

‘So Strange a Proceeding’

MURDER, JUSTICE AND EMPIRE IN 1830s HOKIANGA¹



ON THE MORNING OF 21 MAY 1838 shots rang out from Ruapapaka Island in the upper reaches of the Hokianga River.² For the inhabitants of the nearby Wesleyan mission station at Mangungu, and for those who lived at the timber depot at Kohukohu, and the local *kāinga*, this was confirmation that a matter that had preoccupied them for a week had been settled. As the blasts of gunfire cleared a man named Kite lay slumped on the ground, dead. Some saw this as justice done; others, such as mission leader Nathaniel Turner, viewed it as a ‘painful event’ that brought honour to no one. But not even Turner could deny that something significant had taken place, given that Kite was ‘the first New Zealander that I am aware of who has undergone anything like a formal trial and thus suffered for his crimes’.³ Two days earlier, Kite had been found guilty of murdering a sawyer named Henry Biddle following a disagreement over property. The decision to execute Kite for the offence had been made by a large group of *Pākehā* gathered in the Wesleyan chapel at Mangungu, while the execution itself was carried out with the consent and active participation of *Māori*. Turner was right when he claimed that Kite was the first *Māori* to be subjected to something approximating trial and execution, but the significance of his experience extends beyond this fact. Kite had received British justice, but only in the loosest sense. His fate encapsulated the kind of accommodation and co-operation that by necessity existed between *Māori* and *Pākehā* in places like Hokianga in the pre-colonial period. This was how empire operated in a New Zealand in the years before the Treaty of Waitangi.

Historians of cultural interaction in 1830s New Zealand have, for the past three decades, emphasised the co-operative nature of the relationship between *Māori* and *Pākehā*. This co-operation was most clearly seen in the client-patron relationship between *rangatira* and *Pākehā*. The need for *Pākehā* to rely on the protection and patronage of a chief in the early years of settlement has become a familiar refrain. James Belich, for example, wrote that ‘[c]lose relations with at least one *Maori* chief were a virtual necessity for ships and [trading and whaling] stations’.⁴ These were the same relations that Judith Binney described as a ‘system of calculated co-operation’, given the material benefits that chiefs gained from their connections to traders and other *Pākehā*.⁵ This article presents a detailed example of how this co-operation operated in practice, in particular when it came to issues of social control. It also explores the idea of empire and how it operated on the margins, and places the pre-colonial accommodation that took place between *Māori* and *Pākehā* within an imperial framework.

The concept of empire can be difficult to grasp. Until recently, its most obvious exponent within New Zealand historiography was James Belich. Belich counts among those historians who challenged the idea of the British

Empire as a spoked wheel radiating out from London; instead he emphasised that imperial success or failure was determined at the periphery rather than at the core, but in such a way that stressed the importance of political control. In *Making Peoples*, Belich argued that empire did not arrive with the annexation of the country by the Treaty of Waitangi in 1840.⁶ Instead he contended that for at least the first 20 years after annexation, empire was a myth on a map, or what he termed 'false empire', as Māori continued to hold real political power over much of the country. For Belich, 'real' or 'tight' empire equated to what John Darwin called 'the explicit transfer of sovereignty and, usually, the imposition of direct administrative control'.⁷ In recent years, however, this view has been challenged by Tony Ballantyne. As a proponent of the 'new imperial history', which sees empire as 'a "bundle of relationships" that brought disparate regions, communities and individuals into contact through systems of mobility and exchange', Ballantyne has questioned the interpretation of empire as a predominantly administrative, political structure and has instead emphasised its cultural aspects.⁸ In their study of imperial connections in pre-colonial and colonial Southland, Ballantyne and Brian Moloughney argued that empire's arrival in New Zealand can be dated to before the signing of the Treaty, rather than to the decades afterwards: 'Murihiku was incorporated into imperial networks long before the onset of formal colonisation. Contrary to James Belich's assertion, empire was not a myth propagated and materialised in the wake of the Treaty of Waitangi, but rather in the south of the South Island imperialism predated colonisation Murihiku was firmly embedded within the commercial enterprises, shipping routes, and markets that made up Australasia'.⁹ This article takes up Ballantyne and Moloughney's argument, and examines ways in which Hokianga, too, was absorbed into an international system of trade and imperial networks following the arrival of timber traders and missionaries. However, it does not abandon Belich's emphasis on administrative power. Instead, it argues that although the Crown was in no position to impose its will in 1830s New Zealand, this did not render it entirely impotent or irrelevant. The Crown could be a player in a system of calculated accommodation that enabled both Māori and Pākehā to take advantage of the material benefits that trade and other forms of engagement could bring. The trial and execution of Kite provided a stage on which this accommodation was played out. By taking a microhistorical approach to a single event, this article looks at how and why empire brought Māori and Pākehā together on a daily basis, and at how, like Murihiku, Hokianga was already plugged into an economic and political imperial network that pre-dated the arrival of colonisation and the signing of the Treaty.

One of the earliest harbingers of Hokianga's new role as an imperial outpost was the arrival in 1820 of HMS *Dromedary* in search of kauri spars that could be used as topmasts by the Royal Navy.¹⁰ From this point onwards ships continued to brave the bar at the mouth of the Hokianga River, and Hokianga became another destination in the global hunt for naval timber, alongside places such as St Helena and Ascension Island, as well as areas of India, coastal Burma, Australia and Canada.¹¹ At least ten shiploads of spars were sent from Hokianga to Britain between 1829 and 1839. Most of the shipments

were arranged by merchants in New South Wales on behalf of British firms.¹² But Britain was not the only destination to which Hokianga spars were sent. In 1835, for example, a cargo of spars was sent to Valparaiso, presumably to the Royal Navy base that had recently been established there, as well as to Brazil.¹³ The navy that this timber was used to build allowed Britain to remain the world's dominant and unchallenged sea power,¹⁴ and this dominance was used to maintain and defend the growing international trade routes that confirmed Britain's commercial success and supported the spread of staging posts and settlements across the face of the globe.

