

Facts on “The English Treaty of Waitangi”

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Independent research by Ross Baker. 31 July 2016. (Copyright).

Part 1.

Part 2. New Zealand officially becomes a British Colony.

I researched the Littlewood document in 1990 and found it was Lt. Governor Hobson’s “final” English draft of the Treaty of Waitangi that Rev Henry Williams and his son Edward translated into the Tiriti o Waitangi on the 4 February 1840. I also researched Queen Victoria’s Royal Charter/ Letters Patent in 2013 and found it was New Zealand’s ‘true’ Founding Document and ‘first’ Constitution. I have now researched the English Treaty and found it is an ‘official’ Treaty of Waitangi. My research below is based on the facts available and not speculation and/or circumstantial evidence.

A few months ago I decided to further research the English Treaty of Waitangi and found some interesting facts but some people are very upset with my research into the English Treaty as they say this will give Maori special rights over their fellow New Zealanders but I can see no reason why; both Treaty’s gave Britain, “*Sovereignty over all the Islands of New Zealand and tangata Maori the same rights as the people of England*”. No more - no less!

Since Rev Robert Maunsell’s dairies were burnt in a fire there has been much speculation and/or circumstantial evidence on the English Treaty of Waitangi that was signed and witnessed at Waikato Heads on the 11 and 26 April 1840 and later fully executed with the Royal Seal by W. Hobson, Lieutenant Governor.

Some researchers have stated, a CMS printed copy of the Tiriti o Waitangi was read and discussed at Waikato Heads on the 11 and 26 of April 1840 and the first 5 chiefs at Waikato Heads signed this document before space ran out and an “unofficial” English Treaty, one of 9 compiled by Lt. Governor Hobson’s secretary, James Freeman, from James Busby’s draft notes was produced and used to hold a further 39 signatures, therefore, the English Treaty is “unofficial”.

Lt Governor Hobson had 200 copies printed of the Maori Treaty of Waitangi (Te Tiriti o Waitangi) by the Church Mission Societies (CMS) printer, Rev William Colenso.

Rev Benjamin Ashwell assisted Rev Robert Maunsell in gathering signatures and also witnessed the English Treaty that was signed at Waikato Heads on the 11 April 1840. During my research I could find no documented evidence of the CMS printed Maori copy of the Tiriti o Waitangi being read, discussed or signed at Waikato Heads on the 11 or 26 April 1840.

As can be seen from the English Treaty below, Rev Robert Maunsell and Rev Benjamin Ashwell witnessed the 32 signatures on the English Treaty with, “*The proceeding names have been obtained*

by us at this station. I embrace all as we can conceive, with the exceptions of two names, the principle men of the Waikato". April 11, 1840, Waikato Heads. R. Maunsell, B. Aswell. Thirty two chiefs signed the English Treaty at Waikato Heads on the 11 April 1840 and the two missing names mentioned being the chiefs of Kawhia and Aotea.

The 7 signatures obtained later on the English Treaty by Capt. W L Symonds states, "*Signed before me on April 26th 1840*" and again there is no mention of the CMS printed version being read or discussed.

The English Treaty is witnessed, dated and the location given by Maunsell, Ashwell and Capt. Symonds and is signed and sealed by W. Hobson, Lieutenant Governor, therefore, a fully executed document but there is no date, location, signature or seal by Hobson on the CMS printed copy below, therefore, it has no real status as a legal document. I am sure if Maunsell had used the CMS copy at Waikato Heads he would have made a note of this with the date and location on it as well as asking Ashwell to witness it as he had the English Treaty. It seems Ashwell was not present when the signatures on the CMS printed copy were obtained.

The Treaty of Waitangi consists of 2 parts plus the Consent from the chiefs.

Part 1. The **Preamble** which explains the reason for the treaty and can be used to clarify its meaning if there is any ambiguity in the either treaty.

Part 2. The **3 Articles** or laws which explains that Britain will gain sovereignty over all the Islands of New Zealand and tangata Maori would be given the same rights as the people of England. At this stage Hobson signs and seals the document.

These are the **terms** of the **offer** put to the chiefs by Lt. Governor Hobson.

Part 3. **The Consent** where the chiefs understood the agreed to the offer/terms of the treaty that was "*Done at Waitangi on the 6 February 1840*" and accepted by them all. "*In witness whereof our names or marks are affixed*".

If Hobson had signed below the Consent it would be part of the treaty but as he signed above this part he referred to Maori only and the reason why it is stated, "*The treaty consists of 3 articles/laws*". I believe the Preamble should be part of the Treaty as it explains the articles/laws. If in doubt of its meaning, reference is made to a Preamble of the document.

