Māori text in most cases and via the English text (with translation) in a minority of cases (at Port Waikato). If the particular language text is being referred to, the discussion will make that plain.

[3] Waitangi Tribunal, *He Whakaputanga me te Tiriti: The Declaration and the Treaty, The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry, Wai 1040* (Legislation Direct, 2014), xxii, 1, 9, 526-29, https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_85648980/Te%20Raki%20W.pdf.

[4] Ruth Ross, "Te Tiriti o Waitangi: Texts and Translations," *New Zealand Journal of History* 6, no. 2 (1972): 129-57.

[5] Anne Salmond, "Where Will the Bellbird Sing? Te Tiriti o Waitangi and 'Race'," *Policy Quarterly* 18, no. 4 (2022): 8; Dame Anne Salmond, "Iwi vs Kiwi," *Newsroom,* 3 May 2021, https://www.newsroom.co.nz/ideasroom/dame-anne-salmond-iwi-and-kiwi-beyond-the-binary; *cf.* Dame Anne Salmond, "Brief of Evidence," 17 April 2010, Wai 1040 #A22, Waitangi Tribunal, where she underlines the argument that kāwanatanga was a "delegated power" or lesser than that of "sovereignty" (even though, *contra* her argument, British governors were exercising paramountcy in New South Wales, Norfolk Island and many other places).

[6] There is at least a difference of emphasis, if not conceptually, between Salmond's 1992/2010 and 2021/22 pieces, illustrated by the statement in the 2021 *Newsroom* article that chiefs "were aware of the considerable powers delegated to the Queen's representatives" and the statement in *Policy Quarterly* that chiefs made an "unreserved gift in ture 1 to Queen Victoria forever of all the 'Kawanatanga' of their lands … a major step, taken in the hope of rongo (peace) and atanoho (tranquil living)." Significantly, there is no emphasis in 2021/22 that "sovereignty" is "an absolute form of power," nor is there the statement that, by contrast, kāwanatanga/government is merely "a subordinate or delegated power": see Salmond, "Brief," 24, 26, 87, 88; cf. also published, "updated" version of "Brief": Anne Salmond, "Te Tiriti o Waitangi (2010)," in *Knowledge Is a Blessing on Your Mind: Selected Writings, 1980-2020* (Auckland University Press, 2023), 337-450.

[7] *cf.* Claudia Orange, *The Treaty of Waitangi* (Bridget Williams Books, 1987), 56-57, which suggested the governor might be focussed on "controlling troublesome Pakeha"; this suggestion is more muted than the Waitangi Tribunal's conclusions in *He Whakaputanga me te Tiriti*, 527, of in effect two separate "spheres" of governor and tribes.

[8] See, for example, Judith Binney, "The Maori and the Signing of the Treaty of Waitangi," in *Towards 1990: Seven Leading Historians Examine Significant Aspects of New Zealand History*, ed. David Green (Government Printing Office, 1989), 20-31. Michael Belgrave, *Historical Frictions: Māori Claims and Reinvented Histories* (Auckland University Press, 2005), ch. 2

[9] Ned Fletcher, *The English Text of the Treaty of Waitangi* (Bridget Williams Books, 2022); Samuel Carpenter, review of *The English Text of the Treaty of Waitangi*, by Ned Fletcher, *New Zealand Journal of History* 57, no. 1 (2023): 93-94; Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge University Press, 2010); Lauren Benton and Richard Ross, eds., *Legal Pluralism and Empires, 1500-1850* (New York University Press, 2013).

[10] Ross, "Te Tiriti o Waitangi," 153.

[11] For example, Alister Chapman, John Coffey, and Brad S. Gregory, *Seeing Things Their Way: Intellectual History and the Return of Religion* (University of Notre Dame Press, 2009).

