

The French Alternative to the Treaty of Waitangi

IN 1839 parallel situations were set up in France and Great Britain: each imperial power was studying ways of asserting its authority over Maori territory. In London, negotiations were afoot to send William Hobson to New Zealand to declare British sovereignty there after negotiating a cession of sovereignty from the Maori. That same year, a French whaling captain, Jean François Langlois, returned to France from New Zealand with a deed, written in French, which said that the Maori signatories had sold him Banks Peninsula. On the basis of this deed, some French businessmen and the French cabinet decided to try and race the British to the South Island and place 'Southern New Zealand' under French sovereignty. They would leave the North Island, with its large Maori population, to the British, while they, the French, would take over the almost empty South Island, along with Stewart Island and the Chathams.

Hobson had extensive discussions about his task with Colonial Office officials and the Colonial Secretary. They were lobbied both by the New Zealand Company and missionary interests. Official British ideas evolved with time, but Hobson was given a great deal of personal discretion and was not given a model treaty. The actual texts of the Treaty of Waitangi were worked out in New Zealand by Hobson, his officials, James Busby and Bay of Islands' missionaries.

In Paris, ideas evolved as well, as the project to colonize the South Island was discussed by the cabinet, by officials of various ministries but principally the Naval and Colonial Ministry and the Foreign Affairs Ministry, and by various businessmen, some of whom eventually became the directors of the Nanto-Bordelaise Company.¹ There was missionary input, but it was negligible. The French press carried the views of merchants and financiers, not of missionaries and philanthropists. At first, the French government thought of sending in a military force to take over the South Island or of sending in a naval captain to proclaim French sovereignty. The first draft of the naval captain's instructions read: 'You will ensure that possession is taken, in the name of France, and by deeds declaring that it is in the reign of His Majesty Louis-Philippe, King of the French, of all settlements formed in the South Island of New Zealand, and that the national flag be raised there.'² It would be 'a wonderful peaceful conquest' of a land that had enough space for both Maori and French. However, pragmatic considerations — that is, fear of British naval power — led the cabinet to decide that the South Island should first be bought from the Maori by French civilians and then, when effectively occupied by French settlers, sovereignty would be declared and a governor (perhaps one of the King's sons) would be sent out.

1 For a fuller treatment of the political and commercial negotiations which preceded the French attempt to annex Southern New Zealand, see Peter Tremewan, *French Akaroa*, Christchurch, 1990, chs 2-4.

2 Marshal Soult to Captain Lavaud, 17 December 1839, *Mémoires et Documents, Océanie*, vol. 13, ff 336-7, Archives du Ministère des Affaires Étrangères, Paris (AE).

Initial contact with the Maori population of the South Island would not, therefore, be through a treaty of cession negotiated with a representative of the French government. The French saw sovereignty residing at a tribal level. They called tribal chiefs 'kings'. The Maori would be asked, tribe by tribe, to sell all their land to a representative of the Nanto-Bordelaise Company, who would be none other than the man who knew them and their ways: the whaling captain, Langlois. Payments for land were seen as trifling but, to protect the Maori to a certain extent, the French government required the Nanto-Bordelaise Company to pay a certain minimum amount (40,000 francs or £1600) for the purchase of the South Island. French plans were based on an awareness of the tribal ownership of land and some knowledge of the tribal distribution of South Island Maori. Langlois was told where he would find the main concentrations of Maori and in what order he should visit them. He was told not to take Kai Tahu people with him when visiting Ngati Toa territory. After gaining the support of the leading chiefs, he was to obtain the signatures of as many people as possible.

The company realized that Langlois's 1838 deed was of only limited value because it had not been followed up immediately by occupation: 'It must be said, purchases are valueless, or can be reduced to nothing through bad faith, if they are not followed by occupation. That is the basis of the Company's system. This system collapses if the basis is destroyed. Not occupying means not purchasing, or at least it is simply paying money into a lottery in which other people select the winners.'³ It shows a good appreciation of the situation in New Zealand. The company saw its ownership of Banks Peninsula as uncertain, because over a year had passed since Langlois had made his 'purchase' and more time would elapse before the land could be occupied. Hence the need for him to renegotiate his deed.

