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Ngāti Mutunga o Wharekauri

Special Factors (3) Relevant to Ngāti Mutunga o Wharekauri Settlement Redress

The Recognition of Moriori by the Crown as an Iwi with an Identical Rohe to Ngāti Mutunga o Wharekauri

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The Ngāti Mutunga o Wharekauri Iwi Trust represents the collective interests of Ngāti Mutunga o Wharekauri, and is a mandated iwi authority for the purposes of the Resource Management Act 1991 and the Māori Fisheries Act 2004. Although the Ngāti Mutunga o Wharekauri Iwi Trust speaks for Ngāti Mutunga o Wharekauri on a number of matters, the mana and decision-making powers remain with Ngāti Mutunga o Wharekauri, according to Ngāti Mutunga o Wharekauri tikanga/kawa.

Our Purpose

- To be the repository of the collective Tino Rangatiratanga of Ngāti Mutunga o Wharekauri
- To represent the collective interest of Ngāti Mutunga o Wharekauri and be the legal representative of Ngāti Mutunga o Wharekauri in relation to the collective interest
- To make and pursue the settlement of claims on behalf and for the benefit of Ngāti Mutunga o Wharekauri under the provisions of the Treaty of Waitangi Act 1975
- To be the mandated iwi organisation for Ngāti Mutunga o Wharekauri

Benefit Provision

To advance the social and cultural development of Ngāti Mutunga o Wharekauri beneficiaries and distribute benefits directly or indirectly to beneficiaries, irrespective of where they may reside, when and where the Trust may decide.

Tikanga

To promote and preserve, protect and maintain the identity, mana, Tino Rangatiratanga, culture, history, traditions, arts and crafts, tikanga, reo, and taonga tuku iho of Ngāti Mutunga o Wharekauri.

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Introduction

The second part of Special Factors Paper 2 catalogued the relationship between the Crown and Ngāti Mutunga o Wharekauri through the 20th century. The prevailing attitude of the Crown over this period was that the population of Wharekauri was an assimilated community of 'Chatham Islanders'. Accordingly, there was no requirement to relate to Ngāti Mutunga o Wharekauri as an iwi having distinct and particular rights and interests under the Treaty of Waitangi that required active protection. In 1961, total expenditure of the Department of Māori Affairs relating to Wharekauri was £42 and government reviews of Chatham Islands administration in the 1980s focussed consultations on the County Council as the body representative of all residents including Ngāti Mutunga o Wharekauri.

The belated and confused 'rediscovery' and 'recognition' by the Crown in the late 1980s that there were Māori on Wharekauri created a schism within the Chatham Island community with major adverse effects that continue to the present day. The main fracture is between those who chose to align themselves with Moriori as opposed to those who align themselves with Ngāti Mutunga o Wharekauri. All Moriori families with a continuous presence on the Island are also Ngāti Mutunga o Wharekauri and many Ngāti Mutunga o Wharekauri families with a similar long-standing association with the island share Moriori whakapapa. Naturally, this is less true for Ngāti Mutunga o Wharekauri or Moriori families residing in New Zealand.

The rediscovery and recognition of Māori on Wharekauri was closely associated with the publication of *Moriori - a People Rediscovered* by Michael King in 1989. This book had a significant impact on both Crown and public perceptions (sympathetic to Moriori and antipathetic to Ngāti Mutunga o Wharekauri) particularly in the decade following its publication. In this somewhat febrile environment, a number of important decisions were made and implemented by the Crown, the Treaty of Waitangi Fisheries Commission and the Waitangi Tribunal that have had very negative impacts on the Treaty relationship between the Crown and Ngāti Mutunga o Wharekauri which continue to the present day.

The sympathy shown by the Crown to Moriori manifests itself as bias or favouritism in the eyes of Ngāti Mutunga o Wharekauri. The Crown, is entitled

to operate policies and programmes that do not treat people fairly and arguably, this is not uncommon. What the Crown is not entitled to do is to abandon the framework and principles of the Treaty of Waitangi and to neglect or even repudiate its obligations to Ngāti Mutunga o Wharekauri under the Treaty. The Crown has done this throughout the 1990s and the 21st century and these actions or lack of action constitute an important special factor in any negotiated settlement with Ngāti Mutunga o Wharekauri.

At the core of this special factor is the relative status of Ngāti Mutunga o Wharekauri and Moriori under the Treaty of Waitangi. The 'rediscovery' of Moriori as a 'people' does not simultaneously establish or define the nature and extent of Article II rights of Moriori automatically. These cannot simply be assumed. Neither does the 'recognition' of Moriori by the Crown lead to identical obligations toward Moriori and Ngāti Mutunga o Wharekauri. Those obligations commence in 1842 and (in terms of Article II) they relate to the protection of the lands, forests, fisheries and other taonga of the people who controlled or owned those things at that time. In the case of Wharekauri, those lands were controlled or owned by Ngāti Mutunga o Wharekauri.

To Ngāti Mutunga o Wharekauri, a crucial outcome of any settlement would be the establishment of a relationship between the Crown and iwi that is readily and consistently reconcilable with the Treaty of Waitangi. Ngāti Mutunga o Wharekauri have waited 175 years for this relationship to deliver the promises contained in the Treaty of Waitangi. That outcome cannot be achieved if a parallel and desired settlement with Moriori undermines some of the very Ngāti Mutunga o Wharekauri Treaty rights that Treaty settlements are supposed to affirm. Those rights could be undermined by the application of principles that do not derive from the Treaty of Waitangi or by the use of inaccurate historical information.

For reasons that the Crown has never explained in terms comprehensible to Ngāti Mutunga o Wharekauri, the Crown now recognises the existence of two iwi on Wharekauri with identical rohe and essentially equal status under the Treaty. This is a non sequitur and the perpetuation of this contradiction is very damaging to Ngāti Mutunga o Wharekauri as well as creating a precedent capable of undermining all 'full and final' Treaty Settlements. There are special circumstances on Wharekauri but the existence of a different set of Treaty principles on Wharekauri compared to anywhere else in New Zealand is not one of them. Yet, this has been the situation that has gradually developed. This Special Factors paper describes the various separate strands that have produced this flawed outcome.

The process followed by the Crown to generate this outcome has been a gradual one. It is not even that easy to precisely identify the milestones in this process or the Treaty of Waitangi rationale for certain Crown actions or attitudes that have emerged along the way. There is no doubt that the Fisheries Settlement (1986 to 2004) gave recognition to Moriori. However, the parameters of that recognition are less well known.

The Māori Fisheries Settlement

The introduction to the Quota Management System (QMS) of over 29 major commercial fish species of New Zealand in 1986 galvanised a number of factors

that would bring Māori identity and iwi affiliation back to the fore on Wharekauri. Māori immediately sought to prevent the expansion of the QMS and that injunction was granted by the High Court on 2 November 1987. Negotiations between the Crown and Māori parties commenced to seek agreement over how Māori fisheries rights should be recognised. No substantial agreement was achieved but an interim arrangement pending settlement was introduced by legislation (the Maori Fisheries Act 1989). Under this arrangement the Government undertook to buy back 10% of all Individual Transferable Quota (ITQ) that it had allocated without any consideration (based on catch history) in 1986. The buyback took four years.

Māori, nationally were positioning themselves to secure what they considered to be their appropriate share of the interim fisheries settlement. Wharekauri Māori were no exception. Te Runanga o Wharekauri Rekohu Incorporated Society (Te Runanga) was incorporated in 1988 as the entity to receive interim use of fisheries benefits in the form of leased quota from the Treaty of Waitangi Fisheries Commission that had been established under the Māori Fisheries Act 1989. As the name suggests, Te Runanga claimed to represent all Māori on Wharekauri whether they chose to identify themselves primarily as Moriori or Ngāti Mutunga o Wharekauri. Some Moriori did join the Runanga and the initial Chairman was Moriori but full rights in this organisation were only available to those with Ngāti Mutunga o Wharekauri whakapapa (which, of course many Moriori had).