[12] Angela Ballara, *Taua: 'Musket Wars', 'Land Wars', or Tikanga? Warfare in Māori Society in the Early Nineteenth Century* (Penguin, 2003).
[13] As in the Declaration of Independence, 1835, *cf. Williams Dictionary*, 7th edition, 'rangatiratanga': 'evidence of breeding or greatness'.
[14] Fletcher, *English Text*, 123-24.
[15] Tony Ballantyne, *Entanglements of Empire: Missionaries, Māori, and the Question of the Body* (Duke University Press, 2015); Vincent O'Malley, *Beyond the Imperial Frontier: The Contest for Colonial New Zealand* (Bridget Williams Books, 2014).
[16] Waitangi Tribunal, *He Whakaputanga me te Tiriti*, 282-84; Anne Salmond, *Tears of Rangi: Experiments Across Worlds* (Auckland University Press, 2017).
[17] For example, Henry Williams, Journal, 29 October 1834, in *The Early Journals of Henry Williams, 1826–1840*, ed. Lawrence Rogers (Pegasus Press, 1961), 398-99; Ballara, *Taua*, 436-43; O'Malley, *Beyond the Imperial Frontier*, 98-101; Samuel D. Carpenter, "A Historical–Contextual Analysis of the Use of 'Tapu', 'Utu' and 'Muru' in the Māori New Testament and Book of Common Prayer," *Religions* 15, no. 9 (2024), 1109, https://doi.org/10.3390/rel15091109.
[18] Lachy Paterson, "Ngā Ritenga Pai: Māori and Modernity in the 1850s", *Journal of New Zealand Studies* 35 (2023): 22-35, https://doi.org/10.26686/jnzs.iNS35.8113; see also, Tony Ballantyne, Lachy Paterson and Angela Wanhalla, eds. *Indigenous Textual Cultures: Reading and Writing in the Age of Global Empire* (Duke University Press, 2020).
[19] Paterson, "Ngā Ritenga Pai," 27.
[20] Lyndsay Head, "The Pursuit of Modernity in Maori Society: the Conceptual Bases of Citizenship in the Early Colonial Period", in eds., A. Sharp and P. McHugh, *Histories, Power and Loss: Uses of the Past – A New Zealand Commentary* (Bridget Williams Books, 2001), 97-121.
[21] See, also, Salmond, "Brief,".
[22] "Art. V. Review of Gladstone – The State in its Relations with the Church," *Quarterly Review* 65, no. 129 (1840): 101.
[23] David Hempton, *Religion and Political Culture in Britain and Ireland: From the Glorious Revolution to the Decline of Empire* (Cambridge University Press, 1996), 3, 13; see also J. C. D. Clark, *English Society 1660-1832: Religion, Ideology and Politics During the Ancien Regime*, second edition (Cambridge University Press, 2000).
[24] Edition cited is Samuel Johnson, *A Dictionary of the English Language*, ed. Alexander Chalmers (1824).
[25] Cited from *The Book of Common Prayer* (Clarendon Press, 1815), the same translation as found in original Book of Common Prayer (1662).
[26] *Ko te Pukapuka o Nga Inoinga … o Te Hahi o Ingarani* (Paihia, 1840).
[27] For interpretative or qualitative (conventional) intellectual history compared with quantitative or text-as-data analysis, see: Jennifer A. London, "Re-imagining the Cambridge School in the Age of Digital Humanities," *Annual Review of Political Science* 19 (2016): 351-73, https://doi.org/10.1146/annurev-polisci-061513-115924; see also Stephen Doherty, Lisa Ford, Kirsten McKenzie, et. al., "Inquiring into the Corpus of Empire," *Journal of World History* 32, no. 2 (2021): 219-40, https://dx.doi.org/10.1353/jwh.2021.0022; Justin Grimmer and Brandon M. Stewart, "Text as Data: the Promise and Pitfalls of Automatic Content Analysis Methods for Political Texts," *Political Analysis* 21, no. 3 (2013): 267-97, https://doi.org/10.1093/pan/mps028.
[28] The corpus comprised texts mostly from the 1830s including from *Hansard*, a selection of leading authors (James Mill, J. S. Mill, T. B. Macaulay, Henry Hallam and S. T. Coleridge) and the following

periodicals: *Edinburgh Review, Quarterly Review, Westminster Review, Eclectic Review, Christian Observer, Evangelical Magazine* and *Calcutta Christian Observer*.