Langlois was supplied with two model deeds by the Nanto-Bordelaise Company: one to confirm his earlier purchase of Banks Peninsula, the other to buy up the remaining tribal lands of the South Island. Langlois was a rather unsophisticated, but very determined and robust man, who did not enjoy the confidence of the other directors of the Nanto-Bordelaise Company. His poor relationship with them led to the need to write out model purchase deeds in full detail, whereas Hobson was trusted by his superiors to put their general policy into effect. It is these French purchase deeds, provided by a commercial company, not a government, which can be compared with the British Treaty of Waitangi. They were intended to be the basis for the French presence in the South Island; they were also intended to determine the role of the indigenous Maori in the future of New France.

A copy of one of these deeds has survived and can be found in a castle in southwest France not far from Bordeaux.⁴ This is the model deed that Langlois was given to acquire new territory outside of Banks Peninsula. It was more than a deed of purchase: the Maori were to give up all rights to their land, including sovereignty. The deed was to be signed in the presence of officers from a French warship. Representative chiefs of each tribe were to sell all their tribal land to Langlois, in his capacity as representative of the Nanto-Bordelaise Company, retaining only such land as they needed to cultivate for their personal needs. One or two hectares per person (regardless, it would appear, of sex, age and rank) were envisaged. This land would be chosen after discussion with the company so as to avoid harming the company's interests.

Like Article One of the Treaty of Waitangi, the French deed claimed to transfer

3 Nanto-Bordelaise Co. note, 7 December 1839, quoted in Commission de la Nouvelle-Zélande, Rapport, 9 February 1842, Mémoires et Documents, Océanie, vol. 15, ff 89-120, AE.

4 Modèle d'acte de vente à passer sur les divers points autres que la presqu'île de Banks, bundle 369, folder D8, Archives du château de La Grave, Bonzac. A transcription and translation may be found in the Waitangi Tribunal Papers: Wai-27, Doc. T3, May 1989.

sovereignty from the Maori, even if the French acquisition of sovereignty was associated with monetary payment rather than a free recognition of the advantages of European rule. The chiefs and members of the tribe 'declare that they renounce all rights and claims of sovereignty, authority and ownership whatsoever over the land, seas, rivers and waters situated within the defined boundaries, declaring on the contrary that they recognize French sovereignty and place themselves under the protection of the laws governing the colony, laws which they promise to obey and carry out faithfully.' The standing in international law of a document ceding sovereignty to a private individual would certainly be dubious, to say the least, for Langlois was not an officer of the French government with authority to acquire territory. However, Langlois's private agreement with the tribes was clearly paving the way for a subsequent official annexation. The tribe would receive a series of payments, the last of which would be dependent on the tribe's carrying out all its commitments under the agreement. The document was to be available in Maori, and the tribal chief was to receive a copy.

Both French and British documents assumed Maori sovereignty and land ownership. The French, however, were intending to negotiate a separate land purchase as a first, decisive step towards cession of sovereignty. The British had the Treaty of Waitangi signed first, and then proceeded to buy up large tracts of the South Island. The same result would presumably have been achieved in the end, whether cession of sovereignty preceded or followed the sale of land. However, the way the French intended to go about things meant that the position of non-signing tribes was clearer. Tribes which had not sold their land to the French would not have ceded their sovereignty.

Like Article Three of the Treaty of Waitangi, the French model deed placed the Maori under the protection of European law, but the French document was singularly lacking in references to the rights and privileges of French subjects, insisting rather on their duties to obey the law, to help defend the French settlements, and to provide labour. The French undertook to give the local Maori any work that there might be. It was a document more concerned with the welfare of the French colonizers than with the well-being of the colonized people. All the same, the continuing authority of the chiefs was recognized, even though it was French law and not Maori custom that the chiefs were to oversee within their tribe. In the Treaty of Waitangi, it was only the Maori version that recognized rangatiratanga, traditional rights of chiefs.

