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**THE IMPACT OF EMERGENT
DEVELOPMENT PHILOSOPHIES ON
FORMAL BRITISH INTERVENTION IN
NEW ZEALAND BETWEEN 1840 AND 1842**

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ABSTRACT

Between 1840 and 1842, the British Government commenced and then began to consolidate its formal colonial rule of New Zealand. Through the signing of the Treaty of Waitangi (1840) and the subsequent installation of the country's first Governor, New Zealand was directed predominantly by the British Government and evolved into a state which had growing political, social, and economic links with Britain.

The primary objective of this thesis is to examine the way in which certain nineteenth century British ideas on development either influenced or were reflected in the nature of official British involvement in New Zealand between 1840 and 1842, and on British policy on New Zealand in the preceding decades. New Zealand was the last of the 'white' colonies to be established by the British Crown. Its period of annexation coincided with profound developments taking place in England in connection with ideas about the progress and improvement of nations, and of intentional rather than immanent development. New Zealand's early years of Crown Colony Government represent the convergence of all these factors within a very short space of time.

The conclusion reached in this thesis is that formal British involvement in New Zealand – in the immediate period after the treaty of cession was signed – reflected the impact of contemporary ideas about development, and that there existed among some officials in New Zealand a distinct intent to develop the colony along the lines of these ideas. It is also apparent, however, that these philosophies were in some cases compromised because of shifting circumstances and insufficient resources to carry them through. Hence, in this period, the development of Maori and European in the colony failed to match the ideals of progress and development specifically prescribed by contemporary social philosophers, policy makers, and sometimes even the Crown's representatives in the colony.

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ABBREVIATIONS

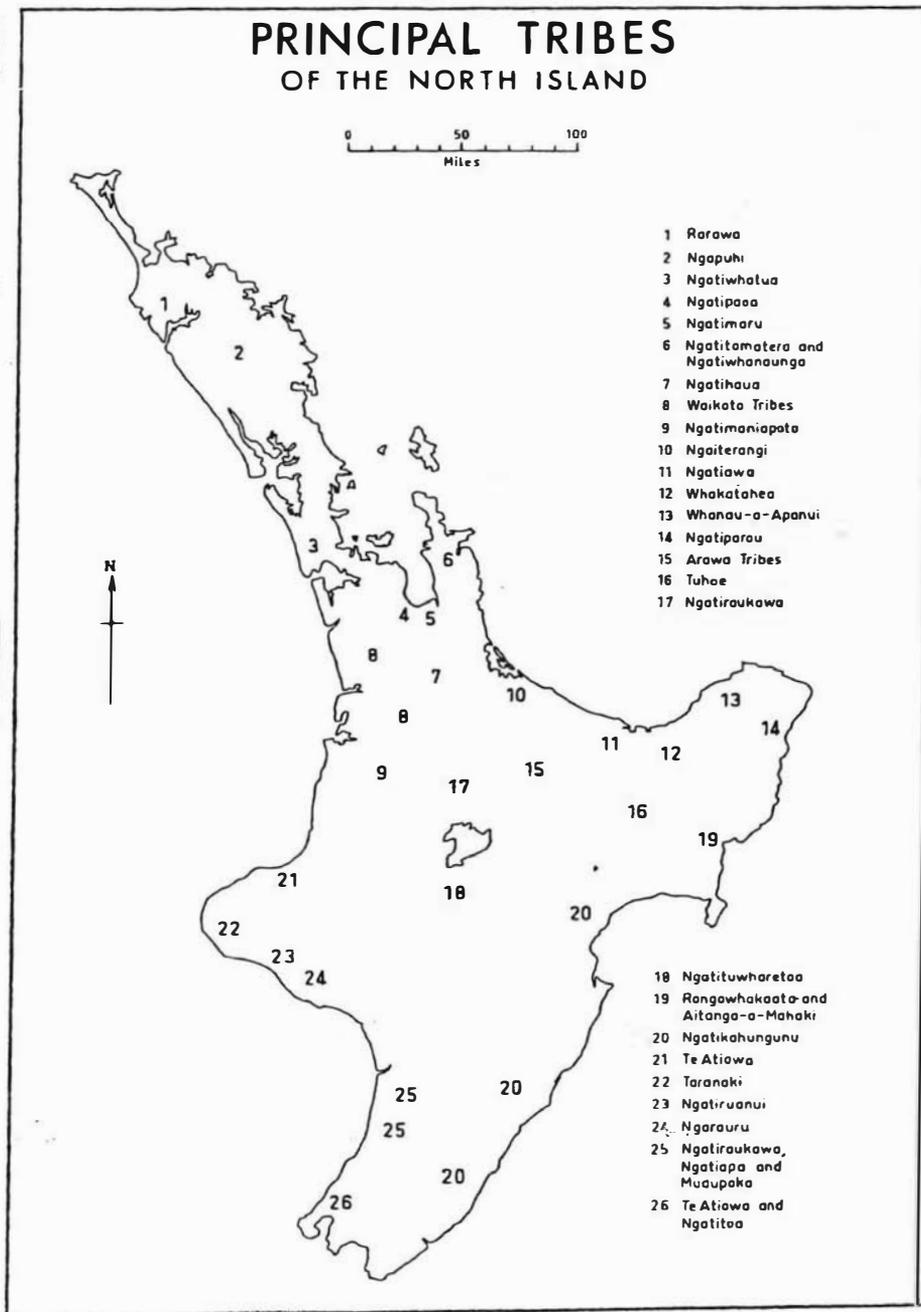
AIML	Auckland Institute and Museum Library
APL	Auckland Public Library
ATL	Alexander Turnbull Library
CMS	Church Missionary Society
CO	Colonial Office
GBPP	Great Britain Parliamentary Papers
HL	Hocken Library
HOC	House of Commons
HOL	House of Lords
MS	Manuscript
MSS	Manuscripts
PKPC	Peter Kennett Private Collection
UCLMC	University College London Manuscript Collection

GLOSSARY

ariki	paramount chief
atua	God
hapu	sub-tribe
hui	meeting
iwi	tribe
kai	food
kainga	home, village, place where fires are burned
kaitiakitanga	guardianship
kaumatua	elder
kaupapa	philosophy; mission; purpose
kawanatanga	governorship
kotahitanga	unity
mahinga kai	traditional food sources
mana	respect; honour; dignity; sovereignty
mana moana	title/sovereignty over the sea
marae	meeting house; courtyard in front of meeting house
mauri	life-force
moana	sea
moko	facial tattoo
Pakeha	European
rangatira	chief
rangatiratanga	chieftainship
rohe	region, district
taiapure	control but not exclusive use
tangata whenua	people of the land; the indigenous people; Maori
taonga	treasure
tapu	sacred
tika	correct; fair; right
tikanga	the correct way of doing things; culture
tiriti	treaty
utu	revenge; justice; compensation
wahi tapu	sacred sites
wairua	spirit; spirituality
wero	spear; challenge; pierce
whaikorero	speech; exchanges of speeches, usually at a marae
whanau	extended family
whenua	land; soil; country

MAORI TRIBAL MAP¹

Note: The principal South Island tribe is Ngai Tahu.



