

5. ENSLAVEMENT

5.1 BACKGROUND

Moriorelders gathered at Te Awapatiki in 1862 to petition the Governor about their lands and their enslavement at Maori hands. They detailed, in a document of 131 pages, their history and their circumstances. Listed as killed in the Maori attack were the names of 226 men and women. The elders referred to the subsequent enslavement of Moriorelders and counted 1336 persons said to have died of 'despair'. The survivors then living, they said, numbered only 101.¹

From the beginning of Crown governance in 1842, until about 1863, Moriorelders were enslaved in appalling conditions. They were housed in inadequate whare, poorly fed, compelled to undertake extreme labour, brutalised, forbidden to marry or to have children, and made to respond to everyone's bidding, including even that of Maori children. For a time before 1842, and possibly for a short while thereafter, they were gratuitously killed at whim.

5.2 ISSUE

What steps did the Crown take to relieve Moriorelders after annexation in 1842, and was there anything more that the Crown might reasonably have done? The question of whether the Crown was obliged to take any steps at all, in terms of Treaty principles, and, if it was, then what steps, is introduced in this chapter, but our final conclusions are stated in chapter 10.

We first consider the Crown's position on slavery in 1842.

5.3 THE CROWN POSITION ON SLAVERY AT 1842

Article 3 of the Treaty of Waitangi imparted to the 'Natives of New Zealand . . . all the Rights and Privileges of British Subjects'. The essence of being a British subject at that time, as we see it, was that British subjects were free. Slavery had been outlawed by an Imperial Act of 1807, and within British territories no subject could be enslaved. Leaders of humanitarian

1. Michael King, *Moriorelders: A People Rediscovered*, Auckland, Viking, 1989 (doc c13), pp 64, 116–118. A copy of this petition was presented to the Tribunal on Rekohu during the first hearing in May 1994: doc b1.

and evangelical movements expressed outrage over the continuation of any form of slavery in British colonies. The issue had high political importance, and, despite opposition from some commercial interests, the British Parliament remained opposed to slavery and the legal position was clear.

5.4 WHAT DID THE CROWN KNOW ABOUT SLAVERY ON REKOHU?

The official British Resident, James Busby, had an inkling of the likely future for Moriori even before 1840. He was informed of the role of the *Rodney* and expressed his fear over the likely ‘extermination or enslavement’ of the Moriori. He then had to consider whether charges should be laid in Sydney against the captain of the brig.²

Richard Hanson, who bought land for the New Zealand Company in 1840, was at least aware of the Maori dominance on Rekohu, for he purported to buy only from them. He ought reasonably to have known of their enslavement as well, but it is not known whether, in communicating with the Government on the land purchase, he passed on this information.

Walter Brodie was another who claimed to have bought land on Rekohu in 1840.³ In later appearing before the Land Claims Commission over that and other purchases he claimed to have made on the mainland, he would have had to explain whether he had acquired the land from the true owners, but it is not known whether he mentioned the enslavement of the Moriori.

Ernst Dieffenbach, however, reported fully on the condition of the Moriori in 1841. Dieffenbach was the naturalist on the New Zealand Company’s vessel *Tory*, and spent four weeks on Rekohu when the ship visited there. In 1841, he published his findings in the *Journal of the Royal Geographical Society*.

Dieffenbach counted 90 Moriori (an underestimate in the light of later censuses) and was shocked by their situation:

They are Polynesians and not Papuans, and their present state of degradation may be ascribed to the miseries which they suffer from the oppressive sway of the New Zealanders [as Maori were commonly called at that time], and from want of sufficient nourishment. These unhappy

2. Busby to New South Wales Colonial Secretary, 6 January 1836, CO209/2, fol 136 (cited in doc F5, p 48)

3. W Brodie, ‘A Visit to the Chathams’, MS papers 133, ATL (doc c3, vol 1.23, p 1)

islanders were in a far different state some years ago; but now they are reduced to the greatest misery: they are the labourers and porters of their masters who have no notion of anything like moderation in the labour they exact; so that ulcerated backs bent almost double, and emaciated, paralytic limbs and diseased lungs, are the ordinary lot of these ill-fated wretches, to whom death may be a blessing. This is no exaggeration. Almost all whom I saw were living in miserable huts in the open fields; their disposition is morose and taciturn, and it was with difficulty that I could gain their confidence; but, after I had succeeded in doing so, I found them not at all deficient in intellect, and naturally cheerful.⁴

Dieffenbach is well known to historians as a close observer with a scientific approach. He travelled widely throughout New Zealand, and though we doubt his census in this case, he had a reputation for carefully measured assessments and statements.

In London, reports to the Geographical Society were avidly read and debated. We imagine that there was an intense interest in new lands. Commercial operators, members of Parliament, scientists, humanitarians, and, most importantly for the purposes of this discussion, officials from the Colonial Office are known to have attended society discussions.

Sealers, whalers, and traders were present on the islands, but it is not known whether they said anything to the Government. Many would have been keen to avoid official notice, we suspect, given what we have read of them. However, one William Hunt farmed on Pitt Island from 1843, and he wrote that he employed Moriori but that Maori sought out and recaptured them, regarding them as escaped slaves.⁵ But we do not know if Hunt's private observations came to official notice.

Maori Anglican teachers arrived on Rekohu in 1841. As often happened elsewhere, the Gospel was first taken to Rekohu by Maori themselves. Moriori reporting in 1862 appear to have accepted that the summary killing of Moriori ceased soon after this.⁶

Rekohu was annexed as the Chatham Islands on 1 November 1842. No action was taken on the ground, like sending a warship or an official to formally declare this fact and to advise the local inhabitants, as was a common colonial practice at the time. Maori probably first learned of it from missionaries or traders, or in some other casual manner. But it seems that there was no practical difficulty about doing something formal. In 1844, the Government brig HMS *Victoria* was sent simply to summon a

4. Dieffenbach, 'An Account of the Chatham Islands', 13 January 1842 (doc c3, vol 6.4, p 208)

5. Frederick Hunt, *Twenty-Five Years' Experience in New Zealand and the Chatham Islands*, 2nd ed, Wellington, William Lyon, 1866 (doc c3, vol 1.2, p 20) (cited in doc F12, p 9–10)

6. Chatham Island minute book (doc c3, vol 8.2, p 13)

European witness for a mainland trial. The captain walked across most of the island, he said, and calculated the population as 600 'Aboriginal natives', 400 Maori, and 'about sixty Europeans'.⁷ However, these figures seem unreliable; they conflict with those of Deiffenbach and with Bishop Selwyn's 1848 figures. (Selwyn appears to have taken more pains to achieve a reliable count in order to assess the number to be converted and the worth of the church's work there.)

In 1845, two island settlers were sworn as special constables to serve warrants on some suspected felons.⁸ But otherwise there was no official presence until the appointment of Archibald Shand as collector of customs in 1854. Two years later, he was also sworn in as the resident magistrate.

Bishop Selwyn visited Rekohu in 1848. This was the first of several visits (probably five), and on his arrival he was met by Pomare Ngatata (William Pitt) who 'came on board, and greeted me as an old friend, having visited us at the college [Saint John's, Auckland] in 1847'.⁹ Selwyn stayed with Ngatata, and, four years later, Ngatata's nephew and successor, Wi Naera Pomare, studied at Saint John's College. The relationship between the Anglican Church and the Ngati Mutunga leaders began early and would be lasting.