By supplying a small fraction of the timber necessary to maintain the navy as 'the most developed arm of the British empire'¹⁵ Hokianga was drawn into a vast global commercial and military network. But, given the risks involved in sailing irregular cargoes half-way across the world and the rigorous quality standards the spars had to meet, the spar trade was not stable enough to support the ongoing survival of the small community of timber traders and sawyers that had gathered at Hokianga.¹⁶ For this reason, the colonial timber trade with New South Wales and Van Diemen's Land became the economic mainstay of Hokianga's Pākehā community. During the 1830s, Australian merchants sent ships to New Zealand to purchase timber for the growing settlements of Sydney and Hobart Town.¹⁷ One estimate suggests that between 1828 and 1839, Hokianga was the source of 50%–60% of the timber exported from New Zealand and the source of nearly all the timber entering the ports of Hobart and Launceston.¹⁸ The settlers of New South Wales and Van Diemen's Land literally built their societies out of Hokianga's trees, and in this way Hokianga was economically and materially drawn into the colonial world.

In 1827, the commercial and military arms of the imperial project were joined by the spiritual, when the Wesleyan mission station was established in Hokianga. As Catherine Hall has noted, '[t]ravellers, merchants, traders, soldiers and sailors, prostitutes, teachers, officials and missionaries — all were engaged in colonial relations with their own particular dynamics'.¹⁹ While the traders focused on financial profit, the missionaries concentrated on the civilising forces of Godliness and morality that could be brought to bear not only on the more depraved specimens of their own countrymen, who indulged in the evils of drunkenness, blasphemy and desecration of the Sabbath, but more particularly on Māori. The missionaries viewed the expansion of trade with suspicion, but were convinced of the righteousness of their own civilising path. Ann Laura Stoler and Frederick Cooper have called these differing objectives the 'tensions of empire', whereby competing agendas met and played themselves out; they exemplified the diversity of the Pākehā community to be found at Hokianga.²⁰

The arrival of empire in the form of the timber traders and sawyers, as well as the less numerically dominant missionaries, during the 1820s and 1830s brought Māori communities into contact with a world beyond their shores. From the earliest days of Pākehā settlement in Hokianga many Māori welcomed the presence of this outside world, and the material goods Europeans brought with them. This was the starting point of Māori–Pākehā commercial engagement and of Māori involvement in the business of empire, an engagement rooted in

the all-important timber industry. Māori labour was vital to the harvesting of timber from Hokianga’s kauri forests. Typically, Māori would fell the tree and drag it to the water’s edge for floating or to a saw pit where it would be worked by European sawyers.²¹ The timber trade could not have functioned without this willing participation, and merchants went to some lengths to satisfy Māori choice in trade goods to ensure their continued co-operation.²²

Trade with Pākehā plugged Māori into an international system of exchange. The spars, planks and produce that were destined for Sydney, Hobart, London and beyond were hewn and dug by Māori, bought by Pākehā and shipped on European vessels. In return, Māori received material goods from Australian colonies and other global ports.²³ As Peter Gibbons has written, ‘the seas about these islands are not barriers; they are highways and along those highways ships have carried ... the products circulating in the world economic system’.²⁴ The Hokianga River was part of this network of maritime highways. The trade that flowed up the river brought new goods and relationships, and widened Māori experience of the world.

Participating in this global network, however, remained dependent on the agreement of chiefs. At the forefront of participation were the chiefs located in the heavily forested upper reaches of the river, who were ideally situated to take advantage of the timber industry’s opportunities. Most prominent were rangatira such as Nene and Patuone of Ngāti Hao, and Muriwai and Taonui of Te Popoto, who early on actively welcomed and engaged with Pākehā. In 1826, Patuone visited Sydney to negotiate for vessels to sail to the river. He returned with Gordon Browne, who was sent to establish a shipyard at Horeke on behalf of the firm of Raine and Ramsay.²⁵ In addition, in 1827 Patuone and Nene had been responsible for offering the Wesleyan missionaries a home at Mangungu after the destruction of their mission at Whangaroa.²⁶

Although most of the chiefs in the upper river were from Nga Puhi-affiliated hapū, it seems that they made their decisions to offer land and timber to Pākehā independently and for a variety of reasons. That is, factors within Māori society rather than imperial coercion appear to have motivated trade. Inter-hapū competition, or the ‘pursuit of mana’, has been put forward as an explanation for the willingness of some leaders to pursue relationships with Pākehā.²⁷ Competition, however, appears to have been only part of the reason for engaging with the newcomers. Mana could be gained by outdoing competitors in the rivalry stakes, but it could also be gained by providing for the people. As Hazel Petrie has noted, ‘At its most pragmatic level, mana is about the control of resources’.²⁸ Chiefs had to ensure that wealth was shared so as to maintain the reciprocal obligations that existed between rangatira and the people. As Petrie also wrote, ‘[s]tatus, wealth and political power were co-dependent’.²⁹ Involvement in trade provided chiefs with the wealth to build and maintain mana with their own people within their own communities. In this way, trade with Pākehā, and interaction with empire, was a new way of fulfilling an old and vital obligation.