¹ Source: A. Ward, *A Show of Justice: Racial Amalgamation in Nineteenth Century New Zealand*, Toronto, 1973, p. 41.

1. INTRODUCTION

After decades of expressed disinterest, declarations of non-involvement,² and general neglect of New Zealand as a potential colony, in 1839 the Colonial Office – the British Government Department responsible for administering the Empire – committed the British Government to become formally involved in New Zealand. British immigration, voracious land speculation, criminal activity, lawlessness, and the absence of any effective system of administration and justice, combined with a myriad of other motivations, finally prompted the British Government into taking a more assertive, even aggressive stance over the ‘New Zealand question’.

Inherent in this official involvement were two discernible features: firstly, the reorientation of the country into a colony locked into an economic, political, and increasingly cultural relationship with Britain; and secondly, as a corollary to this first point, the introduction of specific concepts of development in the country. The main focus of this thesis is on examining how both of these features were founded to some extent on particular contemporary notions of development and progress, and how they applied in the context of Britain’s formal involvement in New Zealand between 1840 and 1842. To date, there has been no substantial research undertaken which identifies or evaluates the links between the actions of British officials – both in England and New Zealand – in this period in relation to New Zealand, and the body of development thinking that was gaining political currency in England at this time. This is especially the case with the central themes of this thesis – those of trusteeship, utilitarianism, rational democracy, Free Trade and immanent and intentional development. This thesis explores the extent to which these and other associated contemporary ideas about progress and development

² J. Stephen to J. Backhouse, 12 December 1838, in *Great Britain Parliamentary Papers [GBPP] 1840*, Vol. 33, p. 3; W. Gisborne, *New Zealand Rulers and Statesmen, 1840 – 1885*, London, 1886, p. 4.

affected and guided several aspects of British colonial rule in New Zealand.

The period of 1840 to 1842 has been deliberately selected for analysis. 1840 was the year in which New Zealand's first Governor was appointed by the Colonial Office, and was also when the British Crown believed it secured a cession of sovereignty from the indigenous Maori population through the Treaty of Waitangi. In the succeeding two years, the British introduced a new justice system into New Zealand which they endeavoured to apply to both Maori and European. During the same period, the colonial administration attempted to impose an economic regime on the country, while the Governor established a Government Department to manage 'Native Affairs', and to maintain peace between Maori and the burgeoning settler population. The formation of this department – the Office of Protector of Aborigines – was to have its own set of implications for the development of Maori in particular and the country generally. Thus, this period can be considered as the time when emergent ideas about development were enacted in the colony to varying degrees.

In September 1842, Captain William Hobson, New Zealand's first Governor, died. By this time, the major institutions of colonial government had taken root and were evolving. Furthermore, the policies of development implemented by the British between 1840 and 1842 set the stage for the consolidation of British rule in New Zealand, and the economic, political, and social changes that this was to bring about.

There are three key aspects of British interventionism over the period 1840-1842 which are focal points for exploration and examination in this thesis. These are: the background, formation and intentions of the Treaty of Waitangi, which considered as a whole signal the type of development the British planned for New Zealand; the nature of Britain's economic administration of the colony, and how the notion of positive trusteeship failed in practice and militated against the prospects for New Zealand to

move towards economic and political independence from Britain; and the imposition of the British legal and judicial system as an attempt to regulate and impose order on the colony. This was done as a means of achieving intentional development for New Zealand and as a device for converting into political sovereignty the legal sovereignty that the British had obtained through the Treaty of Waitangi. These three dimensions of British intervention in New Zealand at this time serve to demonstrate the means of implementation and the impact of contemporary ideas about development, and allow for an evaluation of how the intention to develop manifested itself in practice in the colony.

The patterns of relationships between the emergent development philosophies of Jeremy Bentham (1748-1832) and John Stuart Mill (1806-1873) in the first half of the nineteenth century, and the execution of British foreign policy in New Zealand at the time of the cession of sovereignty explain to a considerable extent the specific nature and characteristics of British intervention in the colony at this time. These patterns also reveal a deliberate urge by British officials at the time to intentionally develop the colony rather than merely administer it.

(a) Structure of the Thesis

The second chapter of this thesis contains a review of specific strands of development philosophies that were prevalent in the first half of the nineteenth century. It focuses on an analysis of the ideas of progress and improvement, especially those espoused by Bentham and Mill. The survey of these positivist philosophies allows for the subsequent analysis of the commencement of formal British intervention in New Zealand in 1840 to be contextualised within particular philosophical frameworks.

The principle of trusteeship, which is a central theme in this thesis, is associated with ideas on immanent and intentional development, as

defined by Michael Cowen and Robert Shenton.³ This approach to interpreting development is revealed in some of the tensions evident in the early years of Crown rule in New Zealand. The choice between immanent and intentional development was partially resolved in New Zealand's case in the early 1840s through applying the principles of colonial trusteeship. Immanent development was founded on the notion that societies naturally, almost organically, develop. In the case of Maori in New Zealand, this type of development was rejected by the British in favour of a doctrine of intentional development, which required a more active and positivist approach, involving official British trustees guiding social, political, and economic change, and achieving a reconciliation between progress on the one hand, and order on the other.

The issue of Free Trade is also assessed in this chapter. Free Trade was a component in development thinking in this period, and great emphasis was placed by the philosophers under review on its importance in the overall schema for development generally, and colonial development in particular. The expense and difficulty of maintaining monopolistic economic relations with colonies was chastised by Bentham especially, who argued that Free Trade was a component in achieving colonial emancipation, and would cultivate the prospects for political, social and economic development within the colonies.⁴

The circumstances of New Zealand's colonisation in the early 1840s, and the fact that it coincided with the period in which notions about development were emerging in England, and acquiring political support, is highly significant. New Zealand was an early example of the implementation of some of these ideas. The other factor which contributes to the special circumstance of New Zealand in the early 1840s was that it was in the process of becoming one of Britain's 'white'

³ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, London, 1996, pp. 25-7, 61-70, 173-253.