[29] It is another striking fact that the Act of Union 1706 between England and Scotland does not use the terms "sovereign" or "sovereignty" at all but rather speaks of a "union of the two kingdoms" and strictly limits the succession of "the Crown and Government" to Protestants; and it also declares (in article 18) that "the Laws which concern publick right, Policy and Civil Government" might be made uniform by the unified Parliament of Great Britain, while preserving "the Laws which concern private Right" in Scotland except where there was "evident utility" for subjects in Scotland to change such private laws.

[30] James Mill, "Government," in *Essays on Government, Jurisprudence, Liberty of the Press, Prisons and Prison Discipline, Colonies, Law of Nations and Education* (J. Innes, [1828]); T. B Macaulay, "Mill on Government," *Edinburgh Review* 49, no. 97 (1829); see also Terence Ball and Antis Loizides, "James Mill," in *The Stanford Encyclopedia of Philosophy* (Fall 2024 Edition), eds. Edward N. Zalta and Uri Nodelman, https://plato.stanford.edu/archives/fall2024/entries/james-mill/; and Joseph Hamburger, "Introduction," in *Collected Works of John Stuart Mill*, vol. 6, ed. J. M. Robson (University of Toronto Press, 1982), x-xv.

[31] J. G. A. Pocock, "Foundations and Moments," in *Rethinking The Foundations of Modern Political Thought*, eds. Holly Hamilton-Bleakley, James Tully and Annabel S. Brett (Cambridge University Press, 2006), 37; see also J. G. A. Pocock, ed. *The Varieties of British Political Thought, 1500-1800* (Cambridge University Press, 1993).

[32] Iain Hampsher-Monk, "On Not Inventing the English Revolution: the Radical Failure of the 1790s as Linguistic Non-Performance," in *English Radicalism, 1550-1850,* eds. Glenn Burgess and Matthew Festenstein (Cambridge University Press, 2007), 135-56.

[33] T. B. Macaulay, 2 March 1831, House of Commons, *Hansard* 3, vol. 2, c. 1191, https://api.parliament.uk/historic-hansard/commons/1831/mar/02/ministerial-plan-of-parliamentary-reform.

[34] T. B Macaulay, "Milton," *Edinburgh Review* 42, no. 84 (1825): 334; *cf.* Johnson's *Dictionary*, where "king" is defined as "Monarch; supreme governour", from Shakespeare.

[35] J. G. A. Pocock, "Empire, Revolution and the End of Early Modernity," in *Varieties of British Political Thought,* 301; see also, Mark Francis, *Governors and Settlers: Images of Authority in the British Colonies, 1820-1860* (Macmillan, 1992); and Lisa Ford, *The King's Peace: Law and Order in the British Empire* (Harvard University Press, 2021).

[36] C. A. Bayly, *Imperial Meridian: The British Empire and the World, 1780-1830* (Longman, 1989).

[37] Lauren Benton, Adam Clulow and Bain Attwood, eds., *Protection and Empire: A Global History* (Cambridge University Press, 2017); Bain Attwood, *Empire and the Making Native Title* (Cambridge University Press, 2020), 96-139; Mark Hickford, *Lords of the Land: Indigenous Property Rights and the Jurisprudence of Empire* (Oxford University Press, 2011); for the humanitarian-Evangelical background, see Roshan Allpress, *British Philanthropy in the Globalizing World: Entrepreneurs and Evangelicals, 1756-1840* (Oxford University Press, 2023).