The wealth and mana that contact with Pākehā brought may also have been at the heart of some chiefs’ wish to form a relationship with the British Crown. Northern chiefs had written to King William IV in 1831 seeking his friendship

and protection. Then in 1835, 34 northern chiefs, including Hokianga leaders Pi and Moetara, signed the Declaration of Independence, organised by the new British Resident, James Busby. The document stated that New Zealand would remain an independent country under the control of the collective power of the united chiefs, who would meet annually ‘for the purpose of framing laws for the dispensation of justice, the preservation of peace and good order, and the regulation of trade’. Although not signatories to the document in 1835, Nene, Patuone and Taonui later signed the Declaration.³⁰ While the Declaration reflected Busby’s wish for a European-style government by and for Māori more than any political reality, its significance lay in the ongoing relationship it expressed between Māori and the Crown. By forming trading relations with Pākehā and cementing their relationships through political alliances with the Pākehā king, Māori such as Nene and Taonui built and maintained reputations among their own people.

In the 1830s, therefore, chiefs engaged with Pākehā, and with empire, for a variety of reasons and in a variety of ways, based on local political and societal factors. They could not be coerced into engagement, and empire could not have continued to benefit from the Hokianga timber trade without the co-operation and participation of those chiefs. Once the decision to engage with empire had been made, the chances that Māori would drive out Pākehā remained small because of the balance of interests that had developed between the two parties.³¹ While Pākehā remained reliant on Māori for land and access to resources, including timber, Māori who could now see the benefits in terms of the wealth and the mana that could accrue through interaction with Pākehā were reluctant to lose those benefits. In this situation of mutual advantage Pākehā and Māori accommodated each other. Empire had to bend to meet Māori, while Māori chose to bend to meet the Pākehā representatives of empire.

The accommodations reached in this environment become clear when looking at the ways in which disputes were resolved. Within their own communities Pākehā worked together through committees to mediate disputes and diffuse tensions, while Māori continued to use tapu and utu to control behaviour and maintain social order. But on those occasions when disputes involved Māori and Pākehā protagonists, new forms of control could be used to alleviate tension and prevent violence. In 1834, for example, the chief Wharepapa of the Te Ihutai hapū plundered the home of a settler as utu for a verbal insult he had received from the settler’s wife. In response, a group of around 40 armed settlers led by George Russell, acting in conjunction with Patuone and other members of Ngāti Hao, attacked Wharepapa’s pa, slaughtered a number of pigs and made off with a collection of goods.³² In part this was a continuation of the tense ongoing relationship between Te Ihutai and Ngāti Hao, and it is possible that the unnamed settler whose wife had insulted Wharepapa was under the protection of Ngāti Hao, who felt compelled to act against Wharepapa to protect their mana. But the involvement of Russell and the other settlers added a layer of complexity to what otherwise would have been a straightforward act of muru, or plunder, designed to gain restitution. Russell was closely related to Ngāti Hao; his common law wife was a cousin to Patuone and Nene. His response can be interpreted as that of someone acting in

conjunction with his Ngāti Hao kin, but they were also the actions of a Pākehā who saw joint activity with Māori as the best way to settle a score with a chief who was not popular with settlers. In this way, both Māori and Pākehā ideas of justice were satisfied.

From 1833 both Māori and Pākehā could appeal to a new means of dispute resolution, in the form of James Busby, the British Resident at Waitangi. Busby has gone down in New Zealand historiography as the man charged with controlling pre-colonial cross-cultural relations, and failing at the task. Sympathetic portrayals attribute his lack of impact to the terms of his employment. As a civilian appointee to an independent territory, he was supposed to be 'a mediator and peacemaker in matters affecting British subjects alone, and a kind of race relations conciliator in affairs between Māori and Pakeha'.³³ But he was not given anything in the way of military or magisterial power. In most cases, he could arbitrate between parties but not enforce his findings, leaving him as the 'man-of-war without guns'.³⁴ Alan Ward was less generous in his judgment, saying that Busby's failure was at least in part due to his propensity for 'vain bluster' and 'officious paternalism'.³⁵ Belich summed up the prevailing view when he wrote, 'Busby was expected to control contact through sheer force of character and moral superiority. He failed.'³⁶

This unflattering summation would have been endorsed by many European residents at the time. Within the Pākehā community, Busby's appointment was seen as an opportunity to bring British justice to Hokianga, to resolve disputes among themselves and to stop the need to placate Māori. During his time in office they appealed to him on a range of issues, including theft of timber and unpaid rent. But their expectation that he would be able to enforce what they saw as the law was disappointed. One clear example of their frustration came in 1836. That year the toxic relationship between trader Thomas McDonnell and missionary William White reached a crescendo when McDonnell accused Nene and another chief, Raumati, of taking part in an abortive plan hatched by White to kidnap him and export him on board the *Brazil Packet*. McDonnell wrote to Busby after the supposed plot was exposed to 'respectfully request your immediate presence here to afford me that justice and protection which, as a British subject, I claim from you, as the Representative of the British Government at New Zealand'.³⁷ A week later he wrote again to Busby reporting White for the crime of piracy. White had previously travelled south from Hokianga on board the schooner *Tui* and during that trip had incurred costs which the ship's owner tried to reclaim by holding on to some of White's possessions, including a lamp, which White tried to reclaim when the *Tui* next visited Hokianga.³⁸ With the assistance of a party of unnamed but armed Māori, possibly from Waima, White took possession of the boat, during which 'a scuffle ensued and blows were struck'. The owner of the vessel was manhandled and the vessel itself moved down the river until it ran aground. Local sawyers Joseph Wright and Thomas Poynton intervened to try to calm the situation, and were joined the next day by Dennis Cochrane. At McDonnell's instigation, all three men, as well as the vessel's owner, captain and one crew member, attempted to follow British legal process by giving depositions to Busby in the hope that he would arrest White and 'prevent the natives interfering in white