Maori also say they are the Indigenous People of New Zealand or tangata whenua but all the chiefs signed the treaty as tangata Maori and not tangata whenua as their ancestors knew they were not the Indigenous People of New Zealand.

Some say, "*Done at Waitangi on the 6 February 1840*", which is written at the end of the Consent in both the English Treaty and Tiriti o Waitangi means the English treaty is not "official" because it was not, "*Done at Waitangi on the 6 February 1840*", but the definition of "*Done*" is, "*Used to indicate that the party accepted the terms of an offer*", and as the English Treaties "*terms of an offer*" are exactly the same as the Tiriti o Waitangi in giving Britain sovereignty over all the Islands of New Zealand and tangata Maori the same rights as the people of England and was signed, witnessed and fully executed by Hobson, it is an "official" Treaty of Waitangi.

All those that signed the Treaty at Waitangi or elsewhere “Consented” to the “*terms of an offer*” Hobson put to them at Waitangi on the 6 February 1840 by consenting to, “*Done at Waitangi on the 6 February 1840*”.

Research shows the CMS printed copy and the English Treaty were folded together when despatched to Hobson to be signed and sealed. Some researchers have said Hobson stuck the two documents together with wax before he signed them to make them one document but Hobson had just had a stroke and could only use his left arm so this would have been impossible unless he had someone do it for him but there is no mention of this, so this is once again based on speculation. The two documents were sent to Hobson as two separate documents and they are now two separate documents, therefore, this does not prove that the CMS printed copy of the Tiriti o Waitangi was read, discussed and signed at Waikato Heads on the 11 April 1840. There is no evidence of who stuck them together or who pulled them apart but we do know they are not stuck together when they were sent to Hobson to sign and are not stuck together now.

I also found a very interesting statement in the *New Zealand History* website but once again is only speculation.

The printed copy of the treaty. (CMS copy of the Maori version)

“This copy is most likely an addition to the Waikato-Manukau copy in English that missionary Robert Maunsell received in late March or early April 1840. Maunsell witnessed all five names on the sheet. The chiefs, from Ngāti Pou on the Waikato River and Ngāti Te Wehi at Whāingaroa (Raglan) may have been visiting Maunsell’s mission station at the mouth of the Waikato River”.

Some researchers also say the rule of “*contra proferentem*” makes the English treaty “null and void” but the definition of ‘*Contra Proferentem Rule*’ is, “*A rule in contract law which states, that any clause considered to be ambiguous should be interpreted against the interests of the party that requested that the clause be included*”. If there is any ambiguity in the treaty such as the word “*kawanatanga*” then the Preamble explains this by stating, “*All the places of New Zealand which may be given up now or hereafter to the Queen*”. Sir Apirana Ngata endorsed this when he stated in his book, **The Treaty of Waitangi - An Explanation**, “*The chief’s placed in the hands of the Queen of England, the Sovereignty and authority to make laws*” The Preamble explains, both Treaty’s gave Britain, “*Sovereignty over all the island of New Zealand and tangata Maori the same rights as the people of England*”. No more, no less!

As for “*forests and fisheries*” stated in the English Treaty, the Treaty did not say “*Maori*” would have blanket possession of forests and fisheries, it said that each individual chief that signed the Treaty would have possession of “*their*” forests and “*their*” fisheries if they could prove the forests and fisheries belonged to them under English law. This part of the treaty (Article 2) was not a blanket cover to Maori as a whole, it referred to “*their*” forests and fisheries of each individual chief that signed the treaty. While the English treaty stated “*their fisheries and forests*” the Tiriti stated all “*their*” possessions which would also mean “*their forests and fisheries*” if they could prove they were “*theirs*” under English law.

This is exactly what both Treaties said, it’s just that the English Treaty mentioned “*their*” forests and fisheries and the Tiriti said all “*their*” properties which would include “*their forest and fisheries*” if

they could prove they were “theirs” under English law.

The problem is, individual tribes do not have to prove the forests and fisheries were “theirs” to the Waitangi Tribunal. If the Government used Queen Victoria’s Royal Charter/Letters Patent and not the Treaty, then this would never happen as each individual tribe would have to prove in a court of law the forest and fisheries had not been sold and were still “theirs” under English law.

Most Deeds of Sale to the Crown stated all timber, rivers, lakes minerals etc. were included in the sale and as the seabeds and foreshore were held in the public domain under English law, I don’t see how individual chiefs could own the fisheries when Queen Victoria and Hobson did not have the power or authority to give Maori any special rights in the Treaty not already enjoyed by all the people of England.

The Law of Nature states, *“By the law of nature these things are common to mankind -the air, running water, the sea and consequently the shores of the sea”*

- Institutes of Justinian 500AD. This is also part of the Magna Carta.