⁴ J. Bentham, *Emancipate Your Colonies!*, London, 1830, in J. Bowring (ed.), *The Works of Jeremy Bentham*, Vol. 4, New York, 1964.

colonies at this time. That is, it was experiencing an influx of British settlers which placed additional demands and expectations on the colony to develop in a particular direction. There was a specific implicit vested interest for Britain in its 'white' settler colonies that was absent in most of the non-white colonies.

Chapter Two concludes with an analysis of the connection between the principle of trusteeship and British colonial treaties in the decades preceding the Treaty of Waitangi. Attention is paid to the role of treaties in the constitutional development of a colony; their use as a device to achieve a revolution of authority in a colony; the requirement of indigenous consent for their validation; and their relationship with the subsequent exercise of colonial trusteeship.

Chapter Three offers a general overview of the threads of formal and informal British imperial activity which combined to constitute early nineteenth century British imperialism in various parts of the world. The shift in attitudes in the Colonial Office towards the entire concept of colonisation is set against a backdrop of social, economic, political, and historical forces which were responsible for the expansion of the British Empire. Although there was no single, universal pattern which can be applied to the policies and actions of the Colonial Office, there are distinctive themes which are apparent. These themes account for the rationale behind many Colonial Office decisions, and either demonstrate the influence or are reflective of some of the development philosophies of the period.

Increasingly, it was the requirement that order be imposed in parts of the Empire to enable policies of development to be enacted that began to influence the nature of British colonial activity, especially in New Zealand in the first half of the nineteenth century. Assumptions about national/racial inferiority and superiority are assessed in terms of the requirement to 'improve' the 'plight' of indigenous peoples, while an

absence of British laws in New Zealand prior to 1840 fortified the British urge to bring 'order' and 'civilisation' to the country.

A brief survey is also included in this chapter of some of the circumstances of other British colonies in this period. This is done to provide a very general context to Britain's imperial activity at the time, and how New Zealand fitted into the evolving policies which guided the expansion of the British Empire. Toward the end of this chapter, the focus is narrowed to the Treaty of Waitangi, and how it was placed within the context of previous British treaty-making.

Chapter Four examines official British involvement in New Zealand from 1833 to the point of annexation in 1840, whereafter it was the Governor based in the colony who was primarily responsible for directing British policy. This chapter analyses the reasons for New Zealand's transition from a Residency to a Governorship, and the inter-relationship between British Government policy concerning New Zealand from 1833 to 1840, the role of private interest groups, such as missionaries, land speculators, immigration companies, along with the growing number of British settlers in the colony, and the connection with some of the ideas on development that were prevalent at the time. Within the Colonial Office, the dynamic of imperial expansion versus non-intervention is considered, in which by 1840, the former had assumed primacy over the latter. This is followed by a detailed review of the moves towards the annexation of New Zealand, and the appointment of a consul (William Hobson) whose initial function was to secure the sovereignty of New Zealand in the name of the Crown, and thereafter rule the colony as Governor. The eventual decision by the British to formally acquire sovereignty over New Zealand was accompanied by an intent to develop the colony in a way that closely reflected the philosophies of social improvement that prevailed in Britain at the time.

Chapter Five explores the role of the Treaty of Waitangi, which, for the British Government, formalised its rights to intervene in New Zealand to

whatever extent it felt was necessary or appropriate and granted Britain full legal sovereignty over the colony.

The exercise of trusteeship was a central principle in Britain's formal involvement in New Zealand. Some protection was offered to Maori in the Treaty, but with an underlying intention to develop Maori in a manner that reflected British values and ideas on the goals of development rather than to preserve Maori society in its existing state. For Maori though, the interpretation of the provisions, principles, and purpose of the Treaty differed markedly from the British understanding – primarily as a result of the mistranslation of the Treaty into Maori – and was to later lead to confusion and resentment between Maori and European. Although there was provision in the Treaty to grant Maori certain 'rights', this was done in a paternalistic manner, and such rights as were included in the Treaty were later enforceable only in a European context. Thus, for Maori to have any prospect of securing their Treaty rights, they had to engage themselves in the system of rule being installed by the colonial administration.

Consideration is also given in this chapter of the type of relationship the Treaty created between Maori and the Crown; the emergence of a distinction between legal and political sovereignty in the powers the British assumed through the Treaty; the problems that arose from the inadequate translation of the document; and the Maori capacity to conclude a treaty, stemming from the type of sovereignty they may have possessed.

Chapter Six moves from the Treaty of Waitangi, which encapsulated some of the ideals of development prescribed for the colony by the Colonial Office, to the practice of development in New Zealand. This analysis considers the effect of 'corruption' as a force that detracted from or undid some of the previous advances of development that had been achieved – principally through Maori consent to the provisions of the Treaty. In the

context of this thesis, corruption describes the forces that lead to, and the consequences of deviation from prescribed patterns of development.⁵

This chapter commences by exploring the manner in which Maori were incorporated, principally through the workings of the Office of the Protector of Aborigines, into a new justice system in the country – one imposed and largely devised by the Governor and his officials. The Government linked this development to the emergence of a ‘native policy’ in which senior colonial officials made efforts at identifying and articulating the Government’s relationship with Maori. The particular complexion this policy assumed was influenced by the dynamic that existed between a growing settler class, which generally speaking was hostile to Maori aspirations, and certain elements within the colonial administration which were conscious of the need not to trample, or at least not to be seen to be trampling, over Maori rights. However, this dynamic existed in a European context, with no consultation or input from Maori, and was founded largely on British assumptions about what Maori wanted and needed. The Government eventually imposed the requirements of a new justice regime on Maori without any evident regard for existing Maori laws and legal customs on the basis that Maori had ceded their sovereign law-making and law-enforcing functions to the Crown through the Treaty. The perceived need by the British administration in the colony to maintain and extend order overrode any sentiments that might have existed to be more receptive to Maori intentions and wishes for the new legal and justice system. The intent to develop the colony in the British mould could only be impeded by preserving the vestiges of the indigenous legal regime.

The following section of this chapter investigates the link between the ideal of the economic emancipation of a colony, and the corruption of that ideal as a consequence of the incompetent economic management of New

⁵ J. H. Newman, in M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 10.

Zealand between 1840 and 1842 by the Governor. The greater the extent of this corruption, the more the prospects for New Zealand separating itself from economic dependence on Britain diminished, and without the ensuing economic emancipation from Britain, there could be no corresponding political emancipation.