The inclusive nature of the Runanga in terms of its possible functions was not matched by its governance structure as borne out by an examination of its constitutional provisions relating to membership: "*The Runanga shall consist of those descendants of tangata whenua, whanau, hapu or iwi of the rohe described as Wharekauri Rekohu and its surrounding islands, shoals, reefs and seabeds, lakebeds, waterways contained within: who providing whakapapa to tangata whenua list (appended)*". That list contains a mere 52 names – all Ngāti Mutunga o Wharekauri people. Moriori without such whakapapa links could be beneficiaries of the Runanga, but not vote. Many Ngāti Mutunga o Wharekauri people were similarly denied voting rights.[1]

It is not surprising that people excluded from full participation in this ostensibly umbrella organisation would move to establish organisational structures in which they could be full participants. This is what happened, eventually culminating in the successive establishment of three rival Ngāti Mutunga o Wharekauri entities and three rival Moriori entities. Moriori formed Tchakat Henu Association of Rekohu Incorporated in 1988 and previous Moriori support for the Runanga evaporated. A rival organisation, Te Iwi Moriori Trust Board was formed in 1992. The third Moriori organisation was Hokotehi Iwi Trust.

On the Ngāti Mutunga o Wharekauri side, a rival organisation to the Runanga was established in 1994 (the Ngāti Mutunga o Wharekauri Incorporated Society) and a second rival followed in 1999 (the Ngāti Mutunga o Wharekauri Trust) which is a separate organisation to, and predecessor of, the present Trust with the same name that was established in 2004.

[1] The present trust (Ngāti Mutunga o Wharekauri Iwi Trust) have added a further 160 names to its tupuna list also drawn from evidence given to the Native Land Court hearing on 16 June 1870. However, the combination of these two lists compiled in 1870 does not ensure that all tupuna who voyaged to Wharekauri in 1835 are identified.

The net result of this organisational competition was that the Crown went from a position of not engaging with Ngāti Mutunga o Wharekauri on the basis that they did not exist (or were simply represented by the County Council along with everyone else) to not engaging effectively because there were 'too many' entities representing Ngāti Mutunga o Wharekauri. This representative mandate competition provides two opportunities to Crown entities intent on minimising Treaty engagement:

i. Engaging with nobody until a single representative body emerges;
ii. Engaging with the rival entity that is most congenial.

Taking advantage of either of these opportunities is inconsistent with the Treaty of Waitangi.

The fisheries settlement process itself did bolster Moriori recognition by the Crown. The Deed of Settlement (23 September 1992) between Māori and the Crown contained the following definition: *1.1.8 "Māori" is deemed to include the Moriori people of New Zealand*. As the Deed is recognised as providing an authoritative source of interpretation of the legislation that implemented it, the term 'Māori' in the Treaty of Waitangi Fisheries Act 1992 can be assumed to have the meaning above. Moriori were therefore the only subgroup of Māori to have explicit mention in the Fisheries Settlement.

The Minister of Māori Affairs was responsible for the appointment of all Commissioners on the Treaty of Waitangi Fisheries Commission. Two Chatham Island Commissioners were appointed under the Treaty of Waitangi Fisheries Claims Settlement Act 1992: Evelyn Tuuta (Ngāti Mutunga o Wharekauri) and Maui Solomon (Moriori). Commissioners had the general fiduciary responsibilities of directors but the composition of the Commission was carefully selected to give 'representative' coverage of iwi and regions. It was therefore something of a coup to have a Moriori 'representative' on this very influential national Māori organisation.

Also, because of the explicit mention in the Deed, Moriori were exempted from the process later developed by the Commission that required mutual recognition of 'iwi status' for the other 56 groups that were to be recognised as the beneficiaries of quota and asset allocation by the Treaty of Waitangi Fisheries Commission. This left Moriori status under the Fisheries Settlement as follows. Moriori were Māori and had Treaty rights. Moriori were given a status equivalent to iwi in the Settlement but obtained this status by declaration rather than by the recognition of 'peers'.

The assumed iwi status of Moriori may have been questioned if the allocation formula eventually adopted had been based upon the principle of 'mana whenua mana moana' as was advocated by the Treaty Tribes Coalition. Essentially, the Coalition's position was that Māori groups that had mana or customary ownership over the land also had mana over adjacent coastal waters and fisheries. It implied that a land-based rohe had an associated marine rohe. The insurmountable difficulties in agreeing such notional marine boundaries meant that this approach was laid aside in favour of simple agreements over quota shares between representatives of beneficiary groups (iwi). As a result, Moriori did not have to demonstrate mana whenua in order to receive Fisheries Settlement Assets following the passage of the Māori Fisheries Act 2004. The

corollary of this is that the Fisheries Settlement cannot be used to indicate that Moriori have mana whenua.

The Fisheries Settlement process was a success for Moriori in that any ambiguities or uncertainties in process or status were moot once the Settlement was enacted. Ngāti Mutunga o Wharekauri had less cause for celebration. Extraordinarily, the Hansard debate over the original Māori Fisheries Bill in 1989 contained this exchange:

The Bill should not have an impact on the Chatham Islands fisheries because it is a matter of law whether the Treaty of Waitangi should apply to the Chatham Islands. I am not saying that it does or does not; it is not established one way or the other. (Interruption) For goodness sake the Minister should shut up and let me have a run. It is not established one way or the other. (Interruption) The Taranaki people are in total conflict. (Interruption) If the Minister wants a go, I will give it to him chapter and verse. Taranaki, in flagrant breach of the limited International law at the time, hijacked a British flag vessel and conquered the Chatham Islands. It cannot be deemed to have acquired any rights as a result of that illegality. If the Minister is a descendant of Taranaki he inherited the criminal hijacking, so he should shut up. A National Government would not reward international criminals; it would not leave it to the law to decide. The Māori Fisheries Commission should not be given any quota in relation to the Chatham Islands for one reason only: that a proper and legal solution should not be compromised. That is soundly based, and is the only principled stand"[2]

The speaker was Doug Kidd (Fisheries Minister 1990 to 1995) and the Minister making the interruptions was Hon. Koro Wetere. 'Taranaki', of course, refers to Ngāti Mutunga who were described in Parliament as international criminals without Treaty rights who should be excluded from the Fisheries Settlement. This travesty of history and associated vilification of Ngāti Mutunga can be attributed in some measure to the work of one of New Zealand's most revered historians published that same year.

Moriori - a People Rediscovered[3] by Michael King

The publication of this book in 1989 is generally recognised as an important milestone in both the re-affirmation of Moriori identity, but more importantly, the establishment of Moriori as a distinct group of Māori recognised by the Crown as having the essential status and rights of an iwi under the Treaty of Waitangi. One thing does not automatically lead to the other. For instance, the fact that people may identify themselves as Waitaha or Kati Mamoe has not led to the Crown recognising those groups as iwi having rohe overlaying the Kai Tahu rohe or the acknowledgement of separate or even exclusive rights in the Kai Tahu rohe.

The publication of Michael King's *The Penguin History of New Zealand* in 2003 followed shortly after by his untimely death secured his reputation as 'the people's historian'. However, King's historical writing has inconsistent standards of rigour and fairness. Arguably *Moriori - a People Rediscovered* is his most polemical work. This is not surprising as he was commissioned by Moriori to write it and to communicate a Moriori perspective: a perspective intended to

[2] Hansard 14525. 12 December 1989
[3] King, Michael. *Moriori - a People Rediscovered*. 1989, Penguin Books (NZ) Ltd (Viking). 226 pages.

counter their alleged vilification. The unavoidable consequence of this approach is that it is not a balanced account of Moriori/Ngāti Mutunga o Wharekauri interaction. Ironically, the main outcome of this attempt to counter Moriori vilification has been to promote denigration of Ngāti Mutunga o Wharekauri, including vilification of the type recorded by Hansard above.