Selwyn counted only 268 Moriori, noting that 'the very small number of children, and the unmarried state in which they seemed for the most part to be living, would lead me to fear that they are rapidly decreasing'. He continued:

The relation in which they stand to the New Zealanders is not satisfactory. They have been reduced to the condition of serfs, and are obliged to obey the orders of every little child of the invading race. The common expression of 'Ngare Paraiwhara' [Na te Paraiwhara], 'Send a Paraiwhara', shows that a 'fagging system' has been established, more injurious perhaps to the masters than to the servants, as there is no appearance of harshness or severity, but a great decrease of personal activity in the dominant race. A long residence on the island would be necessary to do away entirely with this evil; but I did what I could in a short visit, by paying personal attention to the poor Paraiwhara, and explaining how they were descended from the elder branch of the family of Noah, by which they obtained the name of the 'tuakana o te Pihopa' (the elder brother of the Bishop). They are a cheerful and willing people; and, like

7. IA18/7, microfiche 3, NA, Wellington (cited in doc F3, p 58)

8. Richard S Hill, *Policing the Colonial Frontier: The Theory and Practice of Coercive Social and Racial Control in New Zealand, 1767-1867*, Wellington, Department of Internal Affairs, 1986, p369 (cited in doc F3, p 58)

9. G A Selwyn, *New Zealand Part v: A Journal of the Bishop's Visitation Tour through his Diocese, Including a Visit to the Chatham Islands in the Year 1848*, London, Society for the Propagation of the Gospel, 1849, p 96 (doc C35, vol 3, sub-doc 18, p 492) (cited in doc F3, p 53). A Gould notes that a descendant of Thomas Archibald Shand has suggested that the Selwyn papers, held at Selwyn College Library, Dunedin, indicate that Selwyn made a total of five visits to the Chatham Islands: doc F3 pp 52, fn 103.

many persons in a subordinate station, more obliging than their masters.¹⁰

Some days later, Selwyn visited Rakautahi in the north-east of the island, 'a village of considerable size, with a good chapel'. Ngatata was again his host (it was his wife's principal residence) and he fed Selwyn roasted eels and mint tea. (Outside the house, 'a row of merry Paraiwharas' cooked the eels on spits.¹¹)

Selwyn's account may be slightly romanticised, as visits often are, or perhaps shaped by his strong commitment to Ngatata. He used 'serfdom' rather than 'slavery', but used 'slavery' for the mainland situation, while yet describing 'slavery in New Zealand' as of a 'mild character'.¹² Selwyn noted that, on the mainland, war captives had been commonly integrated into the captors' families and that there were no insurmountable objections to teaching the Gospel to slaves.¹³

Selwyn's reports did not suggest any harshness or severity in the treatment of the Moriori.¹⁴ Perhaps he regarded serfdom as less serious than slavery, at least in its application to New Zealand, or possibly he wanted to excuse Ngatata, whom he clearly saw as a good convert and close friend. Later, he allowed Wi Naera Pomare to take a Moriori 'servant' with him when he went to study at Saint John's College.¹⁵

There is evidence that the advent of Christianity curbed the impromptu murder of Moriori slaves. Much later, Moriori themselves reported to the Governor that indiscriminate killing stopped at about that time. William Hunt wrote that the workers taken back by Maori as escaped slaves attempted to put themselves under Christian Maori, rather than the non-Christians who had gone to capture them.¹⁶ But the church did not in fact end slavery on Rekohu, and it does not appear to have taken a strong position on the matter. Missionaries before Selwyn had been much more vigorous in condemning slavery on the mainland, this protest dating back to the 1820s, and it appears to us that most slaves there had been freed before 1840. But on Rekohu, slavery continued.

The Chief Protector of Aborigines, George Clarke senior, was a former Church Missionary Society missionary. Of necessity, he relied upon information from his former colleagues to attend to his now secular charge. He would have had no difficulty in learning of the Moriori people had he chosen to inquire after them, since Anglican Maori teachers were working on the islands and one of his Wesleyan colleagues had visited there in 1842,

10. Selwyn, p 98 (p 493) (p 54)

11. *Ibid*, p 98 (p 493) (p 55)

12. *Ibid*, pp 59–60 (p 494) (p 56)

13. *Ibid*

14. Document F3, pp 54–57

15. Selwyn

16. Frederick Hunt papers (doc c3 vol 1.2, p 20)

although Bishop Selwyn's first official visit did not come until after the abolition of the protectorate. Even so, Clarke did not send a protector to visit the islands or to inquire into the state of Maori and Moriori there, although this was done for other parts of the country. Also, relations between officials and the churches – especially the Anglicans – were close. Lord John Russell's instructions to Hobson had provided that 15 to 20 per cent of profits from the on-sale of land acquired from Maori was to be used to benefit Maori.¹⁷ This does not seem to have been adhered to (see the Tribunal's *Report on the Orakei Claim*), but benefits were passed to the Anglican Church, which in some respects was doing what the Government might have done. Governors arranged land endowments for the missions and subsidies for the missionary schools, and Governor Grey also arranged for a £7000 Civil List vote for 'Native Affairs' to ensure continued support for the schools.¹⁸ Bishop Selwyn's account of matters on Rekohu was published in 1849, and he is known to have discussed the situation on the islands with Governor Grey at that time.¹⁹

However, Governor Grey also personally travelled extensively to assess the country in his charge and the position of Maori in his care, especially their military capacity. He covered an extraordinary territory, given the conditions, and in 1850 he even voyaged to the Auckland Islands, well to the south of the country. Despite that, he did not call in on Rekohu en route. None the less, Grey's visit to the Auckland Islands gave him some picture of the Moriori position, for a number of Ngati Mutunga had established themselves on those islands with Moriori as their slaves.²⁰ Whatever the state of the information beforehand, Grey could now see something of the position at first hand.

Despite the advent of Christianity from 1841, the Rekohu economy of the 1840s and early 1850s reinforced Moriori slavery. The economy boomed through the supply of potatoes, wheat, and other produce, first to whalers, who set up shore-based operations from 1840 onwards, then to markets in Wellington, Auckland, Sydney, and San Francisco. According to King, Rekohu was called by some 'the Garden of the Pacific'.²¹ Crucial to all this was Moriori labour.²²

As already mentioned, the Government took no steps to appoint an official to Rekohu, and indeed took no steps to demonstrate its responsibility for Rekohu until 1854. In that year, Archibald Shand was appointed a collector of customs. Shand's appointment seems to have been inspired by the Government's desire to raise revenue from the horticultural trade

17. Ngati Whatua bargained for 10 per cent of the resale profit after the first land deals: Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 2nd ed, Wellington, Brooker and Friend Ltd, 1991.

18. *Ibid*, p 3

19. Document A16, pp 5–7

20. A W Shand, 'The Occupation of the Chatham Islands by the Maoris in 1834', *JPS*, vol 2, 1893, pp 78–86 (cited in King, *Moriori*, p 85). King says that, although Grey impressed the Maori chiefs, there is no evidence that he spoke with Moriori or, presumably, that the Maori chiefs spoke of Moriori. He notes that the only hint of an interaction is that later Moriori were convinced that Grey would solve their problems.

21. Shand in his 1856 census reported produce to the value of £4000 being produced on the island: Shand to Colonial Secretary, 30 April 1856, Shand letters, NA, Christchurch (doc C3, vol 7.1, pp 37–39); King, *Moriori*, pp 89, 92–93; doc F12, p 16.

22. Dieffenbach, 'An Account of the Chatham Islands', 13 January 1842 (doc C3, vol 6.4, p 208); King, *Moriori*, p 93; doc F12, p 16

and to stop the alleged smuggling of goods between Rekohu and Poverty Bay.²³ European residents then requested a resident magistrate. In 1856, Shand was also appointed to that task, though he had no training as a resident magistrate and no particular background in dealing with Maori or Moriori.²⁴

When Shand went ashore at Waitangi on 9 August 1855, Toenga Te Poki and other local chiefs objected both to the landing of his furniture and to his presence. Shand referred to this as evidence of their determination to 'be their own Governors'.²⁵ The chiefs wrote to Acting Governor Wynyard on 1 September 1855 protesting Shand's presence, and four years later reminded Governor Browne that there had been no prior communication with them about his appointment.²⁶ Shand thought that the resistance to his arrival was linked to the chiefs' concern that he might oblige them to pay debts to Europeans and restrict their access to tobacco and liquor. More broadly than that, however, they were probably showing concern for their presumed authority to govern.²⁷ Nevertheless, Shand was allowed to take up residence and was initially given a house at Waitangi by Toenga Te Poki's brother Wharepa. He noted in his diary that he was offered a 'slave' as well.²⁸

In his first few weeks there, Shand travelled the island. He reported to the Colonial Secretary on 25 October 1855, expressing the hope that Bishop Selwyn might visit again. He thought this necessary to prevail upon Maori to:

abandon habits of gross intemperance acquired since his departure, to render up the arms . . . and finally to modify still more the enslaved state of the primitive inhabitants, who are now debarred even from intermarrying, and if possible, to effect their entire freedom.²⁹

Meanwhile, Shand remained the target of Maori criticism.