mens [*sic*] quarrels'.³⁹ However, Busby could only respond that 'he had neither power nor authority to render us any assistance, in short, that he had no power to act'.⁴⁰ Busby and McDonnell's relationship was already strained, given that in 1835 McDonnell had deliberately tried to undermine Busby by having himself appointed Additional British Resident. Although the appointment only lasted a year, McDonnell missed no opportunity to excoriate Busby for failing to exercise a power he did not have.⁴¹ But the *Tui* episode was a clear indication to more even-tempered Europeans that they could not expect the norms of British justice to operate in New Zealand. Busby confirmed as much when he wrote that, 'I have always been careful to make [Europeans] understand that ... they must be satisfied to rest the security of their lives and properties altogether upon their success in conciliating the natives, and securing their protection'.⁴²

Yet in 1838 Busby was willing to get on his horse and ride to Hokianga to preside over the trial of Kite for the murder of Henry Biddle. This change in policy is perhaps partly explained by the fact that he viewed criminal matters differently from civil. He claimed that he 'never failed to investigate such cases, when brought under my notice, and to admonish the parties when I had the opportunity, that though there were, at the moment, no means of bringing them to justice, the evidence of their conduct should be placed upon record, and they might at any future period be made to answer for it at the bar of a criminal court'.⁴³ When he set out for Mangungu he may have been intending where possible merely to 'investigate' and 'admonish', or perhaps he realised that the nature of the alleged crime — the violent death of a European at Māori hands — was highly unusual and would require a unique solution. Whatever the reason, Busby found himself representing the British Crown at a proceeding that applied 'justice independently of law'⁴⁴ and that went beyond the bounds of his job description. In doing so, he participated in an episode that demonstrated both the impotence of so-called real empire and the possibilities of constructive negotiation that existed in an environment of balanced interests.

The exact nature and sequence of the events leading to Biddle's death are difficult to establish. Busby, Turner, John White and John Marmon all left accounts of the affair, with White's and Marmon's being the most detailed.⁴⁵ Both these narratives were, however, recorded years after the event, with White setting his memories to paper in 1871 and Marmon's account appearing in the *Otago Witness* in 1882. On the other hand, although neither Busby nor Turner provided much detail about the circumstances surrounding the murder itself, their accounts were written within days of their involvement, and on that basis can perhaps be viewed as more reliable. By piecing together the elements shared across the narratives, the following can be gleaned. One day in early May, Biddle left his home at Whirinaki and travelled upriver to Herds Point (Rawene) to purchase some goods. In order to get home he accepted the offer of a trip in a canoe manned by Kite and a young boy, also from Whirinaki. At some stage on the journey Biddle's property became the subject of a dispute between the occupants, possibly because Kite asked for payment in return for the passage downriver.⁴⁶ The disagreement turned violent; Biddle was injured, entered the water and probably drowned.⁴⁷ Several days later, his body washed up on the banks of the river and was taken to Mangungu for medical examination.

From the outset, Biddle's death excited the attention of people from across Hokianga. It laid bare the tensions that existed between them, as well as their willingness to navigate through those tensions. The retrieval of Biddle's body and the capture and trial of Kite involved all of empire's representatives, starting with the missionaries, then drawing in settlers, and ending with the government's man, Busby. But it also exposed their reliance on Māori co-operation. Nathaniel Turner recorded how, after hearing that Biddle had been murdered 'by a Slave belonging to Wirinaki [*sic*]' and consulting 'our Chiefs & several Europeans', he went to Whirinaki 'to hear the particulars of the case & persuade the Chiefs to secure the supposed murderer until the case was fully known'. Turner spent around four hours talking to Kite and the boy who had been with him in the canoe, as well as Whirinaki rangatira, trying to ascertain what had happened. In the end, he could not persuade the rangatira to forcibly detain Kite, but they were willing to hand him over to Turner and Pākehā more generally 'to deal with him as we thought proper'. Turner was unwilling to take charge of Kite, however, because he thought it 'would not be right'. Instead, he persuaded Nene to go to Whirinaki and collect Kite, possibly in the belief that it was better for Māori leaders to act as policemen in their own communities rather than missionaries.⁴⁸

The Wesleyan form of Christianity on offer at Mangungu had never found favour at Whirinaki, and the people there had little reason to placate Turner.⁴⁹ Instead, they may have been willing to hand over Kite because they accepted that he had committed murder, an action unacceptable according to tikanga, and that the wider Pākehā community had a legitimate reason to seek restitution according to the custom of utu.⁵⁰ The fact that Biddle was a Pākehā living at Whirinaki and that Kite was a slave were probably also significant factors. Biddle's residence at Whirinaki meant that they might have felt some added responsibility for seeing his killer dealt with. Meanwhile, Kite's status as a slave might have meant that he held less importance within the community, and was therefore easier to hand over. The young boy who was in the boat with Kite when Biddle drowned was not a slave, and although he was handed over too, it seems he only ever acted as a witness and was never in any real danger of being accused of murder.⁵¹ In this way, the Whirinaki chiefs were conducting themselves according to the customs that applied in their own community. Further evidence of their willingness to co-operate on their own terms is seen in the fact that they handed over Kite to Nene, a man who only a year earlier they had fought in an outbreak of inter-hapū violence at Mangamuka.⁵² Once they had relinquished Kite, they appear to have played little further role in events.