Moriori - a People Rediscovered is a book that ultimately relies upon a narrow list of primary sources for its main 19th century narrative. Foremost amongst these is Hirawanu Tapu, (1824 to 1900?) who was the primary source for Alexander Shand in compiling his writings on Moriori published in the Polynesian Society Journal[4]. In turn, these sources were used heavily by King who completed this incestuous circle by writing the biographies of Hirawanu Tapu in the *Dictionary of New Zealand Biography Volume 1* and *Te Ara Encyclopedia of New Zealand*. Another important contemporary source of information about Moriori was William Baucke. Baucke lived closely with Moriori and was more fluent in the Moriori dialect than Tapu, but his occasionally unflattering observations of Moriori were used by King as evidence of a European tendency to articulate negative judgements of native peoples without a deep understanding of them[5].

Baucke may have been burdened by certain cultural prejudices but this does not by itself make him an unreliable witness anymore than the mere fact that someone shares a culture would make them a reliable one. He was critical of both Tapu and Shand. Tapu's primary language was Māori and Baucke noted that Tapu was not a fluent Moriori speaker, asked informants leading questions, made suggestions to fill in gaps and used Māori parallels. In other words, it is not easy to determine what was recorded by Tapu and what was created by Tapu. Baucke was critical of Shand's credulous recording of everything said by Tapu as authentic. Although widely respected by both Ngāti Mutunga o Wharekauri and Moriori, Tapu was not an academic ethnographer or historian but a Moriori spokesperson seeking to secure the maximum land from the Native Land Court and to also achieve maximum recognition for Moriori from the Governor.

In this role of spokesperson, Tapu was not above the strategic use of information. There is a noticeable difference between his statements in an open public forum such as the Land Court and his statements in correspondence that was unlikely to be subject to Ngāti Mutunga o Wharekauri scrutiny. In the latter, he develops a theme that Moriori were never conquered by Ngāti Mutunga o Wharekauri and therefore retain mana whenua. His reasoning was that Moriori had not been defeated in a fair contest, as they had not engaged in a contest. In his letter to Governor Grey, Tapu equates Moriori to sheep and Ngāti Mutunga o Wharekauri to a wild dog and he also requests that the Governor send a ship

[4] King appends a reprint of Shand's "*the Moriori People of the Chatham Islands*", Memoir of the Polynesian Society, Volume II, Wellington 1911. Pp. 100-119. Alexander Shand (son of the original Resident Magistrate on Wharekauri, Archibald Shand) had some difficulty getting his work published by the Society. It is essentially a poorly structured and unreferenced collection of stories for which Tapu was his main (if not only) source. Although Shand was an assiduous collector of this material, the poor quality of the whakapapa support he gave to the 1905 Mackay Commission (See Special Factors Paper 2) indicates that his output was not necessarily methodical or accurate.

[5] It is characteristic of King to praise sources he wishes to quote selectively from while demeaning those who made contrary observations. For example, on page 94 of his book, King describes Archibald Shand (whom he quotes liberally) as 'fastidious'. If by that King meant 'meticulous' and painstaking then all of the evidence is against him. Shand's accounts were so disorganised and shambolic they were subject to investigation by William Seed. If he meant to suggest that Shand was rather priggish and oversensitive by nature, that would be more accurate but the use of such precise alternative words would not necessarily boost Shand's credibility.

to remove all of the Ngāti Mutunga o Wharekauri so that Moriori could be restored rights to their land.

King apparently accepts the position that conquest and subjugation are not simple matters of historical fact and that because Moriori tikanga allegedly precludes the concept of conquest (because of their pacifism) they could never suffer conquest. Ngāti Mutunga o Wharekauri occupy a different world in which reality is not determined by what we happen to know about or agree with. For example, the annexation of Wharekauri by the Crown in 1842 happened. Similarly, the position of the 1870 Native Land Court on customary title was clear and based upon who controlled or possessed land at the time the Treaty of Waitangi came into effect as a matter of fact.

The Court applied the '1840 rule' and accepted that customary title to land could be achieved through the process of conquest – even conquest that had occurred during the musket wars in the 19th century. Tapu progressively developed three themes to combat these obstacles with a view to supporting Moriori claims to mana whenua. As mentioned, he asserted that Moriori had not been conquered, that Māori had abandoned Wharekauri and (trying to navigate a tricky line with the denial of conquest) accentuated the harsh consequences of Ngāti Mutunga o Wharekauri subjugation. The conquest and subjugation are matters of fact that support Ngāti Mutunga mana whenua. The abandonment of Wharekauri by Ngāti Mutunga is a myth. There was no 'final evacuation' of Ngāti Mutunga o Wharekauri as suggested by the Waitangi Tribunal.[6]

Tapu used ancestral associations to advance a claim over Pitt Island to the Native Land Court, As the Tribunal records he abandoned this approach in favour of a direct appeal to Wiremu Wharepa through the Court. "*The claim I now make to this island is not that I wish to claim the whole but that I may receive a small portion for us to use. The statements I have made with respect to this Island are intended for Wiremu Wharepa and his father who are the owners of this Island. They may consider me and give me a small portion of it. Wiremu Wharepa and his cousins are the owners to this land. This is all I have to say*".[7] The Tribunal states that this plea was dismissed. What actually happened was that, with the support of Ngāti Mutunga o Wharekauri, two areas of Pitt Island were designated for Moriori Reserves. These Reserves were never established because no Moriori person was able to establish an ongoing association with those places. In later years the reserved land areas were incorporated into adjoining titles.

The Tribunal states that the award of 3% of the land to Moriori was unfair and the award 'should have been' more than 50%. The process above makes clear that the awards to Moriori were made at the behest of Ngāti Mutunga o Wharekauri. The fact that Moriori, Michael King and the Waitangi Tribunal may dislike this outcome is not reason to obscure the process. In 1870, 4,100 acres of Wharekauri were set aside as Moriori Reserves at the behest of Ngāti Mutunga o Wharekauri customary land owners. Given that the Moriori population at the time was 52, this was approximately 80 acres for every Moriori man, woman and child. Furthermore, the land set aside as Moriori reserves was generally where they were living at the time i.e. it was better quality land. This gesture is

[6] WAI 64. Page 105
[7] Chatham Islands Minute Book, 25 June 1870 (doc C3, vol 8.2, page 41) See also WAI 64 page 127.

difficult to reconcile with the Tribunal/King narrative of unrelenting hostility to Moriori and accordingly receives little attention by them.

For a writer, supposedly knowledgeable of Māoritanga, King's characterisation of Ngāti Mutunga culture, values and motivation is crude and inaccurate. Speaking of Ngāti Mutunga he states "*For these Māori at this time, displaced from their own ancestral home and insecure in their previous one, mana was to be derived solely from fighting, and even more so from successful conquest*."[8] This is nonsense expressed as fact. It is true that survival is a precondition for the exercise of mana but Ngāti Mutunga has never considered that mana was derived solely from fighting. A similar example of King presenting an unflattering opinion about Ngāti Mutunga as fact is "*At first they had fought to defend, then to survive in hostile territories, and then to secure footholds in new ones. By the 1830s they sought to fight because combat among their warriors had become habitual; and as an antidote to their sense of dislocation.*" The suggestion by King that Ngāti Mutunga sought opportunities to fight because they were simply habituated to violence and killing is both ahistorical and offensive. Sadly, it has also become 'common knowledge'.

King's analysis of Ngāti Mutunga motivation is contradicted by the available evidence which suggests strongly that the migration of Ngāti Mutunga was another chapter in their attempts to secure their safety and survival. It is true that Ngāti Mutunga were prepared to fight and kill (if necessary) to secure that survival but there is no evidence to support King's view that and they took these extreme measures simply out of habit. These two fabrications by King portray Ngāti Mutunga as brutish by choice and irrational by nature.