Stephen Carkeek, the collector of customs at Wellington, does not appear to have assisted Shand's delicate position. Carkeek arrived at Rekohu in January 1856 together with the Wellington chiefs Te Puni and Wi Tako Ngatata. Carkeek had instructions from the Colonial Secretary to do what was required 'for the establishment of the Customs Department and for the protection of the Revenue in the Chatham Islands'.³⁰ He was also to swear in Shand as the resident magistrate. To these ends, Carkeek met gatherings of Maori at Waitangi and Kaingaroa (without Shand's presence). With strong support from Wi Tako, Carkeek secured consent

23. William Young, 19 April 1854, Customs Department letters, NA, Wellington (cited in Rhys Richards, 'An Historical Geography of Chatham Island', MA thesis in geography, University of Auckland, 1962, pp 59–60; doc c3, vol 9.1, pp 59–60)

24. 'An Early History of the Chatham Islands and its Inhabitants', RS Florence papers, box 2, Archives, Canterbury Museum Library (doc c3, vol 6.3, pt 2, p 14); Shand letters, NA, Christchurch (doc c3, vol 7.1, p 236); doc f3, pp 60–61; doc f12, p 10

25. Shand letters, NA, Christchurch (doc c3, vol 7.1, p 19)

26. Translation of a letter from Maori to 'Governor Wynyard', 1 September 1855, T1 6 1856/142 (doc c35, vol 1.1, pp 112–114) (cited in doc f3, p 60)

27. Shand letters, NA, Christchurch (doc c3, vol 7.1, pp 4–5, 14, 18–19) (cited in doc f12, p 11); doc f3, p 60; Shand to McLean, 10 September 1858 (cited in doc f3, p 86)

28. Document f3, p 99

29. Shand letters, NA, Christchurch (doc c3, vol 7.1, p 17) (cited in doc f3, pp 61–62)

30. Gisborne to Carkeek, 29 December 1855, T1 6 1856/142 (doc c35, vol 1.1, p 32) (cited in doc f3, pp 61–62)

to the collection of customs duties and, so he claimed, to the acceptance of British law at the hands of the resident magistrate. But in answer to criticisms of Shand, Carkeek told the assembled Maori that Shand would be removed on a well-grounded complaint being preferred against him by the Maori population generally.³¹ This soon led to more complaints than usual.

Carkeek then appointed three Maori 'chiefs' (two at Waitangi, including Wi Naera Pomare, and one at Kaingaroa) as preventive officers of the Customs Department, for which they were paid £50 a year each. He nominated four chiefs (including Pomare) as assessors of the Resident Magistrates Court. The Government, as usual, was as much interested in acquiring land as in anything else.³²

Governor Browne considered that Shand's authority had been compromised by Carkeek's actions, and he rebuked the collector of customs. But, perhaps from a concern to keep Maori happy, he ordered that efforts be made to find a suitable replacement for Shand. Local Maori had asked for a doctor and the Governor thought that someone with medical qualifications would be preferable. However, there was no replacement at that time, and Shand remained at his post until 1863.³³

Johannes Engst published a further account of Carkeek's meeting many years later, but we place little weight on it. Engst was on the island with the Moravian missionaries and, although he was only 12 at the time, would no doubt have been party to many oral recollections as well. Engst stated:

The Commissioner [Carkeek] also was empowered to offer to the inhabitants to embrace British law and free the Moriori from serfdom, for which the Government would sanction to the Maoris their right and title to the land, and declare null and void the purchase of the Company. These actions were agreed on by the Commissioners & the Maoris in January 57.³⁴

Engst had the year wrong but that is a small matter. However, there are some extraordinary features about this recollection. There is nothing to suggest that the 1840 New Zealand Company purchase was still a live issue in 1856 and able to be used as a bargaining counter with Maori. That issue had been long put to bed, at least as far as the Government was concerned, though Moriori continued to raise the matter. Also, there is no other evidence of a formal agreement to free Moriori, and, if there had

31. 'Correspondence Relative to the Establishment of British Authority in the Chatham Islands', 28 May 1856, AJHR, 1856 (doc c3, vol 6.6, p 2)

32. Ibid

33. Memorandum from William Young, 25 March 1856 (doc c35, vol 1.1, p 35) (cited in doc f3, p 66); doc f3, p 72

34. 'An Early History of the Chatham Islands and its Inhabitants', R S Florence papers, box 2, Archives, Canterbury Museum Library (doc c3, vol 6.3, pt 2, p 12) (cited in doc f3, p 63)

been such an agreement, we think that would have been reported by Carkeek. Time plays tricks on the memory, and we think that Engst was probably confusing later events.

Our specific conclusions are considered later, but we consider that by at least 1856 officials must have been fully aware of the slavery on Rekohu and the serious plight of the Moriori people.

5.5 WHAT DID THE CROWN DO?

So what did the Crown do? Essentially nothing, as we see it, save to the extent that the Crown's only official on the islands attempted some conciliation, with very little success. It was not until 1863 that manumission was finally achieved, in official opinion if not entirely in practice, and such pressure as the Crown might be seen to have brought to bear in that year appears to have arisen because of Taranaki land problems, not from a concern for Moriori.

Here, historians' opinions, as argued before us, differed sharply. King and Phillipson saw Shand as hopelessly compromised by Maori chiefs and essentially ineffectual, with severe treatment of the slaves continuing largely unrelieved until the 1863 appointment of the more forceful Captain William Thomas as the resident magistrate. On the other hand, Gould argued that, despite his acknowledged difficulties, Shand made some progress and that Moriori conditions gradually improved from and after 1856. We do not see the difference between these views as overly important for our purposes, since it was obvious that slavery was still continuing. Of more significance is the historical evidence that Shand sought support from the mainland to overcome slavery but did not get it.

In February 1856, Shand reported that, for the purposes of control and the assertion of authority, he needed the support of at least one European policeman. No support came. He repeated the request in 1859, 1860, and 1862 but, though supported by a petition from 'many of the better disposed Maories', to no avail.³⁵ Anticipating an unfavourable reply in 1860, he asked to be recalled if his request was not granted. Indeed, his whole correspondence is replete with references to his 'powerlessness' in respect of both his magisterial and customs duties. It is this that most points to his dependence on Maori support, as Shand acknowledged.

In June 1856, Shand reported to the Colonial Secretary:

35. Shand to Colonial Secretary, 28 August 1861, Shand letters, NA, Wellington (doc c3, vol 7.1, p 237) (cited in doc f3, pp 96–97)

I have also been cognizant of one or two instances of assault in cases where the Maori masters have contended for a not yet obsolete privilege of severely bruising and maltreating their Moriori slaves: But these are exceptional cases, and I am happy to add very generally reprobated by the better disposed of New Zealanders.³⁶

In 1857, a Moriori, Pawa Ngamunanga, wrote to the Governor apparently requesting that he visit the islands. We do not have the letter, but the inwards register of the Native Department noted: 'Pawa Ngamunanga and others complaining that they are kept in a state of slavery by Maoris'. The reply read:

Greetings. The Governor has seen your letter [he may or may not have]. The Governor cares and takes thought for all the people of that island, whether Pakeha, Maori or Moriori, and he desires that they together take hold of the peace brought here by Christianity and western civilisation.

The Governor is detained because of his many cares, and will not be able to visit you. However he has given instruction that the truth of the points in your letter be considered and investigated.³⁷

There was no such investigation, as far as we are aware, although back on Rekohu there had clearly been some change, for Moriori were now bestirring themselves to the extent that one of them had the temerity to write to the Governor.

Then, in early 1858, the young Moriori leader Hirawanu Tapu visited the mainland in a forlorn attempt to meet the Governor or the Native Minister. However, probably as a result of meeting with officials, the Assistant Native Secretary wrote to Shand for a report on 'the present condition of the aboriginal inhabitants of the Chatham Islands, adding any suggestion for its amelioration which you may be able to offer'.³⁸ On the evidence, this was the closest that the Government came to contemplating that something should be done. There was not a real change of heart until later, however, and when it came it was due not to any Government pressure over slavery but to Crown and Maori tensions in Taranaki.