[38] Eugene F. Irschick, *Dialogue and History: Constructing South India, 1795-1895* (University of California Press, 1994).

[39] C. A. Bayly, *Recovering Liberties: Indian Thought in the Age of Liberalism and Empire* (Cambridge University Press, 2012); see also, Christopher Bayly, "European Political Thought and the Wider World During the Nineteenth Century," in *The Cambridge History of Nineteenth-Century Political Thought,* eds. Gareth Stedman Jones and Gregory Claeys (Cambridge University Press, 2011), 835-63.

[40] Vincent O'Malley, "Reinventing Tribal Mechanisms of Governance: The Emergence of Maori Runanga and Komiti in New Zealand before 1900," *Ethnohistory* 56, no. 1 (2009): 69-89.
[41] Brenda Chalfin, *Neoliberal Frontiers: An Ethnography of Sovereignty in West Africa* (University of Chicago Press, 2010), 3.
[42] Benton, *A Search for Sovereignty*, 288.
[43] Benton, *A Search for Sovereignty*, 299.
[44] *cf.* Tony Ballantyne's similar argument for colonial state formation in New Zealand: "On Place, Space and Mobility in Nineteenth-Century New Zealand," *New Zealand Journal of History* 45, no. 1 (2011): 50-70.
[45] "Māori and English Texts", Waitangi Tribunal, https://www.waitangitribunal.govt.nz/en/about/the-treaty/maori-and-english-versions.
[46] Fletcher, *English Text*, 487-529; see also, Michael Belgrave, *Becoming Aotearoa: A New History of New Zealand* (Massey University Press, 2024), 97-99.
[47] See Annabel S. Brett, *Changes of State: Nature and the Limits of the City in Early Modern Natural Law* (Princeton University Press, 2011); Anthony Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain and France, c. 1500-c.1800* (Yale University Press, 1995); Andrew Fitzmaurice, *Sovereignty, Property and Empir*e, 1500-2000 (Cambridge University Press, 2014); Quentin Skinner, "The Sovereign State: A Genealogy," in *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept*, eds. Hent Kalmo and Quentin Skinner (Cambridge University Press, 2010), 26-46.
[48] Jose Harris, "Introduction: Civil Society in British History: Paradigm or Peculiarity?," in *Civil Society in British History: Ideas, Identities, Institutions*, ed. Jose Harris (Oxford University Press, 2005), 11.
[49] Joe Harris, "From Richard Hooker to Harold Laski," in *Civil Society in British History*, 15-16.
[50] Thomas Hobbes, *Leviathan*, ed. J. C. A. Gaskin (Oxford University Press, 1996), 111-39, also, xxxiv-vi.
[51] See Pagden, *Lords of All the World*; see also C. S. Lewis, *English Literature in the Sixteenth Century, Excluding Drama* (Clarendon Press, 1954), 46-51.
[52] See, for example, Brodie Waddell, "Governing England Through the Manor Courts, c. 1550-1850," *Historical Journal* 55, no. 2 (2012): 279-315.
[53] Pat Thane, "Government and Society in England and Wales, 1750-1914," in *The Cambridge Social History of Britain, 1750-1950*, vol. 3, ed. F. M. L. Thompson (Cambridge University Press, 1990), https://doi.org/10.1017/CHOL9780521257909.
[54] Notably, the Municipal Corporations Act 1835.
[55] Angus Hawkins, *Victorian Political Culture, 'Habits of Heart and Mind'* (Oxford University Press, 2015), 57-64; *cf.* Harris, *Civil Society in British History.*
[56] T. B. Macaulay, "Barère," *Edinburgh Review* (1844), in The *Miscellaneous Writings of Lord Macaulay*, vol. 2 (Longman, Green, Longman, and Roberts, 1860), 198; Linda Colley, *Britons: Forging the Nation, 1707-1837* (Yale University Press, 1992).
[57] C. A. Bayly, "The British and Indigenous Peoples, 1760-1860: Power, Perception and Identity," in *Empire and Others: British Encounters with Indigenous Peoples, 1600-1850*, eds. Mark Daunton and Rick Halpern (UCL Press, 1999), 36; see also Fletcher, *English Text*, 82.
[58] Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262, 2011, 451, https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68356606/KoAotearoaTeneiTT2Vol2W.pdf; see also, Dominic O'Sullivan, "The Crown is Māori Too – Citizenship, Sovereignty and the