After securing Kite, Nene delivered both him and his young companion to the missionaries at Mangungu. At around the same time the mission station took possession of Biddle's mortal remains. Missionary John Whiteley had been among a group that had retrieved Biddle's body, which upon arrival was examined by two doctors, named Cook and Smith. They concluded that Biddle's death had been a violent one, at which point the missionaries took Kite and the boy to Horeke, where Kite effectively became a prisoner. Horeke had been used as a gaol on at least one previous occasion, in 1835, when the

perpetrators of a mutiny on board the schooner *Industry* were captured and held there in irons before being sent to Hobart for trial.⁵³ Some of the same irons that had secured the mutineers were used three years later to hold Kite, but not before both he and the boy were made to give statements in the presence of a committee of enquiry comprising ‘twenty seven of the most respectable Europeans residing at Hokianga’ about what had happened to Biddle.⁵⁴ Kite might have been handed over according to *utu*, but he was now being subjected to a loose form of British legal proceeding.

The committee of 27 concluded that ‘the deceased had met his death through the violence of the natives’,⁵⁵ and accordingly sent the depositions to Busby asking him to come and investigate the matter further and ‘bring it to a close’.⁵⁶ Turner, however, makes it clear that this step was taken only after consulting with leading rangatira, who agreed that Kite should be held as a prisoner pending Busby’s arrival.⁵⁷ Although Turner did not name the rangatira, it is probable they included Nene and his brother Patuone, and possibly also Taonui, under whose protection Horeke lay. These chiefs’ willingness to see Busby become involved in the proceeding was an extension of their ongoing engagement with both the British Resident himself and the Crown more generally. While no rangatira would have suffered Busby attempting to regulate how disputes were handled within their own communities, leaders such as Nene and Taonui were willing to involve him in sorting out disagreements between Māori and Pākehā. The same year as Biddle’s murder, for example, Taonui wrote to Busby complaining about Pākehā allowing cows to roam over cultivated land. Earlier, in 1836, Nene had been one of three chiefs who had written to Busby asking him to intervene in their strained relationship with McDonnell.⁵⁸ It therefore made sense to call in Busby to mediate a violent episode between a Pākehā victim and a Māori perpetrator.

On the morning of Saturday, 19 May, following Busby’s arrival, a group of around 60 settlers gathered at the Wesleyan chapel at Mangungu to attend Kite’s trial. They were joined by a group of ‘Principal Chiefs’.⁵⁹ Holding the trial inside the Wesleyan chapel made practical sense given that it was large enough to accommodate all those who came to watch proceedings. But it also had a wider significance, given that Mangungu had been a site of interaction between Māori and Pākehā since the establishment of the mission station in 1827. None of the written accounts of the affair state when or how it was decided that Kite would be subjected to a trial; Busby merely recorded that he asked Europeans and rangatira to meet him on the earliest day on which he could be at Hokianga. Nevertheless, Busby quickly assumed the role of judge, and told the assembled settlers that he considered it their duty to take part in the proceedings as a kind of expanded jury and that they should pay the strictest attention to the evidence brought before them. He also saw to it that an unnamed but respected settler acted as counsel for Kite. This was, then, a Pākehā-dominated proceeding, in that most of the active players were drawn from their ranks. But Busby was keen for Māori to not only approve of his actions but to witness and participate in the proceedings. He asked that one of the missionaries interpret the evidence given by settlers into Māori, and vice versa, and he made it clear that he considered it ‘my duty to apply to the

Chiefs for the execution of the prisoner should two thirds of [the jury] agree to a verdict of guilty'.⁶⁰ Pākehā might be responsible for convicting Kite, but his trial needed Māori involvement in order to give the proceedings legitimacy.

Witnesses included Whiteley, the boy who had been in the canoe with Kite and Kite himself. Kite and the boy did not admit to killing Biddle, but instead claimed that although Kite had held Biddle's head under the water, Biddle had in fact walked away from the confrontation and died trying to cross the creek where his body was found.⁶¹ The 'jury' was having none of it. When time came to vote on a verdict, Busby asked all those who thought Kite was guilty to move to one side of the chapel and those who believed him to be not guilty to move to the other. All but two or three voted for a guilty verdict.⁶² Those who did not included missionaries, who probably shared Turner's opinion that the crime was one of manslaughter rather than murder.⁶³ Busby, however, claimed somewhat unconvincingly that Kite 'finally confessed that his sentence was just, and that he deserved to die'.⁶⁴ More importantly, perhaps, Busby also claimed that the assembled chiefs were satisfied with Kite's guilt.