A consideration of the choices available to Ngāti Mutunga in the 1830s presents nothing but awful alternatives. Those who elected to remain in Taranaki, perhaps strengthening ties with Te Atiawa relatives, may well have found themselves sheltering in either Pohokura or Pukerangiora Pa in 1831-32 when they were overrun by Waikato. At Pukerangiora "*in and around the pa somewhere between a thousand and one thousand five hundred people are believed to have been killed or captured. As usual there now occurred the ritualised killing of prisoners for cannibal feasting and revenge. But on this occasion the killing was to become infamous*[9]*. This was not only because of the very large numbers involved, but more because of Te Wherowhero's personal role in the killing process using his mere "Whakarewa". Taranaki say that he killed until he complained that his arm was too tired, by which time he had slain over 150 people.*"[10] Taranaki was subjected to repeated raids by Waikato in the period 1826 to 1834 that left it ravaged and largely depopulated.

Alternatively, Ngāti Mutunga might have chanced their arm by joining Te Puoho o te Rangi of Ngāti Tama in his daring raid deep into the South Island with the objective of seizing control of territory there. Eventually, Te Puoho o te Rangi and his companions were killed, captured, eaten and enslaved by Ngāi Tahu in 1836. "*All but one of the members of the taua were to meet a grim fate. A few attempted to escape on the way to Ruapuke, and with one exception they were captured and killed. The surviving women were taken as wives by Ngai Tahu,*

[8] King, Michael, *Moriori - a People Rediscovered*. Page 76.
[9] In fact, it is partly a testament to King's book that the events at Pukerangiora are little known compared with far less bloody conquest of the Chatham Islands less than four years later.
[10] Crosby, R. O., *The Musket Wars*, Reed Publisher,1999, 400 pages. Page 245

while the men lived as slaves for some years, many being killed as the years progressed."[11]

A third option was for Ngāti Mutunga to stay in Wellington. An important reason for the decision of Ngāti Mutunga to migrate to Wharekauri was the collapse of their relationship with Te Rauparaha following a series of large battles in Horowhenua in 1834. Te Rauparaha had granted control of the northern Kapiti coast to Ngāti Raukawa who had migrated south from the Cambridge area. The Kapiti coast was also an area settled by his Taranaki whanaunga including Ngāti Mutunga and in 1834 the numbers of refugees from Taranaki swelled following the devastating attacks of Waikato including the infamous sacking of Pukerangiora Pa. This influx caused friction and eventually fighting between Ngāti Raukawa (supported by Te Rauparaha) on one side and an alliance of Taranaki iwi including Ngāti Mutunga on the other. Ngāti Toa were divided in their sympathies,, some supportive of each side. Initially things went well for the Taranaki Alliance until Te Rauparaha appealed for (and received) assistance in the form of large taua from Waikato and Ngāti Tuwharetoa. This turned the tide in a series of large battles that culminated in a two-day battle at Haowhenua in which Te Atiawa were defeated.

"*After Haowhenua, Ngāti Raukawa, Te Atiawa and their respective allies pulled back to their homes leaving an uneasy peace to fall over the Te Horo area. Ngāti Mutunga under Pomare were left lamenting the loss of Pomare's brother Te Wakatiwai, who had been killed at Haowhenua. Ngāti Toa then added to that sense of loss by digging up Te Wakawitai's body to uncover tobacco buried with him. That act of desecration led Pomare to send his Ngāti Toa wife Tawhiti back to her uncle Te Rauparaha, and to determine to seek a home more secure than Whanganui-a-Tara for Ngāti Mutunga*."[12]

By 1835, the Wellington region was populated by a diverse collection of displaced Māori groups and competition for a secure position in this increasingly crowded space was intense. Te Rauparaha exercised a fickle oversight over the situation but after 1834, Ngāti Mutunga knew that their historical support for him apparently counted for little. This volatile situation was exacerbated by an ill-judged attack on the small remaining Ngāti Ira population in Whanganui-a-Tara by Ngāti Mutunga in 1835. In contemplating the three options above, the idea that the migration to Wharekauri was motivated by opportunism or that Ngāti Mutunga craved additional fighting opportunities is silly. The alternatives to migration all carried a high risk of death, enslavement and the destruction of tribal identity. Migration to Wharekauri was also risky but the best of a suite of bad options.

Having established his ugly characterisation of Ngāti Mutunga, King is quick to dismiss the evidence that Ngāti Mutunga o Wharekauri (Ngaera Pomare) made efforts to secure their presence on Wharekauri through trade and negotiation with Moriori as being insincere or token efforts. With hindsight, the events of the conflict seem inevitable but this does not mean they were preferred or planned. King inserts fiction into fact in a subtle fashion. In describing the 1835 conquest he writes "*For the Māori participants in this drama, what took place was simply tikanga, the traditional manner of supporting new land claims. As*

[11] Ibid page 321.
[12] Ibid page 287

Rakatau noted with some satisfaction[13] in the Land Court in 1870:…we took possession…in accordance with our customs and we caught all the people. Not one escaped. Some ran away from us, these we killed, and others we killed – but what of it? It was in accordance with our custom."[14]

This quote begins factually but then loses its balance when King inserts his fictional spin on Rakatau's demeanor. King was not present in the Land Court in 1870. There is not a shred of evidence that Rakatau gave his evidence to the Court 'with some satisfaction'. Rather, the Court shows that Ngāti Mutunga o Wharekauri were open and matter of fact about the events of the conquest. Such candour may be shocking to some people today but the belated addition of a fictional gloss of self-satisfaction by King over this honest and plain account is a stain on his reputation as a historian.

The myths about Moriori 'exposed' by King (to the extent that they had any currency) had been comprehensively and authoritatively shattered by H.D. Skinner in 1923.[15] Skinner's work certainly provided the basis for the conventional understanding of Moriori held by Ngāti Mutunga people as evidenced by the excellent work on the subject compiled by the pupils of Kairakau primary school for the 1940 New Zealand Centenary and stored in the National Archives. These views were that Moriori were Māori whose culture and technology were adapted to Chatham Island conditions over a long period. As well as refuting old myths about Moriori, Skinner presciently addressed future myths that were not to gain general currency until the Waitangi Tribunal investigation of the Chatham Islands more than 70 years after the publication of his book.

"*Anyone who carefully scrutinizes the evidence must conclude that the commonly accepted verdict of unmitigated barbarity on the part of the Māori conquerors is not justified. A conquest in which two hundred out of a population of sixteen hundred were killed, does not, judged by European standards, connote exceptional ferocity, even less so, when the narrow confines of Chatham Island are considered. Nor can nineteenth century civilization which achieved the extermination of the Tasmanians afford to assume a righteous pose in recounting misdeeds of the Neolithic Māori*."[16]

The same warning is relevant to 20th and 21st century civilizations as well but this 'righteous pose' has been avidly adopted by Moriori and Pakeha alike. With Moriori, this is understandable in the context of advocacy. In the case of Pakeha and the Crown, reference is often made to the Chatham Islands as a rationalisation for unprovoked Pakeha aggression during the land wars. This rationalisation usually fails to make the important point that such European invasions, killing and confiscations of land occurred after the signing of the Treaty of Waitangi.

The comment of Skinner above indicates that the narrative contained within *Moriori - A People Rediscovered* has not been (and is not) uncritically accepted by historians and ethnographers. When Michael King gave evidence to the Waitangi Tribunal he simply tabled his book in lieu of the usual technical

[13] Emphasis added
[14] King, M. *Moriori – A People Rediscovered.* Page 66.
[15] Skinner, H. D. (lecturer in Ethnology, University of Otago) *The Morioris of Chatham Islands*, Bernice P. Bishop Museum, Honolulu, publisher 1923.
[16] Ibid, page 33.

historical report or reports. Tony Walzl, a professional historian, presented three technical reports to the Waitangi Tribunal (C14, C37 and F12) that documented many examples where King's book simplified or omitted evidence that, if considered in its entirety, generates a considerably more complex historical narrative of Moriori/ Ngāti Mutunga o Wharekauri interaction. For example, Walzl submits: *When dealing with the events from 1855 to 1863, and the relationship between Māori and Moriori, Dr. King paints the following picture:*

- *That the beating of Moriori slaves by Māori was common and "typical" [p96]*
- *That Shand attempted to stop Māori beating Moriori and urged Māori to release them [p96]*
- *That Māori promised to Shand that they would stop beating their slaves and that they would release them. Dr. King then suggests that Māori "promptly broke these promises" [pp94&95]*
- *That Shand was ineffective in his attempts to assist Moriori and that manumission had to be accomplished in 1863 by his successor Capt Thomas [p98].*

Walzl continues "*The available evidence contained within WAI-64 Claimants document banks does not support any part of this overall viewpoint*"[17]. This is a very serious charge for one historian to make against another and Walzl provides detailed analysis of sources to support it. For instance, King wrote:

> "*One problem in particular that concerned Shand was his double inability to prevent the beating of Moriori slaves or to punish those responsible for the assaults. He complained in 1856 that the Māori claimed 'a not yet obsolete privilege of severely bruising and maltreating their…slaves*"[18].