The thesis concludes with an assessment of the extent to which the particular nineteenth-century philosophies of development reviewed herein influenced or were reflected in British policy in New Zealand from the first half of the nineteenth century, and how these policies manifested themselves in New Zealand, especially between 1840 and 1842. In particular, consideration is given to the way in which the notions of trusteeship and intentional development were fundamental strands of British policy on the colony, and yet, due to various circumstances, the ideals contained in these philosophies of development were never fully realised in New Zealand as a result of the effects of corruption. However, a distinction is highlighted between the intent of implementing ideas of development in New Zealand during the early period of Crown colony government, and the comparative success of these attempts. Despite various forces contributing to the general failure of the doctrine of intentional development in the colony to realise the goals of development, there were flow-on effects of these endeavours which certainly did influence the subsequent shape of development in the colony.

(b) Research Methodology

One of the principal sources of material on the activities of the British Colonial Office during the nineteenth century – the main official body responsible for orchestrating and implementing British imperialism – is the collection known as the Great Britain Parliamentary Papers. They appear in numerous volumes with the documents relating to Britain's involvement in New Zealand having been published by the Irish University Press between 1967 and 1970. These volumes contain memoranda, official correspondence, reports, instructions, correspondence

from private citizens to officials, budgets, select committee recommendations, minutes of proceedings, minutes of evidence, maps, and several miscellaneous documents. Together, they are the most thorough source which reveals the day-to-day workings of the Colonial Office and the British Government in relation to the British Empire.

However, while the Great Britain Parliamentary Papers provide a framework for understanding the policies and practice of official British colonial activity during the nineteenth century, they are, in themselves, inadequate for the development of a more comprehensive picture of the nature and consequences of this activity particularly on indigenous populations, and also on settler communities not in direct contact with Crown officials. The Great Britain Parliamentary Papers can in some cases reflect the political sensibilities of their authors rather than the reality of the situation being addressed. This is counterbalanced to some extent, though, by the inclusion of numerous pieces of private correspondence from settlers, and to a much lesser extent Maori, to the colonial Government. It is still necessary, however, to supplement the contents of the Great Britain Parliamentary Papers with other records kept by those involved, affected, or observing the processes of British imperialism. These records exist in the form of books, diaries, journals, personal correspondence, pamphlets, and newspapers, many of which offer an unofficial, first-hand perspective on events, and which serve as a counterweight to the official Government documents. Several of these non-official sources remain unpublished, and so have been accessed through archives including the Alexander Turnbull Library, the National Archives, the Auckland Public Library, the Auckland Institute and Museum Library, the Hocken Library, and the University of Auckland Library.

The writings of those in contact with British officials and representatives in New Zealand between 1840 and 1842 appear in a multitude of formats, and vary substantially in their value – from the incidentally insightful journals of Elsdon Best and Felton Mathew (both of whom assisted the

Governor in the implementation of Crown policies), and the more intellectually penetrating observations of William Swainson (the colony's first Attorney-General), to the unequivocally hostile works generated by Charles Heaphy and Edward Jerningham Wakefield (New Zealand Company officials), both of whom were vigorous in their assaults on the activities of the Crown's representatives.⁶ Although some of these sources were written after the period under review, they still constitute first-hand accounts of events between 1840 and 1842.

The Maori perception of events at this time has left comparatively little trace on the historical landscape. Maori literacy was still weakly developed at this stage, and specific oral recollections have rarely survived to the present time. However, it is possible, to some extent, to carefully reconstruct elements of Maori thought at the time through the observations made by missionaries such as George Clarke, William Colenso, William Yate, and William Williams, as well as Crown officials when they came into contact with Maori, although attempts at reconstruction can run the risk of shaping the slender strands of evidence that have survived to fit a preconceived argument or perception.⁷

As a consequence of the research that I undertook for some of the historical components of this thesis, a great deal of material was unearthed that had not previously been published. I therefore decided to use some of this data to write a biography about Governor William Hobson's rule in New Zealand. This book, *Hobson: Governor of New Zealand, 1840 – 1842*, was published by David Ling Publishing in late 1998. Some of the content of this thesis was reproduced in this book. A few fragments of material from some sections of this thesis have also been reproduced in my biography, *FitzRoy: Governor in Crisis, 1843 – 1845*, published by David Ling Publishing in late 2000, which is about Hobson's successor as Governor of New Zealand.

⁶ P. Moon, *Hobson: Governor of New Zealand, 1840-1842*, Auckland, 1998, p. 12.

⁷ Op. cit.

(c) Significance

The nature of the themes and topics covered in this thesis result in the work bordering a variety of scholarly disciplines, including development studies, economics, politics, and history. As a consequence, the implications of the findings in this work are inevitably broad. In bringing a new theoretical perspective to a period of New Zealand history, and in advancing the field of development studies, the significance of this thesis is profound – providing a fresh perspective on events in New Zealand in the early 1840s, and furthering the exploration of early attempts at converting ideas about development into a practice of development.

The Impact on Current Treaty Scholarship

The current portrayal of the Treaty of Waitangi by historians, jurists, and political scientists, has been heavily influenced over the last quarter of a century by the work of the Waitangi Tribunal. In particular, there has been considerable effort invested in determining the meaning of the Treaty for the purpose of resolving grievances by Maori arising from its breaches by the Crown. One of the consequences, though, of so much research being undertaken for this reason has been that analyses of the Treaty have tended to be confined mainly to the post-1840 period. Substantially less consideration has been given, by comparison, to the pre-1840 period, the precise reasons why the Treaty was initiated, and the ideas that influenced its provisions. As a corollary to this, there has been similarly scant attention given to the philosophies that influenced British Government policy on New Zealand prior to 1840. The beginning of Chapter Five of this thesis offers an overview of current Treaty scholarship in New Zealand, and demonstrates how this thesis represents a substantial departure from most of the current thought on the history and meaning of the Treaty. In particular, the development studies perspective

on the intent and impact of the Treaty provides an entirely new vantage point from which the history of the Treaty can be viewed.

The overall significance of this revised assessment of the Treaty is that it shifts the focus relating to the purpose of the Treaty away from its present general status as that of a benchmark against which claims are assessed and settled. The Treaty is contextualised in this work as a document which specifically indicated the intent of the British Government to enact a prescribed doctrine of development for the colony.

The Significance from a Development Studies Perspective

Another area of significance in this thesis is the employment of Michael Cowen and Robert Shenton's distinction between immanent and intentional forms of development.⁸ Details of this dichotomy, its application, and relevance are discussed in the beginning of Chapter Two of this thesis. One of the main aspects of this approach lies in the way in which the philosophies of Bentham and Mill can be fashioned in a specifically development studies context. This thesis adds to the small but growing body of development studies literature⁹ that utilizes early nineteenth-century ideas about development as theoretical constructs and strategies for development practice.¹⁰

There are two flow-on effects of this approach which further elevates the significance of this thesis. The first is that there is currently no substantial existing work which addresses the philosophies of Bentham and Mill in the context of British colonial policy on New Zealand in the first four decades of the nineteenth century. Although the link between their

⁸ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, London, 1996, p. 132.