There is also no mention of *“all the people of New Zealand”* in the English treaty, as in the Maori text, because the treaty was between Queen Victoria and the tangata Maori chiefs, but once Britain gained sovereignty over all the Islands of New Zealand, *“all the people of New Zealand”*, including tangata Maori came under one flag and one law - English Law.

Governor Hobson gave the following instruction to Captain Bunbury when he went South gathering further signatures, ***“The treaty which forms the base of all my proceedings was signed at Waitangi on the 6th February 1840, by 52 chiefs, 26 of whom were of the federation, and formed a majority of those who signed the Declaration of Independence. This instrument I consider to be de facto the treaty, and all signatures that are subsequently obtained are merely testimonials of adherence to the terms of that original document”***. My emphasis added.

Hobson also made it very clear to all those gathering further signatures, they must fully explain the ***“terms”*** of the treaty until the chiefs understood them before they were allowed to attach their names or marks.

The Chiefs consented to the ***“terms”*** of the original document and the ***“terms”*** in both treaties were, *“Britain would obtain sovereignty over all the Islands of New Zealand and Maori would be given the same rights as the people of England”* to *“their”* Estates, *“their”* forest and fisheries and all *“their”* property under English law, *“the same rights as the people of England”*. (Articles 1, 2 and 3 in both treaties)

It was the **“terms”** of the treaty Hobson was referring to in the instructions to Capt. Bunbury above.

If we read both treaties and understand them fully this would clarify much of the confusion and distortion by the Waitangi Tribunal. The **“terms”** are exactly the same in both treaties and do not include the **“Five Principles for Crown Action on the Treaty of Waitangi”**. These are no more than a fiction dreamt up by Geoffrey Palmer and his mates in Parliament and deprive non-Maori of their lawful rights. England had no racial laws and the Treaty put tangata Maori under the same laws as the people of England.

My main concern about the English Treaty all previous research has been based on speculation and circumstantial evidence. I have thoroughly researched the English Treaty and there is no mention that the CMS printed copy being read, discussed or signed at Waikato Heads on the 11 April 1840. The English treaty used at Waikato is signed by 39 chiefs, witnessed by Maunsell, Ashwell and Symonds and fully executed by W. Hobson, Lieutenant Governor. The CMS printed copy is not witnessed by Ashwell or Symonds or executed by Hobson.

My research also shows that the English Treaty, while not originally intended to be an “official Treaty” by Hobson, was fully executed by him as an “official Treaty”. It may not have been what Hobson wished for, but it was witnessed by authorised officials, dated and the location given before being signed and sealed by Hobson, then added to the “official” list of signatures and the number of treaties gathered.

Both Treaty’s put New Zealand under the laws and dependency of New South Wales on the 21 May 1840 until Britain declared sovereignty over all the Islands of New Zealand on the 3 May 1841, Twelve months later Queen Victoria’s Royal Charter/Letters Patent, dated the 16 November 1840 separated New Zealand from New South Wales. Queen Victoria’s Royal Charter/Letters Patent is completely ignored by most researchers, government historians, the government, the Waitangi Tribunal and Te Papa, our National Museum, which misinforms over 1.5 million visitors of our ‘true’ history each year.

For full information on Queen Victoria’s Royal Charter/Letters Patent, click onto www.onenzfoundation.co.nz, then click on ‘Royal Charter’ in the right hand column.

Once New Zealand was separated from New South Wales on the 3 May 1841, New Zealand became a British Colony with a Governor and Constitution to form a government to make laws with courts and judges to enforce those laws; irrespective of race, colour or creed, but under the watchful eye of Great Britain.

Queen Victoria's Royal Charter/Letters Patent was the document which 'founded' New Zealand as an independent British Colony with its own Constitution to form a political and justice system on the 3 May 1841, therefore, Queen Victoria's Royal Charter/Letters Patent is New Zealand's 'true' **Founding Document** and 'first' **Constitution** enabling New Zealand to become an Independent British Colony with its own government under one flag and one law irrespective of race, colour or creed.

Summary.

As I stated at the beginning of this article, researchers have stated, "a CMS printed copy of the Tiriti o Waitangi was read and discussed at Waikato Heads on the 11 and 26 of April 1840 and the first 5 chiefs signed this document before space ran out and an "unofficial" English Treaty written by Lt. Governor Hobson's secretary, James Freeman, was compiled from James Busby's draft notes and used to hold a further 32 signatures, therefore, the English Treaty is not official".