Shand embarked on what he called a 'crusade around the settlements' to seek agreement that Moriori should live on equality with Maori and that customs duties should be paid.³⁹ Meetings were held at Tupurangi, Waitangi, and Kaingaroa, and Moriori attended at least the last two

36. Shand to Colonial Secretary, 24 June 1856, Shand letters, NA, Wellington (doc c3, vol 7.1, p 44) (cited in doc F3, p 89)

37. Rogan (on behalf of Donald Mclean) to Ngamunanga, 22 March 1858, MA4/71, outwards Maori language letters, p 99, NA (doc F4, vol 4.38, p 778(i)) (cited in doc F3, p 68)

38. Native Secretary to resident magistrate, Chatham Islands, 1 April 1858, NA (doc c3, vol 2, sub-doc 2.5, p 2)

39. Shand to Native Secretary, 27 May 1858, 10 September 1858, Shand letters, NA, Christchurch (doc c3, vol 7.1, pp 147-148, 180); doc F3, p 71

gatherings. Shand implied that, if his proposals were not agreed to, he might be recalled to New Zealand, leaving Maori to the mercy of a group of Frenchmen who were seeking compensation for cargo that Maori had taken from the recent wreck of a French ship.⁴⁰

Four chiefs agreed to his propositions, or so Shand recorded. But he also recorded that three Moriori had spoken, including Hirawanu Tapu, and that they had endorsed the Queen's governance.⁴¹ In May 1858, Shand reported:

I have a very gratifying earnest of their good intentions now added in the important pledge given, that their Maori Masters hitherto have from henceforward no claim or control over the Aborigines (The Moriori) in the shape of servitude. (We won't speak of Slavery in a British Colony) – But that Maori and Moriori are to be, as I have told them the Queen's law regards them both – on equally free terms now that they are all the Queen's subjects in common.

So far so well – but I hope I anticipate the hope of seeing yourself on a visit to this Island – as 'Tapu' tells me you gave him encouragement to expect – when you could easily arrange many necessary details for the advantage of the aboriginal that I am at a loss to.

To gratify the Maoris (who are impatient that their good intentions be promulgated), I have promised to send for publication in your *Karere Maori* the enclosed Declarations for the sake of all concerned.⁴²

King dismissed the Maori assurances as no more than promises contrived to mollify Shand, but we feel less able to so assume.⁴³ We also think that the fact that Moriori had been allowed to speak is indicative of change, though they were of course speaking in the presence of the magistrate, whose position was clear, and Maori may have been gritting their teeth.

But we think that the change of heart amongst Maori was really due to events in Taranaki. On the same day that Shand penned his report to McLean, he also wrote to the resident magistrate in Wellington. 'I have my narrow little office "chock" full of [Maori] while I write this in a hurry,' he began, before going on to record his belief that some kind of political change was being discerned by the chiefs that was causing them to affirm closer relations with the Queen and her officials.⁴⁴

And indeed there was political change. Trouble was brewing in the Ngati Tama and Ngati Mutunga heartlands of Taranaki. Some Taranaki

40. Shand to Native Secretary, 25 February 1858, Shand letters, NA, Christchurch (doc c3, vol 7.1, pp 132–133)

41. Pamariki's narrative, 28 May 1858 (doc F4(a), vol 4, pp 769–777)

42. Shand to Native Secretary, 27 May 1858, Shand letters, NA, Christchurch (doc c3, vol 7.1, p 148)

43. King, *Moriori*, p 97

44. Shand to resident magistrate, 27 May 1858, Shand letters, NA, Christchurch (doc c3, vol 7.1, p 147) (cited in doc F3, p 80)

Maori had shown support for the Maori King at Waikato, who had taken a stand against the Governor, shots were being exchanged over land issues, and settlers were being forced back to New Plymouth.

On the other hand, the close relatives of Ngati Mutunga in Wellington, including the chief Ngatata (who was particularly close to Ngatata Pomare), were leaning towards the Government. This in turn may have been due to the fact that there had long been tensions between the Taranaki peoples of Wellington and Ngati Toa, whose connections were with Waikato, the home of the Maori King. It seems there is little wonder that Rekohu Maori expressed support for the Government at this time.

Significant in this respect is a letter from Rekohu Maori published in *Te Karere Maori* (the Government paper for Maori) on 16 August 1858:

Our loving friend, Governor Brown Salutations. We wish to say a word to you with reference to the word in which we have been engaged, in connection with the Magistrate stationed on this, Chatham Island, in promoting these things which are in accordance with the Queen's good laws, and we have determined to unite ourselves to her as our parent. This is all on this subject. Friend, the Governor, the rumour about a Maori King has reached us, but we say, none but the Queen. This is all from us, the men, old and young, of Ngati Kura and Ngati Kahuhura. Toenga Te Poki, Tangari, Paina, Kirihipu Poirā, Pangupangu, Tahu Pahi.⁴⁵

That letter was dated 8 May 1858, before Shand's round of meetings had concluded and probably even before they had begun.

In fact, according to Shand, Maori went still further to suggest reserves for Moriori. Shand wrote to the Assistant Native Secretary on 24 June 1858 to discuss the 'assurances' he was receiving from Maori 'of their entire willingness to set them [the Moriori] free'.⁴⁶ On the same day, he also wrote to the Colonial Secretary:

the Maoris profess their willingness with the Governor's assistance and approbation – to make reserves of land for the aboriginal, and are very anxious to divide off their own separate interests in the island.⁴⁷

On 6 July 1858, Shand later reported, a large runanga of Maori and Moriori gathered at Waitangi of their own accord. This, Shand wrote, was 'to testify to their better obedience to British law and their earnest desire to do away with the use of ardent spirits'.⁴⁸ The runanga requested that

45. Cited in doc F3, p 80

46. Shand to Smith, Assistant Native Secretary, 24 June 1858, Shand letters, NA, Christchurch (doc c3, vol 7.1, p 163) (cited in doc F3, p 83)

47. Shand to Colonial Secretary, 24 June 1858, Shand letters, NA, Christchurch (doc c3, vol 7.1, p 164) (cited in doc F3, pp 82–83)

48. Shand to Colonial Secretary, 6 July 1858, Shand letters, NA, Christchurch (doc c3, vol 7.1, p 167) (cited in doc F3, p 83)

this letter also be published in *Te Karere Maori*. Amongst the signatories to the letter were three Moriori. Shand added:

The greatest grievance that the Moriori – the aboriginal natives – have had reason to complain of, was their being hitherto regarded as slaves to the Maoris who subdued them.

This is no longer the case and I am happy to afford a very satisfactory proof of it, in the fact that a native Chief at Waitangi has just been fined for an assault by knocking down an aboriginal native woman whom he pretended to regard as his slave, and he paid the fine I imposed of £5.

The only suggestion that I am at present prepared to make to H E the Governor for the further amelioration of the Native aboriginal race, is by repeating what I have had the honor of submitting already thro the Hon the Col Secty, that the wish of many of the Maori shd be entertained by H Ex, in the appointment of a surveyor to divide off their lands and make reserves for the Mioriori (sic).⁴⁹

Despite the chief's acquiescence in Shand's penalty, Shand in fact continued to lament his inability to enforce compliance.

On 10 September 1858, Shand wrote again to advise that 'for the amelioration in common of both Moriori and Maori a survey should be undertaken', with 'a sufficient apportionment of land' for Moriori. He wrote that 'the more influential of the Maoris here have expressed themselves willing to acquiesce', and added:

But I have no idea whatever that they would willingly consent to do what the Maoriori seek, ie – to divide with them share and share alike the lands which the Maori conceive themselves fully entitled to by right of conquest.⁵⁰

Shand considered that Rekohu Maori were more stubborn in their views than other Maori. In his opinion, this arose 'from their being so long the uncontrolled disposers of the destiny of the poor subjected Moriori' and because they had not been more firmly discouraged from resisting the orders of the Government three years previously. However, he added, they had since become more cooperative. Maori, he thought, were no longer disposed to 'restrict the liberty' of Moriori and had 'generally consented to let them go free from compulsory labour'. But their right to intermarry was 'rather retarded from many of the Moriori women having

49. Ibid (pp 167–168) (p 85)

50. Shand to Native Secretary, 10 September 1858, Shand letters, NA, Christchurch (doc c3, vol 7.1, p 179) (cited in doc f3, pp 86–87)

been attached in a kind of relationship with their Maori masters of old, that the latter are reluctant to depart from'.⁵¹

It would be 10 years before the Government would consider surveys. When it did consider them, however, it did so because it desired to secure Rekohu for Ngati Mutunga by court order, as it could not meet its promise to return to Ngati Mutunga the land that had been confiscated from them in Taranaki. This matter is considered more fully in chapter 6.

In King's view, the ill treatment of Moriori continued as before. He referred to two 1859 reports from Shand describing alleged assaults, one against a Moriori male and one against a woman slave who ran away to marry. She was pursued to Kaingaroa and brought back to Waitangi. In both cases, the constables appointed by Shand were unable to interfere. These cases, King suggested, were 'typical'.⁵² Phillipson argued the same, but Gould noted that they were the only cases of such violence and defiance of authority reported by Shand that year.⁵³ We presume that if Shand was unable to do anything about the assaults, then few would have been reported. We accept, however, that even if Maori were in fact genuine in their proclamations, slavery would not disappear overnight.