Treaty of Waitangi," *The Conversation*, 8 February 2019, https://theconversation.com/the-crown-is-maori-too-citizenship-sovereignty-and-the-treaty-of-waitangi-111168.
[59] *cf.* Ballantyne, "On Place, Space and Mobility".
[60] Clifford Geertz, "Centers, Kings, and Charisma: Reflections on the Symbolics of Power" (1977), in Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (Basic Books, 2008), 143.
[61] Samuel Marsden, "Journal of first visit to New Zealand in Dec. 1814," Marsden Collection, MS. 176/1, Hocken Library; see also, Samuel D. Carpenter, "The Reshaping of Political Communities in New Zealand: a Study of Intellectual and Imperial Texts in Context, c. 1814-1863", PhD thesis, Massey University, 2020, 22-48.
[62] Elizabeth Hura, "Te Heuheu Tūkino II, Mananui," *Dictionary of New Zealand Biography*, Te Ara - the Encyclopedia of New Zealand, https://teara.govt.nz/en/biographies/1t31/te-heuheu-tukino-ii-mananui; Robert Ritchie Alexander, "Te Heuheu Tukino II (Mananui)," in *An Encyclopaedia of New Zealand*, ed. A. H. McLintock (1966), http://www.TeAra.govt.nz/en/1966/te-heuheu-tukino-ii.
[63] Steven Oliver, "Te Wherowhero, Pōtatau," *Dictionary of New Zealand Biography*, Te Ara - the Encyclopedia of New Zealand, https://teara.govt.nz/en/biographies/1t88/te-wherowhero-potatau.
[64] Orange, *The Treaty of Waitangi*, 42.
[65] A concise summary of the Waitangi hui concerns is at Salmond, "Brief," 53-54.
[66] William Colenso, *The Authentic and Genuine History of the Signing of the Treaty of Waitangi, New Zealand…* (George Didsbury, 1890), 27. Hobson's account of this speech perhaps gives more of the guts: "You must be our father! You must not allow us to become slaves! You must preserve our customs, and never permit our lands to be wrested from us!": Hobson to Gibbs, 5-6 February 1840, cit. Salmond, "Brief," 51.
[67] According to Rima Edward's Tribunal evidence, the statement was: "Ko te atakau [shadow] o te whenua kia Kuini Wikitoria ko te ihi te wehi te mana te kikokiko te tinana o te whenua kia tatou ki nga rangatira. He atawhai te mahi a te Kuini. Kia whakamanahia e tatou tana inoi"/ "The shadow of the land to Queen Victoria but the Sovereignty, the body, the substance of the land remains with us the Chiefs. The Queen's purpose is to care. Let us sanction her request": Rima Edwards, "Affidavit," 16 April 2010, Wai 1040, #A25, Waitangi Tribunal, 71.
[68] Te Maire Tau, "The Discovery of Islands and the Stories of Settlement," *Thesis Eleven* 92 (2008), 22.
[69] Salmond, "Brief," 82.
[70] Binney, "The Maori and the Signing of the Treaty of Waitangi," 26.
[71] Panakareao had written to Marsden in 1837 along these lines, seeking a governor to protect us all ("tetahi Kawana mo tatou, hei tiaki i a tātou"): see N. Panakareao to S. Marsden, 9 May 1837, cited in Manuka Henare, "The Changing Images of Nineteenth Century Māori Society – From Tribes to Nation," PhD thesis, Victoria University of Wellington, 2003, 140.
[72] Tau, "The Discovery of Islands," 21-22.
[73] See also, Salmond, "Brief," 82, commenting on Shortland's speech at Kaitaia: "If Shortland's speech was sincere (and there is no reason to suppose that it was not), then he was convinced that British laws and institutions, and the Queen's protection could be extended to New Zealand without Maori laws and customs, or the prerogatives of the chiefs being encroached upon. Panakareao evidently believed the same".
[74] Clause 3 of the signed reo Māori version: "ki **te wakarite ture** kia tika ai te wakawakanga, kia mau pu te rongo[,] kia mutu te he[,] kia tika te hokohoko".