Like the investigation into Biddle's death and the resulting trial, what happened during Kite's final 36 hours was a matter of co-operation between missionaries, settlers and rangatira. Kite was returned to Horeke and left in the custody of McDonnell, where he was attended by the missionaries John Hobbs and Nathaniel Turner. On Monday morning he was taken to Raupapakau Island by a party that included Nene, Hobbs and 'several other Europeans'.⁶⁵ According to John White, he was shot by a relative of Nene's, a rangatira named Pangari.⁶⁶

As discussed earlier, Kite was a slave belonging to Whirinaki, and was therefore not the responsibility of Nene personally or Ngāti Hao generally. Nene had no direct control over Kite; that power belonged to the Whirinaki chiefs, who had made their decision by handing Kite over to the Pākehā community. Yet, Busby and other Pākehā still felt that they could not or should not act without the involvement of leading Hokianga chiefs, including Nene. For his part, Nene felt the need to become involved in bringing the killer of a Pākehā to justice, apparently to the point of taking responsibility for executing the culprit. The decision to involve Nene and other chiefs in arresting and prosecuting Kite can, in fact, be understood not as the result of Pākehā clearly understanding tikanga Māori and making sure that it was taken into account, but as a manifestation of the relationships that held Māori and Pākehā together in Hokianga. Pākehā understood that their presence in the area and ongoing prosperity relied on rangatira, while Māori leaders sought to maintain the productive connections to traders, missionaries and the Crown that could bolster the wealth of their communities and their personal mana, and which would be threatened if attacks on individual Pākehā were allowed to go unpunished. For both sides, the trial was an important stage on which they needed to demonstrate their determination to meet each other halfway in order to maintain the benefits that interaction and trade brought.

While the tricky negotiated realities of daily life might have been obvious to the traders and missionaries on the spot, Busby faced the potentially difficult task of convincing his masters in New South Wales and London that compromising

the strictures of British jurisprudence was an acceptable course of action. He had, after all, not been authorised to act in a magisterial capacity. A week after the trial, when he returned to Waitangi, Busby wrote to the Governor of New South Wales Sir George Gipps, his immediate superior, to describe what had taken place. Gipps's initial reaction was not promising. He refused to approve of Busby's actions until he had communicated with the Colonial Office.⁶⁷ He then referred the matter to the New South Wales Crown Solicitor, who called the whole proceeding 'extraordinary' and recommended that the Governor not be seen to countenance such goings-on by reimbursing Busby for his expenses, as he had requested.⁶⁸ It seemed Busby had overstepped the mark by becoming involved in something so strange and unusual. However, Gipps's opinion had softened by the time he wrote to London. He told the Secretary of State that 'it would be most unjust to Mr Busby on that account to suppose that he had no competency, and had not in the fullest manner satisfied himself' that Kite was guilty before seeing him executed.⁶⁹ The Secretary of State, Lord Glenelg, replied almost six months later stating his 'approval of the course adopted by [Busby] for bringing to justice the murderer of a British Subject at New Zealand'.⁷⁰ Concepts of British justice could, it seemed, be negotiated in circumstances where they could not be strictly enforced.

Kite's trial and execution was unusual in Busby's career as British Resident in that it saw him overstep the mark from arbitrator to a type of presiding magistrate. But his actions also pointed the way to the future. Resident Magistrates in the 1840s, although nominally backed up by the authority of the new colonial government, found themselves dependent on Māori co-operation when it came to settling disputes between Māori and Pākehā protagonists. Settlers and officials alike knew only too well that the execution of Maketu, the first person to be hanged in New Zealand following annexation, had been dependent on his family's decision to hand him over to the colonial authorities, a decision made in order to avoid further violence in their own communities.⁷¹ This realisation reached the highest levels of imperial office, with Glenelg's successor in the 1840s, Lord Stanley, warning Governor FitzRoy that he should take a soft line when trying to apply British law to Māori communities.⁷² This was the 'false empire' that Belich described. But a lack of tight administrative control does not equate to non-existence. Instead, political and economic empire had been part of the landscape in places like Hokianga since the 1830s. Māori leaders in that decade were keen to cement a relationship with the Crown, and some of them were willing to demonstrate this by allowing Busby to help resolve disputes with Pākehā. This was an extension of the relationships they had formed with traders, which had enabled them to enjoy the material benefits of international trade. In turn, however, traders and Crown representatives both in New Zealand and abroad had learned that accessing profits from the timber industry and protecting life and limb meant accepting the need to co-operate with, and placate, Māori. In this way, Māori and Pākehā were drawn into relationships that required a high degree of accommodation, but which enabled each party to gain something of value in return. In places like Hokianga, these relationships and the need to compromise remained central to daily life even after 1840, but they were what made empire, and the all-important timber trade, work.

By expanding the definition of empire beyond a tight focus on administrative control and viewing it more in terms of global participation and daily interaction, it is possible to see New Zealand, and in particular places such as Hokianga, engaging in systems of global imperial exchange before the notionally significant date of 1840. The maritime highways that Gibbons described brought the British Empire to New Zealand long before annexation, even if at that stage its presence relied on accommodation and compromise. By looking at episodes such as the murder of Henry Biddle and the way it was dealt with, the mechanics of that accommodation, and the relationships that lay at its heart, become evident, and New Zealand's experience of imperial connections is expanded.

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NOTES

1 The quote in the title to this article is taken from Eric Ramsden, *Busby of Waitangi*, Wellington and Dunedin, 1942, p.187.

2 Today the piece of water that bisects Hokianga is referred to as a harbour. However, in the nineteenth century it was consistently referred to by Pākehā as the Hokianga River. This article therefore uses the term 'river'.

3 Nathaniel Turner, Journal 1836–1846, 21 May 1838, http://acms.sl.nsw.gov.au/_transcript/2010/D04581/a2223.pdf, accessed 5 June 2012.

4 James Belich, *Making Peoples: A History of the New Zealanders From Polynesian Settlement to the End of the Nineteenth Century*, Auckland, 1996, p.145.

5 Judith Binney, 'Tuki's Universe', in Keith Sinclair, ed., *Tasman Relations: New Zealand and Australia, 1788–1988*, Auckland, 1987, p.21. See also Vincent O'Malley, *The Meeting Place: Māori and Pākehā Encounters, 1642–1840*, Auckland, 2012.