War broke out in Taranaki in 1860. The Wellington section of Taranaki Maori did not take part and generally expressed loyalty to the Crown. On Rekohu, Shand continued to have troubles with Maori, but this time over another aspect of Maori custom. 'Muru' describes raids conducted on the crops or goods of persons deemed guilty of some transgression. In this case, the offenders were alleged to have allowed their stock to stray on the complainants' plantations, and for this compensation was required. Shand reported that muru raids were conducted against both Maori and Pakeha, and he also wrote of a Maori behaving arrogantly and abducting a woman (though it was not stated whether she was Moriori or Maori).⁵⁴

However, Europeans also challenged Shand's authority. It was only then that the Government seemed more earnest about doing anything. In 1857, the German settler Oskar Beyer refused Shand's order to pay a debt to a Maori.⁵⁵ One year later, the troublesome Beyer was convicted of assaulting a trader from Sydney, but once again he refused to pay the penalty.⁵⁶ Frederick Whittaker, the Attorney-General, considered that the Government should either withdraw Shand or give him the means of enforcing the law against Beyer and others of his ilk. He recommended that a man-of-war visit the island.⁵⁷ But neither course was taken, and in 1860

51. Shand to Native Secretary, 10 September 1858, Shand letters, NA, Christchurch (doc c3, vol 7.1, p 179) (cited in doc F3, pp 86–87)

52. King, *Moriori*, p 96

53. Document A16, pp 13–14; doc F3, pp 90–93

54. Shand to Colonial Secretary, 5 October 1861, Shand letters, NA, Christchurch (doc c3, vol 7.1, p 239) (cited in doc F3, p 96)

55. Shand to Colonial Secretary, 4 September 1857, Shand letters, NA, Christchurch (doc c3, vol 7.1, p 113) (cited in doc F3, p 66)

56. *Ibid*

57. IA34/32, NA (cited in doc F3, p 67)

Shand reported that the Germans were refusing to pay customs duties and were rousing Maori to flout the law.

In 1860, the runanga (including at least one Moriori signatory) gave written notice of a complaint against Shand himself. The runanga complained to the Government that Shand was drinking, supplying liquor to women for sex, stealing livestock, and ignoring the Maori assessors appointed by Carkeek. They asked that Shand appear before the runanga to answer to the charges.⁵⁸ It may be, however, that these complaints stemmed from a Maori desire to take control, with Shand answering to them.

Once more, the Government was prepared to consider some action; namely, the visit of both a man-of-war and representatives of the Government. Nothing happened, however, until 14 August 1861, possibly because of a preoccupation with the Taranaki war. On that date, William Seed, a collector of customs, was sent to report on Shand's management and on any other matters. Seed found nothing to complain about, but he spent eight days on Rekohu and commented on the Moriori:

Everywhere that I met the poor Morioris I found them delighted to see me, but the Maoris appeared to exercise a most suspicious vigilance over their actions, and rarely left them a moment alone to talk to me. The miserable remnant of this ill-used people, I believe, cling most tenaciously to the belief that His Excellency's Government will ere long restore them to freedom, and to the possession of some portion of their land which was so cruelly wrested from them by their Maori conquerors. It is estimated that there must have been three thousand Aborigines on the Island when the Maoris first reached here, twenty-five years ago; the greater part of these were slaughtered at once, and the remainder subjected to a state of most oppressive slavery. Of late years however their condition has much improved. I believe they are not now beaten or ill-used, and they are allowed to cultivate the ground for their own benefit, in common with the Maoris; the men are also now allowed to take wives, which they were formerly not permitted to do, but are still prohibited from taking Maori women.⁵⁹

On this account, matters had not improved as much as had been suggested. It seems that Maori had indeed been posturing for political reasons of their own.

58. Document F3, pp 82, 95–96, 101–102

59. Seed to Carkeek, 21 October 1861, *New Zealand Gazette*, p 27 (doc 35(c), p 505) (cited in doc F3, p 104)

On 13 March 1862, Moriori wrote to the Governor requesting him:

to grant them a share of any advantage he may be pleased to bestow on the dominant tribe of Maoris – who already forwarded their supplication for Miss[ionary] ministers, schoolmasters & medical men to instruct and assist them.

The present Petitioners are also urgent in soliciting a certain apportionment of the land for their special behoof – more effectively to establish their general freedom which the Maoris have been prevailed upon to vouchsafe.⁶⁰

Moriori had not included some details in their letter in order not to ‘provoke offence with the Maories’, but, at their request, Shand sent them on. They referred to the former large numbers and happiness of Moriori, and added:

That altho’ now saved from any abuse, & no longer reckoned in person along with their possessions, the slaves and property of the Maoris – they, the Moriori grieve that they have not got a bit of land of their own, but are only on sufferance permitted to cultivate a portion. That this deadens their energies . . . and no wonder for they add, what it would be hard to gainsay, that when at work on land that may be resumed at any moment by its Maori Possessor, they are distracted from their best endeavours to the work, and can only think of their unhappy condition, and can only hear the wailing spirits of their murdered Ancestors in the leafless Karaka trees on what was once their undisturbed grounds. They also alledge [sic] a legal objection – for which they must have been indebted to the white man, – that without admitting the Maori right of Conquest, they, the Maoris, afterwards sold whatever right & title they possessed without the concurrence of the Moriori – who conceive they have therefore most claim on His Excellency’s consideration.⁶¹

This suggests that conditions had improved, even if civil liberties were still wanting, but it must be read with a later letter from Hirawanu Tapu that noted that abuses were still continuing.⁶² (The land sale reference is possibly to the New Zealand Company transaction in 1840, which the Government had declined to recognise.)

In June–July 1862, there occurred the most remarkable act of the Moriori resurgence, namely a gathering of elders at Awapatiki, including the survivors of the ill-fated meeting at that place in 1835. After lengthy

60. Shand to Colonial Secretary, 13 March 1862, Shand letters, NA, Christchurch (doc C3, vol 7.1, p 245) (cited in doc F3, p 97)

61. Shand to Colonial Secretary, 3 April 1862, Shand letters, NA, Christchurch (doc C3, vol 7.1, pp 247–248) (cited in doc F3, p 98)

62. King, *Moriori*, p 118

deliberations, the assembly produced a 131-page document written by Tapu and signed by 30 elders. It was to be forwarded to Governor Grey by Tapu. The document listed the names of 226 men and women killed during the Maori invasion, 1336 who had died of 'despair', and 101 who were still living. The elders then recounted the invasion and its aftermath and the coming of 'the teachings of the Son of Man', after which 'the killings of these hapless people ceased forever; but they were still treated with great severity and every indignity cast upon them'. They contrasted their concepts with those of Maori:

According to [Mori] ideas it was very evil to cause the death of another, or to take from a man his own land. The various tribes were constantly exchanging visits, and when they occupied each others land for a time they never attempted to claim what did not belong to them.⁶³

The document then postulated a particular view of law which, while no doubt influenced by opinions gleaned from Europeans, was not entirely different from the Maori division of law between the sacred (tapu) and the profane (noa), a division which affected all or most aspects of everyday living. On this occasion, Mori distinguished between 'the Divine Law . . . that is written in the Holy Scriptures' and 'the law of the Queen' based upon divine law. The Mori petitioners sought the protection of that 'perfected law':

England holds the cause of God and a cannibal people cannot rise above nor refute the law of England because God is the source of Pakeha law . . .

Friend Grey, here is our word to you concerning . . . our two islands, let them be sold to The Queen. The rights of the Maori are not straight, they are stealing the rights to our land. It is not right and the payments before were not right, but the rights of our islands are with us. We are the original inhabitants . . .