To which Walzl responded*: The full quotation from Shand's letter on this subject gives a markedly different impression of the situation. After noting various disagreements with Māori Shand records:*

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

King did not attempt to defend his work against this painstaking and powerful review. Rather, he simply wrote a brief letter to the Tribunal describing Walzl's work as "eccentric". Apparently, the Tribunal accepted the view that accurate quotation of written sources and the careful demonstration of the links between historical evidence and retrospective interpretations was "eccentric" because it clearly preferred King's simpler narrative to the more complex one presented by Walzl.

WAI 64: *The Rekohu Report*

The Waitangi Tribunal constituted to hear claim WAI 64, concerning the Chatham Islands held hearings from 9 May 1994 to 15 March 1996. The Report was

[17] Walzl, T. *Chatham Islands 1835-1870*, evidence to the Waitangi Tribunal(F12). Page 16
[18] King, *Moriori- A People Rediscovered*. Page 96

eventually issued in 2001. As mentioned, it draws heavily on the work and perspective of Michael King's *Moriori - A People Rediscovered* although these influences are not always referenced. Many of the Tribunal's findings are unexceptional: Moriori are Māori people, and as such are entitled to bring claims before the Waitangi Tribunal. This was no more than was recognised in the Fisheries Settlement in 1992.

The contentious findings of the Tribunal, in the view of Ngāti Mutunga o Wharekauri, relate to the opinion that Moriori should have been awarded at least 50% of land awards by the Native Land Court in 1870 based on hypothetical (but unspecified) alternative Crown criteria for the Land Court in 1870 which should have somehow have delivered more or less equal awards to both Moriori and Māori. The reasoning behind this finding is elusive. It relies on an acceptance that such a view is self-evident once the concept of mana whenua has been expunged from Treaty issues and moreover that the concept of mana whenua should be so discarded. In fact, the Tribunal makes an extraordinary recommendation (which has not been adopted): "*We recommend that the term 'mana whenua' be taken from out of the statutes and other words be found to express whatever is the statutory intent. Further thought is also needed on how 'tangata whenua' is defined.*"[19]

The Tribunal considered that in awarding 97% of land to Ngāti Mutunga and 3% of land to Moriori in 1870[20], the Native Land Court "aggrandised conquest and misunderstood the primacy of the ancestral right" and that "the 1840 rules were inimical to custom". It uses Te Rangi Hiroa as the authority for two contentions about native land title:

- "*That conquest in itself was not valid but could be legitimated by time".*
- "*That the functioning title was ancestral inheritance*".

These were positions attributed to (but not explicitly referenced to) *The Coming of the Māori* by Te Rangi Hiroa (Sir Peter Buck).

The reason for this referencing 'over-sight' is because what Te Rangi Hiroa actually wrote does not support the two assertions above: "*Conquest (raupatu) alone did not confer right of ownership unless it is followed by occupation*[21]*. If the invading party retired, the survivors of the defeated tribe could return and still own their land. Occupation to establish a title had to be continuous, as idiomatically expressed by the term ahi ka, or lit fire*"[22] He continues "*When the Waikato confederation invaded Taranaki, they drove Atiawa out of their territory and Atiawa migrated south to establish homes in exile. Later, the Waikato tribes claimed ownership of the Taranaki territory by right of conquest. However, it was proved conclusively that some families of the Atiawa had remained on the land and, by keeping their fires alight, had prevented the tribal rights of ownership from being extinguished. When conquered territory was occupied for some generations, the title by conquest became a historical event and the functioning title became that of ancestral inheritance (take tupuna).*[23]

Rather than supporting the contention of the Tribunal that Ngāti Mutunga did not possess valid and exclusive land rights, the framework outlined by Te Rangi

[19] WAI 64 page 262.
[20] As noted above, the Native Land Court awarded all of the land to Ngāti Mutunga o Wharekauri except where Ngāti Mutunga o Wharekauri supported the setting aside of Moriori Reserves.
[21] Emphasis added.
[22] Te Rangi Hiroa. *The Coming of the Maori*, Nelson, RW Stiles, 1925. Page 380.
[23] Ibid. Page 381

Hiroa affirms those rights. The alleged primacy of ancestral right cannot be attributed to him. According to Te Rangi Hiroa, conquest does establish ownership of a captured territory if the conquerors remain in occupation. This is what Ngāti Mutunga did and have remained in occupation continuously for the approximately eight generations that have passed since 1835. Ngāti Mutunga did not 'retire' from Wharekauri, they did not 'abandon' Wharekauri and they were not 'evacuated' from Wharekauri.

This fact is the crucial difference between the situations in Taranaki and Wharekauri that escaped the Tribunal. Although Taranaki was repeatedly ravaged by taua of the 'Waikato confederation' between 1826 and 1834, those taua always returned to their traditional homelands and Waikato Settlement in those conquered lands was discrete and discontinuous. This allowed the remnant of Atiawa remaining who were unsubjugated within their Taranaki takiwa to maintain ahi kaa. The combination of lack of widespread and continuous occupation and settlement by Waikato in Taranaki plus ongoing occupation of Taranaki by a small number of unsubjugated Atiawa provided the factual basis for claims to customary title by Te Atiawa and Ngāti Mutunga in Taranaki. This combination of factors was absent in Wharekauri.

Te Rangi Hiroa observes that the basis for customary ownership ('functioning title' in his terms) evolves over time, eventually morphing into ancestral inheritance. It is a gross misrepresentation of what he wrote to say that control or possession of land is not 'valid' before that point. The Tribunal's attempt to diminish the customary rights and interests of Ngāti Mutunga o Wharekauri by distorting and misrepresenting the work of a pre-eminent Ngāti Mutunga scholar is exposed as unworthy by an examination of that work.

The Tribunal wriggles mightily around the concept of mana whenua and eventually side-steps it by declaring it to be unhelpful. "*We are inclined to think the term 'mana whenua' is an unhelpful nineteenth century innovation that does violence to cultural integrity*" and "*Crown counsel likewise challenged - we think correctly - its use to describe a general authority of a particular group over any area of land*"[24] While the Crown counsel may wish to challenge the use of 'mana whenua' as meaning 'authority over any area of land', that is in fact the everyday meaning of the term – unhelpful as that may be to the Tribunal. Contrary to the wish of the Tribunal, 'mana whenua' with this everyday meaning has probably become even more embedded in common usage since 2001. In the end the Tribunal concludes its extensive discussion of customary land rights weakly: "*We conclude that Moriori are tangata whenua. So also, today, are Ngāti Mutunga*"[25]. Indeed, but this in no way establishes that Ngāti Mutunga and Moriori have equal rights except under Article III of the Treaty of Waitangi. The insertion of the word 'today' into the Tribunal's conclusion is worthy of Michael King. It raises the question that Ngāti Mutunga o Wharekauri may be tangata whenua today but might not have been yesterday? The Ngāti Mutunga o Wharekauri view is that they have been tangata whenua on Wharekauri since its conquest and occupation in 1835.

Article II of the Treaty promised to secure the "full exclusive and undisturbed possession of their lands and estates forests fisheries and other properties which they may collectively or individually possess…" This promise cannot be kept

[24] WAI 64 page 28
[25] Ibid. Page 29

safely without an unambiguous definition of who 'they' are and what it is that they 'possess'. With respect to land, these are the questions answered by establishing who had mana whenua in 1842 when the Treaty took effect in Wharekauri.