⁹ H. L. R. Wright, *State Practice and Rural Smallholder Production: Late Colonialism and the Agrarian Doctrine in the Papua New Guinea, 1942-1969*, PhD Thesis, Massey University, 1999; S. Corbridge, 'Book Review: Doctrines of Development', in *Journal of Development Studies*, Vol. 33, No. 5, June 1997, pp. 729-731. P. McMichael, *Development and Social Change: A Global Perspective*, Thousand Oaks, 1996; G. Rist, *The History of Development*, London, 1997; J. Overton, 'Development in Chaos?', paper presented to DevNet Conference, Wellington, 17-19 November 2000.

¹⁰ J. Overton, p. 1.

development philosophies and British Government policy in this period has been acknowledged (as detailed in Chapter Two of this thesis), the specific focus of this work on the relationship between the emergent development philosophies of the period and British Government policy on New Zealand has not been addressed previously, and makes a considerable contribution to the existing corpus of research on this early period of development studies.

The other flow-on effect is to provide a specifically development studies perspective to the character of official British intervention in New Zealand between 1840 and 1842. This also covers new ground, and has the effect of re-orienting the understanding of the motives and reasoning behind this intervention in the colony in general, and specifically, the purpose and intended functions of the Treaty of Waitangi.

This thesis further advances the application of the notions of immanent and intentional development, and trusteeship, by detailing both their importance as an impetus for the work of Bentham and Mill in prescribing processes of development, and for enabling the articulation and contextualisation of some of the tensions which emerged from this dichotomy in Britain's execution of its doctrine of intentional development for New Zealand in the early 1840s. In the context of recent discussions on the origins of development studies and development practice, this work is firmly positioned among those theorists who cite nineteenth-century examples of development thinking being enacted, and presents New Zealand between 1840 and 1842 as a case study to support this stance.

(d) Notes on Terminology

The terms 'colonialism', 'colonisation', and 'imperialism', are used interchangeably in this thesis unless they appear in reference to certain writings where a specific meaning is attached to them. In such cases, the given meaning is made clear and is distinguished from its general usage.

Although specific definitions for these terms do exist, the considerable variation in their specific employment during the nineteenth century (and more so in the twentieth century) could lead to confusion if single definition was unilaterally applied in this thesis.

Unless otherwise stated, the British Government and the British Colonial Office are used as meaning the same thing. The Colonial Office was a department of the British Government charged with implementing Government colonial policy.

The term 'Free Trade' is capitalised because this was the practice adopted by the exponents of this doctrine. Free Trade refers to a specific approach to global relations, and has implications beyond commercial exchange, particularly in areas such as political independence for colonies and a corresponding reduction in economic dependence on the colonising power. Free Trade had become an element in the larger schemes that the social philosophers reviewed in this work devised as part of their prescription for the development of colonies.

Aristocratic, honorary, and academic titles are omitted from the footnotes and the bibliography. Thus, for example, Lord Normanby appears as Normanby, Sir George Gipps appears as G. Gipps, and Dr. Keith Sinclair appears as K. Sinclair.

The convention in this thesis is not to italicise Maori words. Italicising Maori words risks marginalising the language, and serves to segregate Maori from its inclusion in English. As an official language of New Zealand, legally speaking, Maori has equal status with English, and this equality is reflected in its treatment in the text of this thesis.

(e) Referencing Conventions

Footnotes have been used in this thesis as the means of referencing material. The convention used is that the first time a reference is footnoted, its full details are included, that is, author, title, place of

publication, year of publication, and page number(s). Where there is more than one work by the same author, then the author's name, title of the work, and page number(s) appear in all subsequent occasions following the initial (and full) reference to the work.

(f) Maori Society

Throughout this thesis, reference is made to 'Maori' as the indigenous people of New Zealand. Maori are a Polynesian people who migrated to New Zealand around 800 AD.¹¹ By the time of the first European arrivals in New Zealand, in the late eighteenth century, the Maori population was estimated to have been around 100,000,¹² with most of their number living in the North Island.¹³

Maori society was made up of tribes (iwi) and sub-tribes (hapu). These were economic as well as political units of organisation.¹⁴ Each iwi was based around common ancestry, and the land that iwi occupied since their arrival in the country.¹⁵ A map of tribal locations appears on page 8 of this thesis.

¹¹ I. C. Campbell, *A History of the Pacific Islands*, Christchurch, 1989, p. 33.

¹² A. Ward, p. 13.

¹³ Abel Tasman was the first known European to 'discover' New Zealand in 1642, but Europeans did not start settling in the country for another century, see K. Sinclair, *A History of New Zealand*, Auckland, 1988, p. 42.

¹⁴ J. M. Davidson, 'The Polynesian Foundations', in W. H. Williamson and B. R. Oliver (eds.), *The Oxford History of New Zealand*, Wellington, 1981, p. 13.

¹⁵ Op. cit.

2. THE PHILOSOPHICAL FRAMEWORK

Current Development Studies Perspectives

This thesis focuses predominately, for its development studies dimension, on the emergent development philosophies that were prevalent in England in the first four decades of the nineteenth century. These often embryonic ideas about development were fashioned before what could be described as the ‘modern age’ of development studies. That is, the period since the Second World War.¹ However, recent works – particularly Cowen and Shenton’s *Doctrines of Development*² – have been instrumental in resuscitating and reconstructing these early development philosophies within the framework of current development thought. The purpose of this section is to position this thesis within the body of contemporary and historical approaches to these early ideas about development, and to demonstrate how this thesis contributes to that corpus of work.

The Continuity of Development

In working towards a history of development thought and practice, Cowen and Shenton defer to the nineteenth-century origins of current development theory. Herein, they imply, lies the paternity of many of the present ideas and themes relating to development studies.³ Furthermore, Cowen and Shenton explicitly link the origins of development theories in the first half of the nineteenth century to a product of Europe’s transition to industrial capitalism during the period.⁴ The need for a remedy for the apparent disorder of the age was the springboard for the creation of

¹ M. P. Todaro, *Economic Development*, Seventh edn., New York, 1999, pp. 78-9; J. Overton, ‘Development in Chaos?’, paper presented to DevNet Conference, Wellington, 17-19 November 2000. p. 1.

² M. P. Cowen and R. W. Shenton, *Doctrines of Development*, London, 1996.

³ *Ibid.*, pp. 3-4.