This is our word . . . the law says that land taken unjustly must be returned to those whose it was before. Enough, come to right . . . the doings here are not in accord with the law.⁶⁴

Tapu attached a covering letter. It stated that, although the indiscriminate killing had stopped with the coming of the Gospel, Maori 'still hold to much evil-doing':

63. Ibid, p 117

64. Ibid

for instance they take women who are actually married as women for them, and as for the men they hit someone and keep them as slave. And another thing they traded them to other men as payments for seed or pork or whatever.⁶⁵

A further letter complained: ‘the Maoris still hold to the law of enslaving the Moriori’.⁶⁶

However, the Government had quite another problem on its hands. Some of the Rekohu Maori had returned to Taranaki and were claiming land there. The Government was seeking to settle Europeans on the land, and, because of the war, a large number were penned up in New Plymouth. Other Rekohu Maori had indicated an intention to return to Taranaki. It would clearly suit the Government if Rekohu Maori were to stay on Rekohu, with the assurance of land there, leaving the Tarankai land free for European settlers. In 1862, the Government had also enacted the Native Lands Act, constituting a Native Land Court to determine the ownership of customary land and award secure titles. There seemed good reason for that court to sit soon on Rekohu. We refer to this matter in more detail in a later chapter, but for now we consider that it was apparent to the Government that a stable situation on Rekohu would be desirable with a view to returning the Maori there.

Accordingly, Shand was informed on 4 October 1862 that he was to be replaced, and, in August the following year, Captain William Thomas arrived to take over from him.⁶⁷ At last, the Government was doing something, even if it was at the expense of the long-suffering Shand.

Thomas appears to have taken an authoritative position from the start. He made a tour of the island, convened a meeting, gave notice of bimonthly circuit court sittings, and discussed the appointment of constables. As instructed by the Government, he then introduced and explained the Native Lands Act 1862. He considered that Maori and Moriori were both sensitive on the subject. Moriori developed their claim to ownership, then offered half to Europeans to take the place of Maori. (They later changed their position to propose an equal division between Moriori and Maori.)

As for the slavery, Thomas commented, ‘The former [the Maori] seem to repudiate the idea of enslaving or ill-treating the latter [the Moriori] but still I can see instances of their making the latter feel the pressure of their thumbs’.⁶⁸

65. King, *Moriori*, p.118

66. *Ibid*

67. Customs 4/2 outwards letters, p.304, no 332, NA (cited in doc F3, p.106)

68. Thomas journal, 2 September 1863, ATL (doc F4, vol 4.34, p.646) (cited in doc F3, p.110)

Thomas's journal (summarised in some detail by Gould) shows a complex situation but suggests that Thomas was at last able to assert pressure. On his first circuit court, a Moriori claimed against a Maori chief of Owenga. Thomas dismissed the case on the payment of 10 shillings costs by Apitia – possibly a diplomatic solution.⁶⁹ At first, Thomas informed the people that they should settle their own 'petty disputes' and only come to him if they could not agree, and journal entries for late 1863 and early 1864 observe that Maori and Moriori were managing cases themselves, though possibly separately. Maori, for example, imposed a fine of £24 against a party of Moriori for damaging a saddle, although the fine was eventually commuted to a horse and two cows, and a Moriori was sent to New Zealand for committing puremu (adultery) in order to avoid a Maori muru.⁷⁰ However, by 1864, Thomas had changed his position on the settlement of such disputes, calling a meeting to lecture on the 'arbitrary and unfair way' in which these two cases involving Moriori had been handled. He advised that in future both parties must come to him in the first instance, 'and satisfy me of their willingness to have their disputes settled by their own people, whom I might think fit for the purpose'.⁷¹ Later that year, Thomas adjudicated in a civil claim that a Moriori brought against a Maori for wounding a horse; he awarded the plaintiff one of the defendant's horses in compensation.

Also in that year, he appointed four assessors, at £25 a year plus clothing allowance, one of whom was a Moriori, Hirawanu Tapu. A Maori protested but, Thomas recorded, he paid him no heed. He also appointed three policemen and had wanted to appoint as well a Moriori policeman at Owenga 'owing to my desire for the Morioris to have equal privileges with the Maories'.⁷² At that point, Maori insisted that the Maori policeman at Waitangi was enough.

The Native District Regulations Act 1858 introduced Maori self-government through runanga. There is some general historical opinion that the Governor (Grey) later sought to use this Act to outbid the Maori King movement, to which the Governor was vehemently opposed after his resumption of authority in New Zealand in 1861. On 3 October 1864, an official runanga was created under the 1858 legislation with six members, including Tapu. It sat for the first time on 5 October, but Thomas cautioned the runanga that it should continue to bring cases to the court rather than take the law into its own hands.⁷³ At a meeting of the runanga in May 1865, regulations were passed on cattle branding, dog registration, and the

69. Thomas journal, 7 December 1863, ATL (doc F4, vol 4.34, p 650) (cited in doc F3, p 112)

70. Thomas journal, 12, 18 December 1863, ATL (doc F4, vol 4.34, p 651) (cited in doc F3, pp 113–114)

71. Thomas journal, 11 February 1864 (doc F4, vol 4.34, p 653) (cited in doc F3, p 114)

72. Thomas journal, 18 March 1864 (doc F4, vol 4.34, p 654) (cited in doc F3, p 117)

73. Thomas to Colonial Secretary, 20 February 1865, MA24/25, NA (doc F4, vol 5, pp 796–810) (cited in doc F3, pp 130–131)

purchase of poisonous drugs, and they were then approved by the Governor-in-Council. However, requests to relax restrictions on the sale of ammunition were declined by the Government while ‘the relations of the applicants are in rebellion against Her Majesty’s Government’. The appointment of a medical officer was also sought.⁷⁴

Thomas reported that in 1864 he had disposed of 16 criminal and three civil cases under the resident magistrates legislation and (over three months) one civil and one criminal case under the Native Districts Circuit Court Act 1858. He did not complain about defiance of his authority. Though it was clear that he worked in with the local leaders, and had considerable regard for their sense of right and wrong, he was confident of his authority and was able to use it on behalf of Moriori rights. Little is known of the runanga’s deliberations, as it appears that Thomas was informed only when his assistance was sought to complete regulations.

In 1864, Thomas reported that there were then 390 Maori and 132 Moriori – 522 persons in all.⁷⁵ More Maori returned to Taranaki in late 1864, and, as more and more left in later years, leaving mainly older Maori behind, Moriori would increasingly dominate. By 1870 at the latest, Moriori were the numerical majority. At the same time, as the war progressed, the power of the Government became increasingly apparent.

King, relying upon a 1928 account by Baucke, has written of a great meeting in 1863 when a general manumission was proclaimed. Baucke also referred to a preceding exhibition of the ‘will to die’ by a Moriori tohunga, as witnessed by a doctor from the HMS *Brisk* (who, according to Baucke, thought that the exhibition was ‘a simple cataleptic fit’).⁷⁶ Gould challenged that there was any specific declaration of manumission and cast doubt on Baucke’s report, pointing to evidence that the *Brisk* was in the Atlantic in 1863 and did not visit Rekohu until 1865. In addition, Baucke was only 15 in 1863. More significantly, Gould observed, Thomas did not report on any specific declaration.⁷⁷ However, it is not necessary for us to determine the matter.

There is a little more evidence about Moriori slavery from the published letter of a botanist, Henry Travers, who visited Rekohu briefly between October and November of 1863. Travers referred to the population of Waitangi, ‘including a few Moriori slaves’, and also wrote:

The remnant of the Morioris . . . exclusive of the few who are still retained in slavery, is settled at Ohangi, on the south-eastern side of the

74. Native Secretary’s Department, Wellington, 20 June 1865, MA4.60, letterbook to resident magistrate and civil commissioner (doc F4, vol 4.35, p 677) (doc F3, pp 131–132)

75. Thomas journal (transcript), 22 March 1864 (doc F4, vol 4.34, p 655)

76. William Baucke, ‘The Life and Customs of the Moriori’, in H D Skinner and W Baucke, *The Morioris* (doc C3, vol 5, p 32) (cited in King, *Moriori*, pp 118–119)

77. Document F3, pp 72–75

island. They do not exceed two hundred in number, and are said to be rapidly decreasing.⁷⁸

This supports Thomas's comments that remnants of the slave system lingered on, but could be dealt with by a firm enforcement of the law whenever Moriori brought complaints against Maori.

Again, our conclusions are at the end of this chapter. For now, we have also to consider the Crown's policy on slavery.

5.6 THE CROWN'S POLICY ON SLAVERY

Historians appear to agree that generally the Crown had a policy of seeking gradual change to Maori society. Missionaries had adopted such an approach and had succeeded in having slaves released before 1840, even in interior places like Waikato, though pockets of slavery remained. But what was the official position?