From my research, I could find no evidence the CMS printed copy of the Tiriti o Waitangi was ever read, discussed or signed at Waikato Heads on the 11 April 1840 but this is still not to say it was not and we will possibly never know but I cannot see any reason why it really matters if the CMS printed copy was read at Waikato Heads or not as the "**terms**" of both treaties state, "*Done at Waitangi on the 6 February 1840*" is what really matters as both Treaties "**offered**" the same "**terms**", "*Britain would gain sovereignty over all the Island of New Zealand and Maori would be given the same rights as the people of England*". At Waitangi, Hobson shook each chiefs hand after they signed the Treaty with the words "*He iwi tahi tatou - We are now one people*", which was followed by 3 hearty cheers. On the 21 May 1840 when Britain declared sovereignty over all the Island of New Zealand, the Treaty of Waitangi had served its purpose and was filed away were it should have remained.

The Treaty of Waitangi had little impact on the settlers as most were British Subjects but it gave tangata Maori protection of their lands from stronger tribes, stopped cannibalism, gave a purpose to life through Christianity and stopped the senseless fighting for the fun of it and the feasts that followed, but best of all, it gave tangata Maori the same rights as the people of England - British Subjects of the most powerful nation at the time without lifting a finger.

It's a little known fact the chiefs had sold over two thirds of New Zealand before the Treaty was signed but most of this land was confiscated by the government after the Treaty was signed without compensation and returned to the thousands of slaves being released now New Zealand was under English law.

Just twelve months after the Treaty was signed Britain decided that New Zealand must separate from New South Wales to become an Independent British Colony with a Governor and Constitution

to set up a political and justice system under one flag and one law - English Law. Queen Victoria's Royal Charter/Letter Patent; New Zealand's 'true' **Founding Document** and 'first' **Constitution** achieved this on the 3 May 1841, the day we must all celebrate as New Zealand's Independence Day as they did in 1841.

While the Treaty of Waitangi gave Britain sovereignty over all the Islands of New Zealand and tangata Maori the same rights as the people of England, it had nothing to do with setting up our political or justice systems in New Zealand. Queen Victoria's Royal Charter/Letters Patent made New Zealand into an Independent British Colony with its own political and justice systems, therefore, any alleged breaches against the Crown today by Maori can only be breaches of New Zealand's laws and not the Treaty of Waitangi.

We must force Government to recognize and use Queen Victoria's Royal Charter/Letters Patent, our 'true' **Founding Document** and 'first' **Constitution**, a vital part of our history which separated New Zealand from New South Wales and made New Zealand into an Independent British Colony with its own political and justice systems.

While Maori must celebrate Waitangi day as the day they were released from their primitive ways of cannibalism, slavery and senseless fighting; all the people of New Zealand, irrespective of race, colour or creed must celebrate Queen Victoria's Royal Charter/Letters Patent, the day New Zealand became an Independent British Colony with its own political and justice systems.

The 3rd of May is the day all New Zealanders must celebrate as the day New Zealand became an Independent British Colony under one flag and one law.

Over the years there has been much speculation and/or circumstantial evidence surrounding the English Treaty of Waitangi by many researchers and historians and I believe this article has succeeded in sorting out speculation from fact. Some say it will give Maori more power to take our public owned resources, but if we force governments to stop ignoring the Queen Victoria's Royal Charter/Letters Patent and the laws it provided, then we have nothing to worry about.

Finally, at the end of the day, it doesn't matter what Hobson said before, during or after the Treaty was signed by both parties, the only thing that matters is what was written on the treaties that were signed by over 500 chiefs, witnessed and fully executed and sealed by Hobson whether in English or Maori.

As the chiefs Consented to the ***“terms offered”*** by Lt. Governor Hobson at Waitangi on the 6 February 1840, then they must accept their ancestor’s agreed to give Queen Victoria sovereignty over all the Islands of New Zealand and in return, tangata Maori received the same rights as the people of England. They became British Subjects.

It is wrong to use the Treaty of Waitangi to claim against the Crown as both treaties had nothing to do with setting up New Zealand’s political, legislative or justice systems.

If Maori want to claim against the Crown, then they must claim through our justice system set up by Queen Victoria’s Royal Charter/Letters Patent dated the 16 November 1840 and not the Treaty of Waitangi as the Treaty of Waitangi only gave Britain sovereignty over all the Islands of New Zealand and tangata Maori the same rights as the people of England under the dependency and laws of New South Wales.

In 1947 New Zealand adopted the Statute of Westminster, which gave New Zealand total control over its domestic and foreign affairs and all the people of New Zealand became New Zealand Citizens with New Zealand Passports under one flag and one law irrespective of race, colour or creed.

From my research based on the documented evidence available, I found the English Treaty is an “official” Treaty of Waitangi.

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Further information and documented evidence to support the above can be found in the following books published by the One New Zealand Foundation Inc. P.O. Box 7113, Palmerston North, 4443. The books are \$10-00 each including P & P while stocks last.

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