⁴ *Ibid.*, pp. 12-13.

systems of positive thought about development.⁵ However, rather than being influenced by the numerous and substantial differences between development philosophies of the last fifty years, and those of earlier periods to conclude that these two epochs are separate and self-contained, Cowen and Shenton portray all development thinking from the late eighteenth century until the late twentieth century as an unbroken continuum which has, at its heart, the need to react to ‘...the destruction wrought by an immanent process of development’.⁶ It is this notion of an unbroken seam of development thought – and especially, development practice – extending back over the past two centuries, which is one of the central tenets upon which much of Cowen and Shenton’s 1996 work is founded. By this time, their previous qualification that attempts by ‘...modern would-be developers to find the origins of their development practice [in late eighteenth- and early nineteenth-century British social philosophers]...requires a very selective reading of texts’,⁷ had been all but abandoned.

An important example of the reconstituting of early nineteenth-century ideas about development, and one which is fundamental to this thesis, is the distinction between immanent and intentional development.⁸ Cowen and Shenton’s stated purpose in this approach is to ‘...show the affinity between the nineteenth- and twentieth- century discussions...’ about development.⁹ The details of what constitutes immanent and intentional development, and their significance as part of the process of the state directing development are explored shortly. What must first be considered, though, is the manner in which these ideas evolved, their variants, and their inherent tensions.

⁵ Ibid., p. 27.

⁶ Op. cit.

⁷ M. P. Cowen and R. W. Shenton, ‘The Invention of Development’, in J. Crush (ed.), p. 31.

⁸ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 56.

⁹ Ibid., p. 60.

The Incorporation of Early Nineteenth-Century Ideas About Development in Current Development Studies

Until comparatively recently, there had been a widespread consensus among development theorists as to the origins of development studies and development practice. This consensus was founded on the premise that the implementation of specific doctrines of development commenced from approximately the end of the Second World War. The Australian economist Heinz Arndt described his 1941 position as a research-assistant in a London-based committee on post-war reconstruction as one of the earliest traceable starting points of modern development economics.¹⁰ In 1986, Deepak Lal defined development studies as ‘The body of thought that has existed since World War II’,¹¹ thus denying the possibility of substantial components of development studies (admittedly otherwise named) existing in earlier periods. It is as though the employment of the term ‘development studies’ itself created the discipline, and implicitly gave birth to a line of thought with no immediate intellectual precursors.

In a similar vein, Ron Ayres’ 1994 article ‘Schools of Development Thought’,¹² contextualised development studies as being identifiable only as far back as the end of the Second World War.¹³ This view of the history of development studies was also shared by Bjorne Hettne, who considered the 1950s, and even the 1960s, as ‘...the formative period...’ of development studies.¹⁴

¹⁰ H. W. Arndt, *Fifty Years of Development Studies*, Canberra, 1993, p. 3. Even the title of Arndt’s book is suggestive of the period in which he presumes development studies to have existed.

¹¹ D. Lal, ‘The Misconception of “Development Economics”’, in S. Corbridge (ed.), *Development Studies: A Reader*, London, 1995, p. 56.

¹² R. Ayres ‘Schools of Development Thought’, in R. Ayres (ed.), *Development Studies: An Introduction Through Selected Readings*, Dartford, 1995, pp. 97-103.

¹³ *Ibid.*, p. 97.

¹⁴ B. Hettne, *Development Theory and the Three Worlds*, New York, 1990, p. 10.

Stuart Corbridge, writing as late as 1995, argued that the ‘...notion of development is very much the product of the 1940s and 1950s, when ostensibly European-American ideas about progress were extended to what could be seen as Europe’s erstwhile colonies’.¹⁵ No consideration was afforded at all to the attempts at enacting development that had taken place in the period of over a century before the 1940s. To this epoch, Corbridge attributed the dismissive epitaph: ‘The pre-history of development studies’.¹⁶

Even as late as 2000, Philip McMichael was content to imply that the Marshall Plan – devised by the United States to revive the economy of Germany after the Second World War – was effectively the world’s first bilateral development initiative.¹⁷ Earlier bilateral and multilateral programmes, especially those with a significant humanitarian or aid component, were categorised as falling outside the realm of development studies because they were allegedly focussed overwhelmingly on ameliorating the effects of poverty, rather than specifically attempting to bring about development.¹⁸

The mid-1990s represented a substantial turning point in the perception of the existence of development practice prior to 1945. Michael Watts, in his 1995 chapter ‘A New Deal in Emotions: Theory and Practice and the Crisis of Development’,¹⁹ suggested that consideration of the basis of development studies required at least some reflection on early ideas about development. He described the need to ‘...identify how and why development emerges as a late eighteenth- and early nineteenth-century problem containing certain tropes grounded in the European experience of

¹⁵ S. Corbridge ‘Editor’s Introduction’, in S. Corbridge (ed.), p. 1.

¹⁶ *ibid.*, p. 1, n. 1.

¹⁷ P. McMichael, *Development and Social Change: A Global Perspective*, Second edn., Thousand Oaks, 2000, p. 44.

¹⁸ *ibid.*, pp. 45-6.

¹⁹ M. Watts, ‘A New Deal in Emotions: Theory and Practice and the Crisis of Development’ in Crush, J. (ed.), *Power of Development*, London, 1995, pp. 44-62.

governability, disorder and disjuncture...'.²⁰ Watts also cited a 1993 paper written by Cowen and Shenton, in which they identified notions such as trusteeship as the '...nineteenth-century touchstones of development'.²¹

However, Watts drew a distinction between ideas about development – which he conceded had origins from at least the late eighteenth century²² – and the practice of development as a specific domain of state intervention,²³ which he identifies as being of much more recent origin.²⁴ Jonathan Crush²⁵ navigated around this stark assertion by proposing that such an impression could be produced as a consequence of '...contemporary development's almost overwhelming need to reinvent or erase the past...Because development is prospective, forward-looking, gazing towards the achievement of as yet unrealised states, there seems little point in looking back'.²⁶ Yet, as this thesis demonstrates, the intent to enact state policy, in the form of a specific doctrine of development to bring about prescribed outcomes, occurred in the 1830s in the case of Britain's formal intervention in New Zealand. Watts' dismissal of such a possibility also fails to sit comfortably with some of Cowen and Shenton's later observations, in which not just pre-Second World War but nineteenth-century examples of doctrines of development being executed were cited. In Latin America, for example, foreign investment and subsequent economic growth were achieved between 1850 and 1914 '...with strong assistance from supporting state intervention'.²⁷ Cowen

²⁰ Ibid., p. 46.

²¹ M. P. Cowen and R. W. Shenton, 'The Theology of Development', paper presented to the Historicizing Development Workshop, Emory University, Atlanta, December 1993, in M. Watts, pp. 47-8.

²² M. Watts, p. 54.

²³ Op. cit.