However, the main difference between the two documents lies in their treatment of land ownership. Article Two of the Treaty of Waitangi officially recognized the continuation of traditional Maori land rights. The French model deed bought out those land rights, and the Maori were to be confined to small reserves in a new French-imposed distribution of land. The position of the reserves would not depend on where the Maori had traditionally lived so much as on where they would best serve French interests. From their reserves the Maori would supply a labour force for the French settlements. The British treaty guaranteed to the Maori 'the full, exclusive, and undisturbed possession of their Lands and Estates, Forests, Fisheries, and other properties which they may collectively or individually possess, so long as it is their wish and desire to retain the same in their possession'. The French deed, on the other hand, had the Maori specifically renounce those same rights of ownership over 'the land, seas, rivers and waters'. The French were concerned with the assimilation of the Maori into a new order.

Claudia Orange has concluded that, without the land guarantee, the Treaty of Waitangi would almost certainly have been rejected by the Maori.⁵ This conclusion was arguably borne out by the firm refusal of the Maori of Banks Peninsula to leave their traditional land and live alongside the French, but the matter was not really tested as the

5 Claudia Orange, *The Treaty of Waitangi*, Wellington, 1987, p.38.

French project to annex the South Island was aborted very early in the piece. It is conceivable that the French might otherwise have succeeded with their land-buying plans because of the very sparse Maori population in the South Island.

The other major difference between the French and British documents as far as land ownership was concerned was that the sole purchaser of land was, in the French case, a private company and, in the British case, the Crown. However, this distinction becomes a little less sharp when it is realized that the French company was to hand over a quarter of the land it acquired to the French government, and that the British Crown would waive its pre-emption rights in favour of colonizing companies, including the Nanto-Bordelaise Company. Indeed, in 1848 Henry Tacy Kemp mistakenly purchased a large portion of the South Island in the name of the New Zealand Company when he was supposedly acting for the Crown. This was seen by Grey as an 'informality' which did not invalidate the deed.⁶

The presence of the French navy and French missionaries was seen as strengthening the French hand when they negotiated land purchases. The naval captain, C.F. Lavaud, who had been sent out to represent the French government, was to provide protection for the French settlements in New Zealand, supporting the Nanto-Bordelaise Company in its acquisition of land and in keeping the land it acquired. Lavaud was to show the Maori, through the presence of his warship and the witnessing of land purchases, that the French settlers were under French government protection and that agreements could therefore not be violated with impunity.⁷ He was to protect French people and other Europeans who settled in the southern island, along with the Maori who worked in the settlements or for the company, treating them as French subjects. Their respect and confidence were to be gained by a judicious combination of justice and benevolence. French politicians also encouraged the activities of French Catholic missionaries in the belief that this would serve French political interests: the enlightening of the savage hordes would give them notions of order, morality and sociability. The acquisition of these values was seen to be in France's national interest, for it allowed the Maori to become part of the French world. The missionaries were giving their converts a love and respect for things French: 'if they become Catholic, they will become French.'⁸

But what happened to all these intentions when the French actually faced the tangata whenua? When the French arrived in New Zealand, their powers were limited by the prior arrival of the British and by the consequent decision not to bring out further shiploads of settlers. This left them with a French warship on permanent station at Akaroa, a few dozen whaling ships around the peninsula bays in the winter season, and about sixty colonists. They faced some 300 Banks Peninsula and ex-Kaiapoi Maori who had ready access to muskets, and received occasional visits from parties of southern Kai Tahu. This made for a fairly even balance of power. Each side needed the other. The Maori needed to keep Europeans happy as protection against tribal enemies and as a source of European goods. The French needed to keep the Maori happy so that they could work and live in security. Each side lived relatively independently of the other. The French were no threat to the abundant resources on which the Maori relied for their food and general livelihood. Indeed, the French enhanced Maori economic power by providing them with a coastal

6 Governor Grey to Earl Grey, 25 August 1848, Great Britain Parliamentary Papers, 1849, (1120), pp.40-1.

7 Duke Decazes to Lavaud, 17 and 28 January 1840, GG² 50/3e, Service Historique de la Marine, Vincennes.

8 Father Colin to Bishop Pompallier, 9 November 1839, HD3, ff 13-15, Marist Archives, Wellington.

vessel, tools, powder, muskets, a European market for the sale of their products (mainly potatoes) and some employment.