[75] Clause 2: "… they will not permit any **legislative authority** separate from themselves in their collective capacity to exist, nor any **function of government** to be exercised within the said territories"/ "a ka mea hoki e kore e tukua e matou **te wakarite ture** ki te tahi hunga ke atu, me **te tahi Kawanatanga** hoki kia meatia i te wenua o te wakaminenga o Nu Tireni...". Ture is mentioned again at the end of this clause, refering to the legal authority by which they would delegate authority.
[76] Preamble: "… enei ture ka korerotia nei": these laws/articles set out below.
[77] See *Williams Dictionary*, 7th edition; see also Richard Benton, Alex Frame, and Paul Meredith, eds. *Te Mātāpunenga: A Compendium of References to the Concepts and Institutions of Māori Customary Law* (Victoria University Press, 2013), 462-64.
[78] "Ture" has approximately 12 total appearances in the texts of Morning Prayer and Evening Prayer; a further 3 references are found in the 42 hymns of the CMS at 1840, sometimes bound with the Prayer Book; there are around 40 uses of ture in the Psalms; there are close to *300* uses of ture in *Te Kawenata Hou/New Testament* (1837 first edition, 1841 second edition), printed 25,000 times by 1841; note also the use of "tikanga" (correct procedure, custom, method, right, reason…) approximately 122 times in *Te Kawenata Hou*; note also the word ture appears approximately 600 times in the 1868 *Kawenata Tawhito* (Old Testament).
[79] See *Ko te Pukapuka o Nga Inoinga* (Paihia, 1840), 9, 20 ("small" prayer book).
[80] "Ko te Inoinga i te Ahiahi" in Ko te Pukapuka Inoinga (Hirini[Sydney], 1833), 20. On the next page, note the prayers for the church throughout the world, "that it would be guided and governed by your Spirit": "kia arahina, kia kawanatia e tou Wairua".
[81] William Colenso, Printing Ledger, fMS-048, Alexander Turnbull Library (ATL); see also P. G. Parkinson and Penelope Griffith, eds., *Books in Māori, 1815-1900/ Ngā Tānga Reo Māori: An Annotated Bibliography/ Ngā Kohikohinga me Ōna Wakamārama* (Reed, 2004), nos. 56 and 73.
[82] Distributed between November 1840 and June 1842: see Colenso, Printing Ledger; also, Parkinson and Griffith, *Books in Māori*, no. 65.
[83] See Malcolm Falloon, "The Māori Conversion and Four Early Converts," PhD thesis, University of Otago, 2020, pp.71-96.
[84] See James Belich, *Making Peoples: A History of the New Zealanders* (Penguin, 1996), 178: Belich estimates 70,000 at 1840.
[85] Colenso, Printing Ledger.
[86] Hoani Kōmene (Ngāpuhi kaumātua), wānanga at the University of Auckland, 2000 (personal records).
[87] Speech of Āperahama Taonui at Hokianga hui, reported in *Te Karere*, 31 May 1856, 12-15, https://paperspast.natlib.govt.nz/newspapers/maori-messenger-te-karere-maori/1856/05/31/15; this hui of Hokianga chiefs also recalled that the Governor was sent to make the treaty in response to the 1835 invitation that the King protect the chieftainship of the tribes or He Whakaminenga (the Confederation); thus, the Queen's Kāwanatanga was agreed to by the chiefs in 1840.
[88] Fletcher, *English Text*, 116.
[89] James Belich, "How Much Did Institutions Matter? Cloning Britain in New Zealand," in *Exclusionary Empire: English Liberty Overseas, 1600-1900*, ed. Jack Greene (Cambridge University Press, 2010), 256-57; Ballara, *Taua*, 440-43; Carpenter, "A Historical–Contextual Analysis of the Use of 'Tapu', 'Utu' and 'Muru'".
[90] See, for example, Williams to Coates, 11 January 1838, (rec'd 24 Aug 1838), CMS/CN/0 101; and Clarke (Corr Sec Northern Ctee) to Coates, 1 March 1838, encl. in Williams to Coates, 4 June 1838, CMS/CN/0 101.