²⁴ Op. cit. Watts cites D. Hunt, *Economic Theories of Development: An Analysis of Competing Paradigms*, New York, 1989.

²⁵ J. Crush, 'Imagining Development', in J. Crush (ed.) *Power of Development*, London, 1995.

²⁶ Ibid., p. 9.

²⁷ W. Glade, *The Latin American Economies*, New York, 1969, p. 235.

and Shenton quote William Glade's suggestion that the scale, nature and coordination of this foreign investment precludes the possibility that such development was unplanned, or simply the product of laissez faire economic liberalism.²⁸ In the case of Canada and Australia in the nineteenth century, Cowen and Shenton were explicit that a doctrine of development was implemented: 'We do not dispute that there was a doctrine of development...and we show in the Canadian case, why and how the doctrine was developed before the mid-nineteenth century'.²⁹ In Canada in the nineteenth century, Government investment in railroads and economic infrastructure was specifically based on the '...principle of intentional development'.³⁰ In Australia in this period, Cowen and Shenton drew attention to what they described as a '...policy of development whose intention was to replace what had been destroyed and lost in the course of capitalist development...'.³¹ While Watts conceded that the concept of development has seldom broken from its eighteenth-century European origins,³² dating the commencement of the practice of development is a comparatively new occurrence and extends back only as far as 1945.³³

Arturo Escobar³⁴ tilted on the side of Watts, stating that the nature of development is inextricably linked with the rise of post-Second World War internationalism,³⁵ and asserting that '...development has functioned as an all-powerful mechanism for the production and management of the Third World in the post-1945 period'.³⁶ Yet, there is a tension in Escobar's own position. Three years earlier, he wrote that development

²⁸ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, pp. 242-3.

²⁹ *Ibid.*, p. 174.

³⁰ *Ibid.*, p. 190.

³¹ *Ibid.*, p. 179.

³² M. Watts, p. 47.

³³ *Op. cit.*

³⁴ A. Escobar, 'Imagining a Post-Colonial Development Era', in Crush, J. (ed.), *Power of Development*, London, 1995, pp. 211-227.

³⁵ *Ibid.*, pp. 212-3.

³⁶ *Ibid.*, p. 213.

practice was inescapably connected to ‘...the rise of Western modernity since the end of the eighteenth century’,³⁷ while also somewhat contradictorily, ascribing the origins of the mobilisation of national production – which he identified as a key component of development practice – to the period of the First World War.³⁸ Whilst not necessarily a paradoxical position, it is none-the-less evident that there is room for ambiguity in tracing the origins of the practice of development.

In presenting development as a reaction to a perceived lack of development, Kate Manzo³⁹ proposed that one of the continuous factors of development thinking was the domination of Western European thought in the establishment of the goals of development.⁴⁰ This too was a concession to the continuity of development thought and more significantly in this context, to development practice, in as far as the attitudes and actions of Western European countries towards non-European countries for at least three centuries have been informed to a considerable extent by the values of development inherent in those Western European nations.

Immanent and Intentional Development

Although this thesis explores the impact of certain contemporary ideas about development on the commencement of formal British rule in New Zealand, simply analysing the relationship between theory, policy, and practice would disclose only part of the significance of the overall process from a development perspective. The wider importance of the policies Britain conceived for and enacted in New Zealand between 1840 and 1842

³⁷ A. Escobar, ‘Planning’, in W. Sachs (ed.), *The Development Dictionary: A Guide to Knowledge as Power*, London, 1992, p. 132.

³⁸ Ibid., p. 134.

³⁹ K. Manzo, ‘Black Consciousness and the Quest for a Counter-Modernist Development’, in J. Crush (ed.), pp.228-252.

⁴⁰ Ibid., pp. 232-5.

is that they represented a shift towards intentional development for the colony. Moreover, based on New Zealand's experience in this period, it is evident that by 1840, a specific doctrine of development for the colony had evolved and been implemented by colonial policy-makers in Britain.

The distinction between immanent and intentional development – which is a pivotal theme in this work – has been articulated by Cowen and Shenton in their seminal work, *Doctrines of Development*.⁴¹ The British Government's execution of contemporary ideas about development in the 1840s in New Zealand reflected a division between these two modes of development. The first approach was that of immanent development, which was a natural, evolutionary, organic type of development that societies generated almost automatically, with no conscious consideration given to issues of development for the society. Such development arose from internal pressures and external threats, and lacked both conscious planning and any ordering of change.⁴²

In New Zealand, those Maori communities outside the realm of European influence in the early nineteenth century could be categorised as existing in this group. It should be stressed from the outset, though, that this does not mean that development did not occur at all in Maori society. On the contrary, there is substantial evidence that regional variations in development emerged, predominantly as a result of the different physical environments in which Maori lived throughout the country.⁴³ In parts of the South Island, for example, some Maori communities found that the climate was unsuitable for the propagation of foods such as kumara and taro, which they had brought with them from Polynesia. Consequently, these communities developed a greater dependence on the available birds and mammals as a source of food, and when these became depleted, the

⁴¹ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, pp. 61, 110, 132.

⁴² *Ibid.*, p. 132.

⁴³ L. Cox, *Kotahitanga: The Search for Maori Political Unity*, Auckland, 1993, pp. 15-17.

communities concentrated on developing their techniques in fishing to compensate for the reduction in other meat sources.⁴⁴ These types of development reflected the process of Maori communities reacting and adapting to the constraints and pressures of their natural environments, rather than deliberately planning to develop to a prescribed goal or goals. Maori belonged to the traditional-oriented world of tribalism, with a heavy emphasis on the communities being connected to the natural world.⁴⁵ This dependence on the surrounding physical environment was a typical characteristic of traditional societies, which Walt Rostow described as operating ‘...within limited production functions, based on pre-Newtonian science and technology, and on pre-Newtonian attitudes towards the physical world...’.⁴⁶ Such limitations tended to serve as a barrier to any deliberately planned attempt to achieve development.⁴⁷ Moreover, the cultural and socio-economic forces at work in Maori communities encouraged the preservation of the existing order,⁴⁸ and obviated any significant effort to intentionally infuse development in Maori society prior to (and to a diminishing extent after) 1840.

The second mode of development was that of intentional development, which relied on the state acting, as the name implies, with a deliberate intent to develop⁴⁹ through its capacity to expand its administrative powers, and thereby impose order.⁵⁰ It related to ‘...planned interventions by the state (or other agencies) to shape and direct socio-economic

⁴⁴ Ibid., p. 16.

⁴⁵ Ibid., pp. 61-2.

⁴⁶ W. W. Rostow, ‘The Stages of Economic Growth’, in P. Worsley (ed.), *Modern Sociology*, London, 1988, p. 141.