Gould began by noting that the British House of Commons Select Committee on Aborigines had taken evidence on slavery in New Zealand in 1836, as did the House of Lords Committee on New Zealand in 1838.⁷⁹ On that evidence, it would have appeared to the committees that slavery had been widespread, that it had arisen from warfare and the taking of prisoners, but that it had abated as Maori were converted to Christianity.⁸⁰ The evidence was also that slaves not released were less likely than before to be killed gratuitously and that their condition was often not markedly worse than that of non-chiefly, free Maori. Further, the children of marriages between conquerors and conquered were likely to be regarded as free. Many of the witnesses described the conditions that existed not at the time that they spoke but earlier, when they had visited New Zealand. Some witnesses seem to have considered that a sudden imposition of British law was neither possible nor desirable but then, on this evidence, neither was it absolutely necessary.⁸¹

In 1839, Lord Normanby proposed to Hobson a gradual approach to the amelioration of certain Maori customs – based on education rather than the hurried imposition of British law – except with regard to practices considered especially barbarous.⁸² Hobson asked whether, failing all other means, he was to use force to suppress human sacrifice and cannibalism. He was told that he could, 'if all the arts of persuasion and

78. H H Travers, 'On the Chatham Islands' in *Transactions and Proceedings of the New Zealand Institute*, 1868, vol 1 (doc F4, vol 6.87, p 16) (cited in doc F3, pp 76–77)

79. 'Report from the Select Committee on Aborigines', BPP, vol 1, 1836 (doc F4, vol 7.99, p 1114) (cited in doc F3, p 14)

80. *Ibid* (pp 1114–1115)

81. Document F3, pp 13–21

82. Marquis of Normanby to Captain Hobson, 14 August 1839 (doc C35, vol 3.29, p 591) (cited in doc F3, p 25)

kindness should prove unavailing'.⁸³ There was no express reference to slavery, though we would rather suspect that, if the killing of slaves had been mentioned, Normanby would have seen that as especially barbarous.

The policy was further clarified in 1840 when Lord Russell issued new instructions as New Zealand became a separate colony. Russell wrote:

Amongst native customs, there will be some which it is the duty of the government not to tolerate. Of these the chief are cannibalism, human sacrifice, and infanticide. With such violations of the external and universal laws of morality no compromise can be made, under whatever pretext of religious or superstitious opinion they may have grown up. On the other hand, there are customs which, however pernicious in themselves, should gradually be overcome by the benignant influence of example, instruction, and encouragement, than by legal penalties. And finally, there are customs which, being rather absurd and impolitic, than directly injurious, may be borne with, until they shall be voluntarily laid aside by a more enlightened generation. It is important to advert directly to this topic, because, without some positive declaratory law authorizing the executive to tolerate such customs, the law of England would prevail over them, and subject the natives to much distress, and many unprofitable hardships. It will of course be the duty of the protectors [Protectors of Aborigines] to make themselves conversant with these native customs, and to supply to the Government all such information as may from time to time be required on that subject.⁸⁴

Again, there was no specific reference to slavery, but clearly Russell's examples of customs that could not be tolerated were not exhaustive. We find it difficult to believe that slavery, although not specifically referred to, was not also a custom which was not tolerated. It was not tolerated in Britain. Crown counsel submitted that at no stage was there a reference to the English law on slavery. However, the provision that the law of England was to prevail and that certain customs were not to be tolerated without some 'positive declaratory law to the contrary' is a qualification on that submission.

Local magistrates and others who applied or upheld the law found the legal status of Maori confusing. This included the protectors of aborigines, who were commissioned as justices of the peace and instructed not to judge harshly against Maori on minor offences, where English law

83. Marquis of Normanby to Captain Hobson, 14 August 1839 (doc C35, vol 3.29, p 586) (cited in doc F3, p 26)

84. Lord Russell to Governor Hobson, 9 December 1840, BPP, vol 3, p 28 (doc F4, vol 7.127, p 1257)

differed from Maori custom.⁸⁵ In the absence of a ‘declaratory law’ authorising the toleration of Maori custom, George Clarke senior, the chief protector of aborigines, found this instruction confusing.⁸⁶ The situation remained ambiguous. In theory, Maori were considered accountable for common offences against persons or property. In practice, however, the law was not enforced against them without prior negotiation with the chiefs, which meant, in effect, that the law could be enforced only near the British settlements.⁸⁷

Maori warfare then became an issue following intertribal fighting in the Bay of Plenty in 1842–43. Could the officials intervene? The Colonial Office took the view that the Treaty of Waitangi had been asserted for the purpose of ending lawlessness among Maori, as well as for regulating settlement, and that the chiefs could not be allowed to make war.⁸⁸

The status of the Treaty itself was then raised. Lord Stanley, the Secretary of State for the Colonies, replied as follows to the Governor:

You will honourably and scrupulously fulfil the conditions of the treaty of Waitangi . . . You will omit no measure within the reach of prudent legislation, or of a wise administration of the law, for securing to the aborigines the personal freedom and safety to which they are entitled, and the most unrestricted access to all the means of religious knowledge and of civilization provided for them by the pious zeal which has established, and which principally maintains the episcopal see and Christian missionaries for their instruction.

Stanley thought it unrealistic that Maori be divorced ‘rudely or abruptly’ from their customs but added nevertheless:

subject to these general rules, you will, of course require from these people an implicit subjection to the law, and you will, of necessity, enforce that submission by the use of all the powers, civil and military at your command.⁸⁹

We think that this is sufficiently indicative of the official position on slavery.

Meanwhile, Governor Grey abolished the Protectorate of Aborigines, which was unpopular with settlers, and also Governor Fitzroy’s Native Exemption Ordinance 1844, which enabled Maori to settle their own disputes. He established the resident magistrate system and a constabulary force, with Maori ‘chiefs’ as assessors to the resident magistrate and

85. Cited in Alan Ward, *A Show of Justice: Racial ‘Amalgamation’ in Nineteenth Century New Zealand*, Canberra, Australian National University Press, 1974, p 46; see doc F4, vol 3; doc F35(c); doc 29, p 580

86. George Clarke to Colonial Secretary, 31 July 1843, BPP, vol 13, p 346 (doc F4, vol 7.102, p 1154) (cited in Ward, p 46)

87. Ward, pp 54–60

88. Minutes of Executive Council of New Zealand, 14 May 1843, CO209/16, NA (cited in Ward, pp 62–63); address to Maoris to stop fighting, September 1842, CO209/16 485(b), NA (doc F4B, vol 5.50, p 855)

89. Lord Stanley to Lieutenant-Governor Grey, 13 June 1845, BPP (doc C35(c), vol 5.30, p 230)

‘ordinary’ Maori as members of the constabulary.⁹⁰ The British Government, however, was not moving in the same direction. Under the constitutions of 1846 and 1852, the Governor could create ‘native districts’, where a form of tribal self-government could be developed.⁹¹ They also provided that the ‘Laws Customs and Usages’ of Maori should be maintained so far as they were ‘not repugnant to the general Principles of Humanity’.

This did not fit with Grey’s plans, however, and, though Britain still had control of Maori policy, no districts were created.

Then, in 1848, Grey thought to capitalise on a slavery issue to advance his own preferred cause. Tamati Ngapora, of Ngati Mahuta, was a Christian convert, but he was also one of the remaining rangatira who would not let go of his slaves. He complained that they were becoming disrespectful, and he sought Crown assistance to reassert his authority.⁹² Grey, regarded by many historians as adroit in manipulating issues, reported the matter to the Colonial Office and suggested that his resident magistrate system would resolve such problems as these. Sitting as assessors in the court, the status of chiefs would be augmented, and they would have the respect that they demanded. No mention was made of what might happen to the slaves.

Earl Grey replied directly on the point of slavery. He considered that it would be ‘inconsistent’ for chiefs to retain their ‘barbarous laws and customs’ in relation to their slaves under ‘the authority of a regular Government’ It was therefore out of the question to pass laws confirming chiefs in the right to ‘exact compulsory labour from their dependants’. Yet, it did not seem to be just for the chiefs, nor ‘likely to promote the real welfare of the slaves themselves’, if slaves ‘should be at once and unconditionally released from their obligations’. Earl Grey wondered if they might not be given the right to cultivate pieces of land for their own subsistence, ‘subject to an obligation to pay either in kind or in money some moderate contribution to the Chiefs formerly entitled to their gratuitous services’.⁹³ There is no evidence that Earl Grey, writing in 1848, had any knowledge of the barbarous treatment of the Moriori slaves on Rekohu. Had he possessed such knowledge, it is surely inconceivable that, given the pitiable condition of Moriori, he would have contemplated allowing this treatment to continue.