As far as land was concerned, the balance of forces also meant that the Maori refused to shift from their traditional villages to be simply a labour-force for the European settlers. It meant, too, that the French kept making payments to the Maori, over and above the amounts stipulated in early purchase documents. Oral arrangements were clearly different from the wording of deeds. These continued payments meant that land was being seen in a Maori perspective: oral arrangements prevailed over deeds. The French were paying regular amounts as a sort of rent for land actually used. Unoccupied land was seen as promised to the French, but not sold to them. Its occupation would have required further payment. This grey area (land promised but not sold) led to complications when the British later had great difficulty working out precisely which land had been alienated by the Banks Peninsula Maori. The repeated payments by the French led the Maori to prefer the French to the British when the British made one-off payments for alienation in perpetuity and when the British referred to the letter of written deeds rather than to oral agreements. But it also led to recrimination against the French when the warships and the French company agent left Banks Peninsula in the mid-1840s and the promised payments ceased.

The relationship between French and Maori on Banks Peninsula in the 1840s was similar to British-Maori relationships in the North Island at that time. But when the small number of Banks Peninsula and Canterbury Maori was swamped by the arrival of Canterbury Association settlers in the 1850s, Maori interests were completely lost from view. Association officials ignored them, there was no one among the British settlers who could speak Maori, and the marginalization of the Maori caused all sorts of misunderstandings and injustices. One of those misunderstandings was that the Banks Peninsula Maori had already sold the whole peninsula to the French.

Would the Banks Peninsula and South Island Maori have been better off if the French rather than the British had succeeded in imposing colonial rule on the South Island? When the British Crown tried, in its turn, to buy Banks Peninsula, it found that many of the Maori inhabitants preferred the way the French acted to the way the British did. 'Engari te iwi pai ko ngā Wiwi. Kāore ā rātou kino', wrote Hoani Tikao to Governor Grey in 1850. 'The French on the other hand are a good nation. They do no evil.'⁹ This difference can, however, be imputed to the relatively small number of French people who settled on the peninsula. They had to be careful to remain on good terms with the various Maori hapu they came into contact with. If large-scale French colonization of the South Island had proceeded, the Maori people and Maori interests could well have been swamped, just as they were by the arrival of the Canterbury Association settlers in 1850. The relatively small numbers of South Island Maori might have allowed the French to buy up their land more easily than the British were able to do in the North Island. The assimilationist policy of the French would have brought the Maori into a European economic system as unskilled labour, initially, although plans were underway for their education and the first ship of French settlers carried on board several thousand alphabet books donated by the Ministry of Education. This was already a major advance on the hollow promises of schools and hospitals made by the British officials who subsequently bought their land.

The Treaty of Waitangi was signed by Iwikau and Hoani Tikao at Akaroa on 30 May 1840. Over the next few weeks, other South Island chiefs signed at Otakou, Ruapuke and Cloudy Bay. The French arrived in the South Island in August 1840. They were not discouraged by Hobson's declaration of British sovereignty over the South Island on the

9 Tekao to Governor Grey, 15 October 1850, GNZ MA 618, Auckland Public Library.

grounds of discovery or by any prior settlement or land purchases by British citizens. It was South Island Maori signatures on the Treaty of Waitangi that was decisive in making the French give up thoughts of annexing the South Island for themselves.¹⁰ By sending the treaty so promptly to the South Island, Hobson ensured that the French did not have the opportunity to impose their conditions of cession upon the South Island Maori.

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¹⁰ Tremewan, pp.90-1, 118-20.

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