6 Belich, esp. ch.8.

7 John Darwin, 'Imperialism and the Victorians: The Dynamics of Territorial Expansion', *English Historical Review*, 112, 447 (1997), p.614.

8 Tony Ballantyne, *Orientalism and Race: Aryanism in the British Empire*, Houndmills, Basingstoke, Hampshire; New York, 2002, p.1. See also, for example, David Lambert and Alan Lester, eds, *Colonial Lives Across the British Empire: Imperial Careering in the Long Nineteenth Century*, Cambridge, 2006, p.5.

9 Tony Ballantyne and Brian Moloughney, 'Asia in Murihiku: Towards a transnational history of a colonial culture', in Ballantyne and Moloughney, eds, *Disputed Histories: Imagining New Zealand's Pasts*, Dunedin, 2006, p.71.

10 Although the ship's initial quest proved unsuccessful, its accompanying schooner, the *Prince Regent*, became the first European vessel to cross the hazardous bar at the mouth of the river and to investigate the interior. This visit by Pākehā was predated by the trip to the area by members of the Church Missionary Society led by Samuel Marsden in 1819. The CMS did not, however, establish a mission at Hokianga.

11 C.A. Bayly, *Imperial Meridian: The British Empire and the World, 1780–1830*, London, New York, 1989, p.130; A. Frost, *The Global Reach of Empire*, Carlton, Victoria, 2003, ch.11.

12 Roger Wigglesworth, 'The New Zealand Timber and Flax Trade, 1769–1840', PhD thesis, Massey University, 1981, Appendix 14, p.369.

13 *Sydney Herald*, 15 October 1834; *Sydney Gazette*, 30 June 1835; J.M.R. Owens, 'The Wesleyan Mission to New Zealand, 1819–1840', PhD thesis, Victoria University, 1969, vol. II, p.699; Frost, p.267.

14 C.A. Bayly, *The Birth of the Modern World, 1780–1914: Global Connections and Comparisons*, Malden, 2004, p.128. See also Frost.

15 Bayly, *Imperial Meridian*, p.131.

16 Wigglesworth, pp.107–108.

17 *ibid.*, p.112.

18 *ibid.*, p.136.

19 Catherine Hall, *Civilising Subjects: Metropole and Colony in the English Imagination 1830–1867*, Oxford, 2002, p.15.

20 Frederick Cooper and Ann Laura Stoler, eds, *Tensions of Empire: Colonial Cultures in a Bourgeois World*, Berkeley, 1997.

21 J.S. Polack, *Manners and Customs of the New Zealanders*, Christchurch, 1976, pp.168–70.

22 Binney, p.23.

23 See, for example, the list of exports headed for Hokianga in *Sydney Gazette*, 13 June 1837; 12 September 1837.

24 Peter Gibbons, 'The Far Side of the Search for Identity: Reconsidering New Zealand History', *New Zealand Journal of History* (NZJH), 37, 1 (2003), p.44.

25 Judith Binney, 'Two Communities 1820–1839', in Judith Binney, Judith Bassett and Erik Olssen, *The People and the Land: Te Tangata me Te Whenua: An Illustrated History of New Zealand 1820–1920*, Wellington, 1990, p.19; C.O. Davis, *The Life and Times of Patuone, The Celebrated Ngāpuhi Chief*, Christchurch, 1995, p.20.

26 Binney, 'Two Communities', p.19.

27 Ann Parsonson, 'The Pursuit of Mana', in W.H. Oliver, ed., *The Oxford History of New*

Zealand, Wellington, 1981, pp.140–67; see also Belich, p.155.

28 Hazel Petrie, 'Bitter Recollections? Thomas Chapman and Benjamin Ashwell on Maori Flourmills and Ships in the Mid-Nineteenth Century', *NZJH*, 39, 1 (2005), p.3.

29 *ibid.*

30 See <http://www.nzhistory.net.nz/media/interactive/the-declaration-of-independence>, accessed 5 June 2012.

31 The term 'balance of interests' is taken from Claudia Orange, *The Treaty of Waitangi*, 2nd edn, Wellington, 2011, p.17.

32 David Colquhoun, "'Pakeha Maori": the early life and times of Frederick Edward Maning', MA thesis, The University of Auckland, 1984, p.30; Davis, p.29.

33 Orange, p.23.

34 Ramsden, p.7.

35 Alan Ward, *A Show of Justice: Racial "Amalgamation" in Nineteenth Century New Zealand*, Auckland, 1973, pp.24–25.

36 Belich, p.134. See also, Tony Ballantyne, 'The State, Politics and Power, 1769–1893', in Giselle Byrnes, ed., *The New Oxford History of New Zealand*, South Melbourne, 2009, p.102.

37 McDonnell to Busby, 29 December 1836, Papers Relating to James Busby, MS-Papers-0196-270, ATL.

38 Turner to Dear Fathers and Brethren, 6 January 1837, Turner, Papers, vol. 4, Letterbook 1836–1849, qMS-2065, ATL.

39 Various to Thomas McDonnell, 9 January 1837, Papers Relating to James Busby, MS-Papers-0196-270, ATL; Depositions of Dennis Cochrane, Joseph Wright, Thomas Poynton, Joseph Barr, Newton Lewyn, Francis Pitz, Papers Relating to James Busby, MS-Papers-0196-270, ATL.