[91] See *AJHR* 1863, E-12, 6; a curious account in the newspapers following Wiremu Tamehana's surrender in 1865 argued that Tamehana and the Kingitanga had only promised to submit to authorised law flowing from the governor, but not give up their authority to apply this law themselves: see "The Native War," *Lyttleton Times*, 13 June 1865, 2.
[92] The Treaty settlement process of recent years has now re-constituted iwi as corporate bodies with functions including co-management of reserves and conservation estate and the like.
[93] O'Malley, "Reinventing Tribal Mechanisms of Governance".
[94] For example, Renata Tama-ki-Hikurangi Kawepō, *Renata's Speech and Letter to the Superintendent of Hawke's Bay on the Taranaki War Question; in the Original Maori with an English Translation* (Spectator Office, 1861).
[95] "Native Banquet," *Wellington Independent*, 25 April 1849, 3, https://paperspast.natlib.govt.nz/newspapers/wellington-independent/1849/04/25/3; see also "Banquet given at Wellington to native chiefs", *Illustrated London News* (London, 1850), from a drawing by Mr J. H. Marriott, Pipitea Street, 1849, ref. PUBL-0033-1850-084, ATL, https://natlib.govt.nz/records/22855483.
[96] Alan Ward, "McLean, Donald," *Dictionary of New Zealand Biography*, Te Ara - the Encyclopedia of New Zealand, https://teara.govt.nz/en/biographies/1m38/mclean-donald.
[97] "Legislative Council," New Zealand Parliament/Pāremata Aotearoa, last updated 21 December 2020, https://www.parliament.nz/en/visit-and-learn/history-and-buildings/evolution-of-parliament/legislative-council/.
[98] See, for example, Premier Seddon at opening of the Kotahitanga meeting house at Papawai Pa, Greytown, 1897, ref. PAColl-1892-77, ATL, https://natlib.govt.nz/records/22907194.
[99] Bayly, "European Political Thought," 863.
[100] In the case of the Kīngitanga, asserting rangatiratanga (chiefly independence) whilst adopting the hybrid discourse of ture, kīngitanga and other European political symbolism including flags (kara): see, for example, *Te Hokioi*, 26 April 1863, 2, https://paperspast.natlib.govt.nz/newspapers/hokioi-o-nui-tireni-e-rere-atuna/1863/04/26/2; and Lachy Paterson, '*Kiri Mā, Kiri Mangu*: The Terminology of Race and Civilisation in the Mid-Nineteenth-Century Maori-Language Newspapers', in *Rere Atu, Taku Manu! Discovering History, Language and Politics in the Māori-Language Newspapers*, ed. Jenifer Curnow, Ngapare Hopa and Jane McRae (Auckland University Press, 2002), 91.
[101] Richard Price, *Empire and Indigeneity: Histories and Legacies* (Routledge, 2021), 2; see also, Sujit Sivasundaram, *Waves Across the South: A New History of Revolution and Empire* (University of Chicago Press, 2020), 77-78.
[102] Waitangi Tribunal, *Ko Aotearoa Tēnei*, 451