Amidst the evasions and cultural contortions, the Tribunal concedes that, after the invasion of 1835, Māori controlled the land "*for all temporal purposes*"[26]. This is a salient point if not the only salient point. 'Temporal purposes' are, of course, the only purposes that the Crown, in the context of the Treaty of Waitangi' must be concerned with. 'Control' in this context means the same as 'possess'. To therefore restate the Tribunal's sentence above in terms of Article II of the Treaty of Waitangi: after the invasion of 1835, Ngāti Mutunga o Wharekauri were in possession of all land on Wharekauri and full and undisturbed possession of that land was guaranteed to Ngāti Mutunga o Wharekauri by the Crown upon the extension of British sovereignty over Wharekauri on 1 November 1842.

The Tribunal contends (contrary to the scholarly analysis of Te Rangi Hiroa above that it claims as support) that conquest was not conquest until it was somehow legitimised and this required 'some generations'. It is a characteristic of Wai 64 that it often begins from a debateable proposition and then focuses exclusively on things that may support it. That proposition is that ancestral right is the only culturally valid basis for the possession of land and that Ngāti Mutunga o Wharekauri either had too few dead or too few living to possess Wharekauri.. "*On Rekohu, in 1840, Māori had none of the elements to achieve an ancestral right, by incorporation, by intermarriage, or by maintaining control and burying their dead on the land over some generations. At 1870, they had dead on the land, but then the living had largely left. We consider that, at 1840 and at 1870, as a matter of custom, Māori had no right unless they could prove that they were merely away on business and intended to return.*"[27]

This artificial and false analysis is contrary to the writings of Te Rangi Hiroa who also made this relevant observation: "*However, no matter what the title, the length of tenure of the land depended on the military strength of the people to hold it.*"[28] In other words, the maintenance of rights requires the maintenance of tenure through the successful resistance of conquest and occupation. Also, the relevant date in this case is 1842, not 1840. By 1842, large numbers of Ngāti Mutunga had already been buried on Wharekauri. Ernst Dieffenbach estimated that approximately one third of both the Moriori and Ngāti Mutunga populations had died in epidemics of 1839 and 1840. This would imply that the burial of perhaps 300 Ngāti Mutunga o Wharekauri would have occurred by 1842. In 1870, many Māori were 'away on business' and intended to return. It is well known that this is what happened and does not have to be 'proven'.[29] Hirawanu Tapu and some Ngāti Mutunga o Wharekauri did assert to the Native Land Court in 1870 that certain Māori (not present personally in the Court) had no intention of returning to Wharekauri from Taranaki. The wishful thinking or self-serving nature of these statements means that great caution is required in deciding whether to accept them at face value.

[26] WAI 64. Page 91.
[27] Ibid page 145.
[28] Ibid. Page 381
[29] See Special Factor Papers 1 and 2 for Ngāti Mutunga dealings with the Taranaki Compensation Court and aftermath.

There was inter-marriage. The result of this inter-marriage is observed in all Chatham Island Moriori families and many Ngāti Mutunga o Wharekauri Chatham Island families. It is probably a unique feature of the Ngāti Mutunga conquest of Wharekauri, that the subsequent process of subjugation and absorption of the Moriori population was a very rare example where the conquering population was only half the size of the conquered. Clearly this presents some practical issues regarding the possible pace of absorption if an overall Ngāti Mutunga o Wharekauri identity is to predominate, especially in circumstances where the Ngāti Mutunga o Wharekauri population was being decimated by European diseases.

The graph on page 74 of *Moriori - A People Rediscovered* (attributed to Richards 1972) showing a decline in the Moriori population of approximately 1,350 between 1835 and 1840 is an overstatement. The decline was awful (approximately 280 killed in the course of the conquest and a further third dying in epidemics (say a further 400). However, this total number is around half of that in the graph. Further dramatic declines occurred in both populations due to disease before fairly reliable census numbers for Moriori and Ngāti Mutunga o Wharekauri were collated in the 1860s. This pattern is not consistent with the contention of the Tribunal that it shows an unsuccessful attempt at extermination of Moriori by Ngāti Mutunga o Wharekauri.

"*Sometimes spoken of was another way for the conqueror to obtain all rights, that being to treat with the conquered by killing every man, woman and child. This could earn the disapproval of other tribes and a consequential loss of mana, but on Rekohu who was to know? On Rekohu, however, despite the prohibition on the right to bear children, this objective was not quite achieved*."[30] This implies that Ngāti Mutunga o Wharekauri had the objective of killing every Moriori man, woman and child. There is no evidence for this. The reason why there is no evidence for this is because it is untrue. It is a baseless and disgusting slur that is all the more disappointing because it originates from the Waitangi Tribunal. It is a stark illustration of the vilification that has become part of the daily reality of what it is to be Ngāti Mutunga o Wharekauri.

Mana Whenua and the 1840 Rule

The Tribunal's efforts to avoid mana whenua, the 1842 rule, the temporal realities of Ngāti Mutunga conquest and possession of land following 1835 do not, and cannot, are not succeed. These realities ultimately explain the disparity between the strength of the rhetoric of the Tribunal and the weakness of its recommendations. "*Compensation should be directed to Moriori cultural re-establishment and the social, economic and cultural development of the people. Also, a significant Moriori land base on Rekohu appears to be a necessary long-term goal*."[31] It is noticeable that the Tribunal does not recommend the transfer of land to Moriori in a settlement with the Crown and that the establishment of a significant land base for Moriori is described as a 'long-term goal'. This reticence is prudent because the Tribunal did not succeed in the body of its report in overturning the conventional position that Ngāti Mutunga o Wharekauri held mana whenua over Wharekauri in 1842 and have never relinquished it.

[30] Wai 64 page 145
[31] Wai 64. Page 286.

Rather, the Tribunal makes an extraordinary proposal which is that the Crown (as part of Treaty settlements) would "*fund a body to promote the development of a new Māori land law, specific to the Chathams,…*" The detail of this new indigenous land law is not contained in Wai 64. It is perhaps the most impractical recommendation ever made by the Waitangi Tribunal.

In the case of cultural sites on Crown land with overlapping interests by both Moriori and Ngāti Mutunga o Wharekauri, the Tribunal recommended that "*the Māori Land Court should appoint trustees representative of each and defines rights and obligations in trust order*".[32] It is not clear that the Māori Land Court has such jurisdiction and it is also a recommendation that rests on the presumption that both Iwi have underlying land ownership interests. Once again, the Tribunal simply assumes away the differences in rights under Article II of the two iwi.

The Tribunal did make an explicit recommendation about Te Whaanga Lagoon "*We recommend special legislation to vest Te Whaanga in a body representative of Moriori and Ngāti Mutunga, but with Moriori predominance*."[33] The reason given for recommended Moriori predominance is that "*Moriori depended on Te Whaanga much longer and much more than Māori. From the time of their arrival, and before, Māori had access to European foods*".[34] The Ngāti Mutunga o Wharekauri view is that potatoes have nothing to do with the ownership of the lagoon (interestingly though, it is also a matter of record that Lieutenant Broughton left Moriori a gift of potatoes in 1791 which Moriori ate rather than planted).[35]

If there is to be any full and final settlement of any Treaty negotiation between the Crown and Māori, application of the '1840 rule' is essential. Many of the recommendations in Wai 64 do not rest on this firm foundation. It is nonsensical for the Crown to admit responsibility for events prior to the establishment of British sovereignty and over which it had no influence. To do so would also draw the Crown into culpability for cycles of Māori conquest or subjugation regressing back in time to the Polynesian settlement of Aotearoa. For better or worse, the Treaty of Waitangi conferred guarantees over what existed when the Treaty was signed or sovereignty was established. It would bring a fatal level of subjectivity into Treaty settlements to secure and guarantee what existed except where an imaginary alternative scenario was preferred by either the Crown or a claimant.