On all the evidence, the official policy was clearly that slavery was not to be countenanced. It was only the Governor who appeared to have a more relaxed attitude.

90. ‘Queen’s Instructions’, BPP, vol 5 (doc, vol 7.105, p 1181) (cited in doc C35(c) F3, pp 42–43); Ward, pp 74–75

91. Earl Grey to Governor Grey, 27 December 1848, C1/22, p 1, NA (doc C3, vol 5.14, p 337) (cited in Alan Ward, *An Unsettled History: Treaty Claims in New Zealand Today*, Wellington, Bridget Williams Books, 1999, pp 107–110)

92. Ngapore to Grey, circa April 1848, BPP, vol 6, pp 19–20, sess 1120

93. Earl Grey to Grey, 27 December 1848, p 2, C1/22 NA (doc C35, vol 14, p 337) (cited in doc F3, pp 35–38)

5.7 ARGUMENTS

We will not detail the copious evidence that counsel mainly relied upon to support one or other view, but we will refer to some of their main themes.

Counsel for Moriori submitted that, on the historical understanding of the facts as she submitted them to be, the Crown did not act with reasonable promptness to secure Moriori liberation. Referring to the Privy Council decision in the *Broadcasting* case, counsel accepted that the guarantee of protection is not absolute and unqualified.⁹⁴ The Treaty relationship between Maori and the Crown being founded on reasonableness, mutual cooperation, and trust, the Crown was not required to go beyond taking such action as was reasonable in the prevailing circumstances in carrying out its obligations. But if any delay was reasonable (though it was argued that it was not), once the Crown was able to do something, it had to take reasonable steps to repair the damage done before it had been able to intervene. Otherwise, the guarantee was hollow. To repair the damage in this case, the years of dispossession and servitude could not be allowed to disadvantage Moriori in subsequent land awards. The Crown failed, and continues to fail, to ensure that this was the case.⁹⁵

We will deal with the land question later, but for now we note our agreement with the argument that the land question and slavery are interrelated.

Crown counsel submitted that the focus of the claim was on an alleged omission on the part of the Crown. Acts of omission are more difficult to assess than acts positively committed, the reasons for not taking action and the likely consequences if action had been taken being much more speculative. It could not be assumed that the Crown was omnipotent, and present-day norms could not be applied to a time when expectations of the State were much lower. The practical capacity of the Crown to assert its sovereignty was limited at the time in question, and an approach that sought the gradual amelioration of violent or otherwise undesirable practices was reasonable.⁹⁶

In response, Moriori counsel argued that Moriori slavery was so repugnant to British justice as understood at the time that regard was required to both the practicalities and the dictates of good conscience, and that the cited elements of expedience should not have been countenanced in this case.

94. *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513, 517 (cited in doc C14, pp 9–10)

95. Document C14, p 10

96. Document F15, paras 15–20

5.8 CONCLUSIONS

We think that some things are plain:

- ▶ At 1842, the enslavement of British subjects, as Moriori were, was an affront to right-minded English people and repugnant to humanity for the purposes of the Crown's duties under the various Colonial Office instructions and British statutes of the 1840s and 1850s.
- ▶ In terms of Colonial Office directions, a policy of proceeding gradually having regard to native custom required proof of necessity before it could be adopted, without any element of expediency that might detract from securing the personal freedom and safety of those affected. All civil and military powers were to be used if the circumstances required.
- ▶ At 1842, Moriori were enslaved in conditions far more serious than any known of on the mainland at that time. A brutal form of slavery continued there after the last vestiges of slavery had disappeared elsewhere.
- ▶ Whether or not the Crown knew of the condition of Moriori in 1842 is largely irrelevant. There was an obligation to find out about the circumstances of the Crown's new subjects without unreasonable delay, and it was entirely practical to have made inquiries. The contemporary standards are best evidenced by the fact of the Treaty of Waitangi itself. This assumed a meeting with local inhabitants before sovereignty was assumed (as in the North Island) or soon after (as for most of the South Island), where any concerns could be voiced.

The promises of the Treaty were also meaningless if the Crown did not make the promises known, visit the Treaty beneficiaries to see what might be required, or at least acquaint itself with the circumstances of its new subjects. Under article 3 of the Treaty, the monarch extended to the natives of New Zealand her royal protection and guaranteed to them all the rights and privileges of British subjects. The promise of protection clearly extended to freedom from slavery. Alternatively, the Crown already knew of the likelihood of Moriori circumstances through Busby's warnings and more particularly through Dieffenbach's report. Later in the 1840s, the situation was conveyed to Governor Grey by Bishop Selwyn, whose account was also published, and the Governor then obtained first-hand experience when he visited the Ngati Mutunga colony on the Auckland

Islands. Still, he neither visited Rekohu nor did anything about the situation there.

- ▶ An early visit to Rekohu was practicable – a visit was made in 1844 purely to uplift a witness for a trial.

Looking broadly at the array of evidence over time, the pattern is reasonably clear. Rekohu was taken by the stroke of a pen. It was administered thereafter with casual indifference for the inhabitants. Expressions of concern for the local inhabitants by central government were extraordinarily rare, and support for the one official resident was nearly non-existent, despite the atrocities to which he referred. Crown action, such as it was, is measurable rather in terms of advancing the Crown's own interest. This was first to protect customs revenue and, later, to advance a settlement of the Taranaki land question in a way that suited the Crown. No other purpose is evident for such actions as the Crown took.

In our view, the emancipation of the slaves has not been shown as resulting from some positive act of the Crown, and neither can it properly be seen to have resulted from moral persuasion over time or from a more forceful intervention in 1863. An inference may be drawn that it was instead the accident of events in Taranaki that was a deciding factor, when Maori found it convenient, at that time, to align with the Crown.

In all, we do not think that in Rekohu the Government applied its policy of gradualism to ameliorate custom. The apparent policy was to ignore until it suited the Crown to intervene for reasons of its own.

The question first posed was: What steps did the Crown take to relieve Moriori after annexation in 1842? We consider steps were taken, as described, in 1863, but that those steps were not initiated from a concern for Moriori. We also consider that, by then, the main damage had been done. At all prior times, the Moriori plight as relayed by the Crown agents on the ground seems simply to have been ignored.

We indicated that the question of what steps the Crown was obliged to take in terms of Treaty principles would be examined later. We now move on to the second question of whether there was anything more that the Crown might reasonably have done.

First, it should be recalled that the Crown had an interest in the condition of Moriori apart from that arising from annexation. It had at least a moral responsibility for the pre-1842 actions of its citizens, even although it may not have been able to do anything at the time. In this case, the invasion that caused the enslavement flowed from the importing of arms by

British subjects (amongst others) and the use of a British ship with the possible complicity of a British sea captain. These factors were known at the time.

Secondly, it should have been apparent at the time that, unlike the situation in most other places and probably uniquely, Moriori were enslaved on their own soil, as though they had been taken from their lands as war captives. Emancipation could not be real without a return of a fair share of the land.

Thus, we come to what was practicable. We consider that a naval ship standing offshore at Rekohu at the time of annexation and a clear statement to the local inhabitants of the Crown's position on slavery, with diplomacy but without equivocation, could have made a significant difference from the start. With less force and resources at their disposal, the missionaries had shown 20 years before that it could in fact be done, and that that type of influence alone was perhaps capable of achieving the goal. All that was lacking was the will to make the necessary commitment at the beginning and then to maintain a consistent position on slavery over time.

If Shand was ineffective, it was only because he had no backing from the central government when backing was required, and because there was no clear and consistent statement of the Crown's position that slavery was wrong and could not be countenanced under the authority of the Government. To step lightly had been forewarned, but the Colonial Office's instructions were equally clear that a deliberate and principled step was still required to uphold the integrity of the Crown and to ensure the personal freedom and safety of the Crown's subjects. The trouble, on Rekohu, was that no positive step was taken at all.

For the lack of such a step, many died, generations were never born, and the Crown's last indigenous subjects in this country remained subjected to unspeakable cruelty.

We doubt that slavery came to an abrupt end in 1863, as was suggested, and think it more likely that, for the want of a clear and consistent statement of position, the ghostly chains of slavery clanked ominously for many subsequent years. In our hearings, some Maori were content to rattle those chains even now, referring to the fact of past enslavement to deny recognition to Moriori today. In 20 years of sittings on the mainland, the Tribunal has never heard Maori talk like that before.