40 Various to McDonnell, 9 January 1837, Papers Relating to James Busby, MS-Papers-0196-270, ATL.

41 McDonnell to Busby 2 January 1837, Papers Relating to James Busby, MS-Papers-0196-270, ATL.

42 Busby to Colonial Secretary, 15 May 1834, Despatches from British Resident 1833–1839, qMS-0344, ATL.

43 Busby to Lord Glenelg, 22 February 1839, microfilm 09-006, reel 1, The University of Auckland Library.

44 Governor Gipps cited at Ramsden, p.188.

45 Busby to Colonial Secretary, 28 May 1838, Despatches from British Resident 1833–1839, qMS-0344, ATL; Turner, Journal 1836–1846, http://acms.sl.nsw.gov.au/_transcript/2010/D04581/a2223.pdf, accessed 5 June 2012; John White, 'English Law: How it was administered in New Zealand in the year 1837', MS-Copy-Micro-0765-12, ATL; 'The Life and Adventures of John Marmon The Hokianga Pakeha Maori', *Otago Witness*, 18 March 1882, p.26.

46 Marmon claimed that the disagreement was over payment, with Kite asking for blankets in return for passage. White, however, said that the dispute was over tobacco. Busby simply referred to 'some property'.

47 The exact reason for Biddle's death is impossible to determine with certainty. Busby was confident he drowned, although Turner recorded that the two doctors who examined the body at Mangungu concluded that Biddle had died of injuries received before entering the water.

48 Turner, Journal 1836–1846, n.d. May 1838, http://acms.sl.nsw.gov.au/_transcript/2010/D04581/a2223.pdf, accessed 5 June 2012.

49 Members of Te Hikutu counted among the followers of Papahurihia, whose sect mixed elements of Judaism and traditional belief, and who was openly hostile towards the Christianity. When Te Hikutu did adopt Christianity it was as Catholic converts.

50 Angela Ballara, *Taua: 'Musket wars', 'land wars', or tikanga: Warfare in Maori society in the early nineteenth century*, Auckland, 2003, p.97.

51 The argument that Te Hikutu only handed over Kite because he was a slave can be found in Busby's letter to Governor Gipps, and has been recounted in other narratives of the affair, including those provided by Ward and, most recently, by Vincent O'Malley, who briefly discussed it in his study of English law and the runanga system. See Ward, p.26; Vincent O'Malley, 'English Law and the Māori Response: A Case Study from the Runanga System in Northland, 1861–65', *Journal of the Polynesian Society*, 116, 1 (2007), p.9.

52 Jack Lee, *Hokianga*, Auckland, 1987, pp.88–89.

53 McDonnell to Colonial Secretary, 4 December 1835, Correspondence of McDonnell and

Henry Oakes with the Colonial Secretary and Lieutenant Governor of Tasmania, claiming recompense for transporting prisoners from New Zealand to Tasmania by the 'Industry', 1835–1836, Micro-MS-0379, ATL; Jack Lee, *Hokianga*, Auckland 1987, p.80.

54 Busby to Colonial Secretary, 28 May 1838, Despatches from British Resident 1833–1839, qMS-0344, ATL.

55 *ibid.*

56 Turner, *Journal 1836–1846*, n.d. May 1838, http://acms.sl.nsw.gov.au/_transcript/2010/D04581/a2223.pdf, accessed 5 June 2012.

57 *ibid.*

58 Taonui to Busby, 21 April 1838, British Resident, Inwards Letters Index, Archway, Archives New Zealand Wellington; Busby to McDonnell, 30 December 1836, Papers Relating to James Busby, MS-Papers-0196-270, ATL. The other chiefs were Moetara and Raumati.

59 The number is given by Turner.

60 Busby to Colonial Secretary, 28 May 1838, Despatches from British Resident 1833–1839, qMS-0344, ATL.

61 *ibid.*

62 *ibid.*; White, 'English Law: How it was administered in New Zealand in the year 1837'.

63 Turner, *Journal 1836–1846*, 19 May 1838, http://acms.sl.nsw.gov.au/_transcript/2010/D04581/a2223.pdf, accessed 5 June 2012.

64 Busby to Colonial Secretary, 28 May 1838, Despatches from British Resident 1833–1839, qMS-0344, ATL.

65 White, 'English Law: How it was administered in New Zealand in the year 1837'; Turner, *Journal 1836–1846*, 21 May 1838, http://acms.sl.nsw.gov.au/_transcript/2010/D04581/a2223.pdf, accessed 5 June 2012; Busby to Colonial Secretary, 28 May 1838, Despatches from British Resident 1833–1839, qMS-0344, ATL.

66 White, 'English Law: How it was administered in New Zealand in the year 1837'. Busby merely refers to the executioner as a chief of 'inferior rank'.

67 Colonial Secretary to Busby, 27 September 1838, Letters Sent Outside the Colony, microfilm 09-006, reel 5, The University of Auckland Library.

68 Ramsden, pp.186–87.

69 Quoted at *ibid.*, p.187.

70 Colonial Secretary to Busby, 18 August 1839, Letters Sent Outside the Colony, microfilm 09-006, reel 5, The University of Auckland Library.

71 O'Malley, 'English Law and the Māori Response', p.10.

72 In 1844 Lord Stanley wrote to FitzRoy stating: 'it may be necessary to temper the strict application of the penalties of British law with much discretion and forbearance. Under the circumstances, indeed, I am afraid it may be inevitable to consider, before interfering with native customs, which are in themselves objectionable, how far the means of coercion at your disposal may render it prudent for you to take steps for that purpose'. Copy of Despatch from Lord Stanley to Governor FitzRoy, 13 August 1844, *Great Britain Parliamentary Papers*, 1843–45, p.151.