Slavery

Ngāti Mutunga o Wharekauri enslaved and subjugated Moriori in 1835-36. "*But it seems hard to generalise about Māori 'slavery' on the present studies. It appears to have ranged from a virtual chattel status to little worse than a kind of tributary relationship, especially where the invaders located themselves in the newly conquered territory…*"[36] Slavery was not the unique experience of Moriori. Ngāti Mutunga were also subject to slavery at the same time as Moriori. "*the Waikato and their allies were a formidable fighting unit and in early 1832 they*

[32] Ibid Page 263
[33] Ibid Page 282
[34] Ibid Page 279
[35] See King, Michael *Moriori – a People Rediscovered*. Page 45
[36] WAI 64. Page 44

inflicted a crushing blow on the northern Taranaki tribes at Pukerangiora pa. Although this was partly avenged at Ngamotu a short while later, nearly all of the Te Ati Awa, Taranaki, Ngāti Mutunga and Ngāti Tama inhabitants of northern Taranaki who had not already been taken back to the Waikato as captives decided to retreat south to Kapiti and Whanganui a Tara…[37] The Ngāti Mutunga survivors of these captives were enslaved for well over a decade and for several years after the Treaty of Waitangi had been signed.

"*In the mid-1840s large numbers of Taranaki captives were permitted to return to their homes in what has been described as a series of competitive grand Christian gestures. But there were strings attached to those gestures. Waikato chiefs are said to have reasoned that the presence of their former taurekareka (captives or slaves) would serve to remind all of Te Ati Awa of the nature of Waikato interests in Taranaki*."[38] The eventual 'conditional release' of these slaves was not attributable to the actions of the Crown but to a change in attitude by Māori to slavery.

A similar change in the attitude to slavery described by O'Malley in Waikato also occurred in Wharekauri under the influence of Māori Anglican and Wesleyan catechists in 1841 and 1842. Māori adopting these faiths were expected to release their slaves and did so. Wanton killings of slaves ceased by 1842 but the other impacts were not as visible as in the Waikato because there was no return of slaves to a distant homeland. Rather, in Wharekauri former slaves and former masters continued to live where they were adjacent to each other.

The extent of this change of attitude was variable. King, speculates that resistance to Christianity and its condemnation of slavery was one factor influencing the decision of Matioro to depart for the Auckland Islands in 1842 where he would be free from such interference. Whether this was so or not, the attitude or actions of Matioro on Auckland Island cannot be used as evidence of general attitudes and conditions on Wharekauri. Ngāti Mutunga o Wharekauri is an umbrella term covering different iwi, different hapu and people with diverse ideas. This was true in the 19th century and it is true today. It is therefore simple to find individual examples of evidence to support conflicting contentions about Ngāti Mutunga o Wharekauri. However, such generalisations are dangerous at the best of times. When they are made to support a pre-determined agenda, such selectivity becomes dishonest.

Ngāti Mutunga o Wharekauri do not wish to downplay the impacts of 19th century slavery on Moriori. However, calculated and continuing overstatement of these impacts is myth making. "*We doubt that slavery came to an abrupt end in 1863, as was suggested, and think that 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*."[39] Whatever doubts the Tribunal have there is no evidence for this proposition. There were no chains, there was no clanking. This is imagery that (contrary to the Tribunal's own advice about the difficulties of accurately characterising the realities of Māori slavery) is designed to evoke a completely inaccurate image of that reality. It is creative writing that has no proper place in a Waitangi Tribunal report.

[37] O'Malley, V. *The Great War for New Zealand Waikato 1800-2000*, Bridget Williams Books2016. 688 pages. Page 101
[38] Ibid. Pages 101 & 102.
[39] WAI 64. Page 90.

Ngāti Mutunga o Wharekauri support Moriori receiving redress relating to failure of the Crown to secure immediate release of all Moriori slaves in 1842. Such redress should be proportionate with redress owing to other iwi for the same Crown failure to secure immediate release of Māori slaves elsewhere in 1840 (including Ngāti Mutunga slaves in the Waikato at that time). The Ngāti Mutunga o Wharekauri view is that redress for slavery should take a financial form. The fact that Ngāti Mutunga people were enslaved in the Waikato does not give rise to any claims by Ngāti Mutunga to land or mana whenua there. Similarly, Moriori redress for slavery does not support any claim to land or mana whenua status over land where Ngāti Mutunga o Wharekauri have mana whenua. Had the Crown acted promptly to release all Moriori slaves in 1842, the benefit of that action would have been freedom from slavery. There is no argument that such freedom (an Article III right) would be associated with an associated expropriation by the Crown at that time of lands possessed by Ngāti Mutunga o Wharekauri, such possession being secured and guaranteed by the Treaty of Waitangi under Article II.

Moriori Settlement Redress in Advance of a Moriori Settlement

Wai 64, released in 2001, made a number of recommendations for consideration in any future processes of negotiation between the Crown and the properly mandated representatives of Ngāti Mutunga o Wharekauri and Moriori. An unusual aspect of those negotiations would be the imperative to reconcile an unprecedented extent of overlapping interests between two iwi. The only sensible approach would therefore seem to be to advance settlement negotiations with both iwi simultaneously while creating incentives for the two iwi to agree how overlapping interests and claims should be dealt with. Achieving such agreement is hugely challenging. That being the case, two things are required to create a conducive environment for agreement:

i. Clear principles enunciated by the Crown that will define the boundaries within which inter-iwi negotiation will occur; and
ii. Scrupulous fairness and transparency by the Crown to both iwi.

Neither of these things have been achieved. Rather, since 2001 the Crown has embarked on processes apparently intended to deliver redress to Moriori in advance of formal settlement negotiations with Moriori and Ngāti Mutunga o Wharekauri. These processes have not shown any regard for Ngāti Mutunga o Wharekauri views about the impact of such initiatives on their overlapping interests or impacts on the possible redress options available for a settlement with the Crown. When such concerns have been raised by Ngāti Mutunga o Wharekauri, they have been rejected by the Crown. Three examples of such 'premature' initiatives are:

i. The purchase of Taia farm by the Crown and proposals to vest title in Hokotehi Moriori Trust;
ii. A Heads of Agreement to vest the Glory Block on Pitt Island in the Hokotehi Moriori Trust; and
iii. The provision of $6m of cultural strengthening money to Hokotehi Moriori Trust.

These are all initiatives that should properly be evaluated and discussed within the context of formal and comprehensive settlement negotiations. The transfer

of ownership or exclusive control of land from the Crown estate to Moriori clearly precludes the use of that land in any later settlement with Ngāti Mutunga o Wharekauri. The early transfer of funds for settlement purposes clouds the quantum of that settlement and its easy comparison with others.

Taia

Taia farm was purchased by the Crown from Ted Hough in 2002. It consists of 1,198 hectares. The 12km long stretch of land is located on the eastern peninsula of Wharekauri. The property sits between the Te Whaanga lagoon and the sea and supports a complex wetland and coastal ecosystem. The coastal area was once used for burials. The Department of Conservation is seeking to reach an agreement for the property to be managed as an historic reserve by the Hokotehi Moriori Trust, in partnership with the Department of Conservation.

Moriori claim that the property is significant as one of the last remaining holdings with Moriori carvings intact and the purchase would ensure the protection of conservation values for future generations. These things can be protected without vesting the ownership of Taia in Moriori. Ngāti Mutunga o Wharekauri has raised objections to the transfer of the Taia block on the basis that it is land over which Ngāti Mutunga o Wharekauri has mana whenua. To date, the Department of Conservation has ignored Ngāti Mutunga o Wharekauri objections and has also failed to answer questions about the stage presently reached in the vesting process.

Glory

In 2004, the Pitt Island Reserve and Conservation Purposes Trust (the Trust) proposed to create a local purpose reserve that would comprise part of a conservation area on Pitt Island which was used for grazing plus part of the Canister Cove scenic reserve. This new reserve (colloquially referred to as the Glory Block) would total around 1,200 hectares and would be vested in the Trust. Before this proposal could be implemented by the Department of Conservation (DoC) and the Trust, Hokotehi Moriori Trust (HMT) objected, outlining an interest in obtaining ownership of the proposed local purpose reserve area as part of a Treaty settlement with the Crown and requesting a halt to the vesting process. The Minister of Treaty Negotiations at the time subsequently informed the Trust that no further steps would be taken in vesting of the Glory Block until any role the land may play in the negotiation of the Moriori Treaty settlement was clear.

The exclusive reference to Moriori by the Minister in her communications was of concern to Ngāti Mutunga who wrote to Pitt Island residents in 2005 (cc OTS) indicating that Ngāti Mutunga o Wharekauri should be involved in any negotiations relating to Chatham and Pitt Islands. The letter stated "We have been advised by our legal counsel that any preference by OTS, Department of Conservation or other Crown bodies that is solely in favour of Moriori, to the exclusion of Ngāti Mutunga, is wrong in principle, unfair in application and constitutes further breach of the Treaty of Waitangi by Crown through OTS". This remains the Ngāti Mutunga o Wharekauri position today.

The Ngāti Mutunga o Wharekauri letter received an unsatisfactory reply from OTS which rejected the request that Ngāti Mutunga o Wharekauri should be

involved in ongoing discussions relating to the Glory Block. It included the statement that "The Crown is yet to come to a view on the nature and extent of Ngāti Mutunga's cultural and historical associations with the Chatham Islands, including Pitt Island". Those associations are simply a fact.

Notwithstanding Ngāti Mutunga o Wharekauri objections, the Crown continued to negotiate with Hokotehi and the Pitt Island community regarding the future of the Glory Block to the exclusion of Ngāti Mutunga. The outcome of those negotiations was a Heads of Agreement between HMT, DoC, OTS and The Pitt Island Community in 2007 which (amongst other things) agrees to:

- Transfer title of the Glory Block to HMT;
- Transfer Rangiauria Scenic Reserve to HMT;
- Transfer of a block of land to HMT in freehold at Waipaua; and
- The separation of the Waipaua waahi tapu reserve in Hokotehi ownership and management.

By this action, the Crown clearly accepted that Moriori had a cultural and historical association with Pitt Island while holding that it was yet to come to a view on those associations by Ngāti Mutunga o Wharekauri.

The Office of Treaty Settlements now inform Ngāti Mutunga o Wharekauri that this Heads of Agreement is no longer being pursued. The Ngāti Mutunga o Wharekauri view is that all Crown owned land should be potentially available to both iwi as possible cultural redress sites. The fact that the Crown has already entered into a Heads of Agreement to vest the Glory Block land in Moriori in the face of Ngāti Mutunga o Wharekauri objections has created Moriori expectations and signalled Crown thinking in advance of the current settlement process with its overlapping claims issues. These signals and expectations cannot be erased now.

The processes to vest exclusive Moriori ownership or control over Taia and Glory could not easily occur within the context of a formal settlement. Both of these blocks of land are far too large to fit within the standing policy definitions and operating guidelines for cultural redress, particularly given the objections of Ngāti Mutunga o Wharekauri.

Cultural Revival Support

Cultural revival support was recommended by the Waitangi Tribunal ('compensation should be directed to Moriori cultural re-establishment'). This compensation was clearly envisaged as part of a settlement but $6m has been provided already. It is not clear whether this is an advance (on account) payment against a future settlement or not. This uncertainty creates a lack of transparency about the content of Moriori settlement redress. The history of Ngāti Mutunga o Wharekauri outlined in these three Special Factors papers clearly establishes a parallel need for very substantial cultural revitalisation support for Ngāti Mutunga o Wharekauri.

'Rekohu'

Following the lead of the Waitangi Tribunal in WAI 64, it has now become common for Government Departments to refer to Wharekauri solely as Rekohu. However this practice is rationalised, it prioritises Moriori associations with the Chatham Islands over Ngāti Mutunga o Wharekauri associations. There is no

basis in the Treaty of Waitangi for this prioritisation. It is a bias. This bias sometimes reaches a laughable level in Wai 64: *"The main concern was with toroa (albatross – hopotchar to Moriori, modified to toroa by Māori)"*[40] Ngāti Mutunga o Wharekauri no doubt owe a debt to aspects of Moriori traditional knowledge but did not need Moriori to teach them a name for albatross.

Conclusion

Historically, it suited the Crown's purposes to lump Ngāti Mutunga o Wharekauri and Moriori together as Chatham Islanders to avoid obligations under the Treaty of Waitangi. Those obligations have now been acknowledged in a general way. However, the process by which the Crown has reached its present position where it recognises two iwi on the Chatham Islands with completely overlapping rohe is piecemeal and opaque. It comprises a stumbling odyssey over nearly thirty years where crucial decision points are fudged. Examples include the process by which a 'people' received the status of an 'iwi', how recognition as a 'people' delivered an associated 'rohe' and how recognition as tangata whenua translates into a location specific list of particular Article II rights. This uncertain foundation handicaps and endangers the process of converting general acknowledgements into durable Treaty settlements.

The desire by the Crown to rediscover and recognise Moriori fermented slowly in an environment where such recognition is entangled with a vilification of their pre-Treaty conquerors. Contradictory opinions about history – even false ones – are arguably of little practical importance up until the point where the precise and agreed definition of Article II rights under the Treaty of Waitangi is required. That point has now been reached.

Under Article II, there must be clarity about what people had what rights. The starting point for this discussion must therefore be to identify, as far as practicable, the relevant particulars arising from the general promises made to Māori under the Treaty. In the case of Wharekauri land, the first necessity is to identify who had mana whenua over what land in 1842. From that point in time, possession of that land by those people was guaranteed by the Crown unless those customary owners agreed to dispose of it by processes which had sovereign approval. Custom was subject to and constrained by law after 1842.

In 1842, Ngāti Mutunga o Wharekauri held mana whenua over all land on Wharekauri. Moriori possessed no land at that time. Possession of that land by Ngāti Mutunga o Wharekauri was achieved by historical processes that were recognised by the Treaty of Waitangi as valid for the past but simultaneously barred from future use. The Treaty thereby froze entitlements and fortunes at that moment. In other words, to the extent that Māori custom had delivered outcomes that were arguably unfair, the Treaty guaranteed that outcome – at least as a starting point. This, no doubt, made people uncomfortable in 1840 and it makes people uncomfortable today but the Treaty is what it is. It is an artefact of history, not an invitation to recreate history along lines more consistent with contemporary views on fairness or cosmic justice.

The Waitangi Tribunal clearly wanted to deliver an outcome through its recommendations that would, over time, establish a large land base for Moriori

[40] Wai 64. Page 264.

on Wharekauri. It found it ultimately impossible to reconcile this 'desirable' outcome with the terms of the Treaty of Waitangi. The Treaty secured and guaranteed rights to Ngāti Mutunga o Wharekauri that were embodied in the exercise of mana whenua over Wharekauri in 1842. These guarantees stand irrespective of whether the Tribunal and others might later attempt to vilify those right holders. Those guaranteed rights stand on their historical content and are not available to the Crown to later use as redress to settle other Treaty grievances.

The Waitangi Tribunal could not find a way around this constraint in 2001. It was reduced to recommending the removal of the concept of mana whenua entirely. The consequence of that removal is the same as a recommendation by the Tribunal that Treaty Settlements should be negotiated without concern for who held customary title over land when Treaty guarantees were made. Although liberating in a certain sense, this recommendation must be completely rejected if the Treaty itself and all previous settlements are not to become a farce.

It is a special factor that we, and we alone, are required to face the prospect that Treaty Settlements on Wharekauri would be potentially subject to a framework recommended by the Waitangi Tribunal that is irreconcilable with any generally sustainable interpretation of the Treaty of Waitangi. These perverse recommendations and the ensuing activities of officials to implement them prior to, and outside of, a formal Treaty settlement process involving both Moriori and Ngāti Mutunga o Wharekauri have created a uniquely adverse starting point for a Treaty settlement negotiation.