⁴⁷ Ibid., pp. 142-3.

⁴⁸ T. Curtis, ‘Takahi Mana-A-Iwi, Patu Tangata: The Displacement of Maori Nationhood and Society’, in *He Tuhinga Aronui*, Vol. 1, No. 1, Auckland, October 1997, p. 61.

⁴⁹ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, pp. 61-5.

⁵⁰ H. L. R. Wright, *State Practice and Rural Smallholder Production: Late Colonialism and the Agrarian Doctrine in the Papua New Guinea, 1942-1969*, PhD Thesis, Massey University, 1999, p. 81.

change'⁵¹ and to contain the damaging effects of immanent development.⁵² This was a far more invasive approach to achieving development, and involved the ends (the future vision of a near-utopian society – the stationary state) justifying the means (the intrusion of the rule of a trustee power over a society).⁵³

Capitalism and Intentional Development

Capitalism has the potential to exist in an ambiguous position in the context of ideas about intentional development. On the one hand, the assertion that 'capitalism develops' assumes such development '...to be an immanent and objective process'.⁵⁴ Yet, when harnessed to become a part of state policy, capitalism can be wielded as a tool of intentional development. Glade cites the case of Latin America in the nineteenth century in support of this possibility:

The fact that Latin American governments were the main borrowers of external funds is perhaps the most revealing single indicator of the degree of state involvement in economic processes during the late nineteenth-century period, for substantial amounts of these funds were employed to modify the economic indicators of the market place and to influence private investment to flow into the channels which would guide national economic life towards [a]...pattern of development.⁵⁵

In Australia in the 1850s and 1860s, a policy of state intervention in the economy sought to direct development by modifying aspects of the laissez faire system, rather than displacing it with an entirely state-controlled

⁵¹ J. Overton, p. 2.

⁵² Op. cit.

⁵³ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, pp. 25-7, 40-1.

⁵⁴ Ibid., p. 4.

⁵⁵ W. Glade, pp. 242-3.

regime. Charles Mayes wrote in 1861 of the need for state-regulated labour costs⁵⁶ as a means of achieving economic development:

It will be seen from the list of 'raw materials' produced in Victoria, how much our success, as a manufacturing people, depends upon the economical production of agricultural produce; but even supposing we produce abundance of raw materials at a cheap rate, we must also possess cheap labour and good machinery for the successful conversion of such raw produce into manufactured articles.⁵⁷

In nineteenth-century Canada, there was a similar attempt at 'blending'⁵⁸ state-directed development with capitalist modes of national economic activity:

The businessmen and French Canadian political leaders had no difficulty in establishing common goals. Economic growth was quite compatible with faith and nationalism. Railway expansion promoted colonisation: the industrialisation of Montreal encouraged the repatriation of French Canadians from the United States. English-speaking entrepreneurs provided jobs for the surplus rural population while not interfering with the French Canadian Mores or traditional power structures.⁵⁹

In this example, the state did not intervene to achieve the population movements or shifts in employment patterns referred to. Instead, pre-emptive state intervention created the environment that enabled the market to respond accordingly.

Emerging Maori Capitalism in the Early Nineteenth Century

As the preceding examples demonstrate, the superficial impression of capitalism as an immanent form of development – being the sum total of

⁵⁶ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 176.

⁵⁷ C. Mayes, in M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 177.

⁵⁸ B. J. Young, *Promoters and Politicians: The North Shore Railways in the History of Quebec 1854-1885*, Toronto, 1978, p. 24.

⁵⁹ Op. cit.

individual activity that is not directed by the state – belies the capacity for the state to regulate aspects of capitalist economic systems in order to actively direct development in a prescribed direction. In the New Zealand situation between 1840 and 1842, the presence of an emerging capitalist system in some Maori communities served as a point of engagement with the European settlers, and was drawing some Maori communities into a field of activity in which the colonial government hoped to be able to regulate.

Prior to the introduction of money in New Zealand, commercial exchange among Maori, as well as between Maori and Europeans, was conducted on the barter principle, as the missionary William Colenso noted:

Buying and selling for a price, as practised by us, was unknown to them . . . They had, however, a kind of barter or exchange; or, more properly, a giving to be afterwards repaid by a gift. Dried sea-fish, or dried edible sea-weed, or shark oil, or karaka berries, would be given by natives living on the sea-coast to friendly tribes dwelling inland; who would afterwards repay with potted birds, or eels, or hinau cakes....⁶⁰

Among the very first occasions of contact between Maori and European, episodes of trade between the two groups were recorded.⁶¹ When Captain Cook's ship *Endeavour* anchored at Mercury Bay in 1769, some of the local Maori came on board to trade items, and in some cases, appropriate them without any form of payment. When one such theft occurred, an officer on Cook's vessel shot and killed the Maori responsible. Such was the importance of this embryonic economic relationship, however, that the local hapu, after some deliberation, decided that Cook's officer had been in the right in exacting utu (justice, revenge) and the exchange of goods between the two parties recommenced.

⁶⁰ W. Colenso, *The Authentic and Genuine Signing of the Treaty of Waitangi*, Wellington, 1890, p. 354

⁶¹ J. White, *Ancient History of the Maori*, Vol. 5, Wellington, 1890, pp. 121-30; J. Cook, *The Voyage of the Endeavour 1768 – 1771*, J. Beaglehole (ed.), Cambridge, 1955, p. 196.

There were other incidents involving Cook's crew reprimanding and sometimes punishing Maori for minor thefts committed.⁶² Probably unwittingly, Cook was establishing some of the rudimentary parameters for trade between Maori and European, a point noted by Alan Ward: '...once relations had been established [between Maori and European], and barter exchanged, the Maori concerned were prepared, within limits, to admit a kinsman's responsibility in a dispute and accept European sanctions against him, for the sake of ending the dispute and *resuming trade* [author's italics]'.⁶³

The elementary and reasonably undeveloped components of a new form of economy were just beginning to enter into parts of New Zealand. The response of Maori who encountered this commercial interaction with Europeans was to embrace to the fullest extent the advantages that such opportunities seemed to afford them. There is virtually no reticence recorded in early Maori reaction to commercial activity with Europeans – unlike the British experience with the indigenous people of the neighbouring Australian colony, who tended to retreat away from any contact with the European arrivals.⁶⁴

The introduction of money was the most important step in the development of capitalism in New Zealand prior to 1840. Money was transportable, it was recognised and accepted by the Europeans for its value, and possibly most importantly, it offered a standardised means of exchange and thereby assisted in the establishment of an emerging capitalist market. The cumbersome system of barter, with its frequent dependence on seasonal produce for exchange, and the seemingly endless process of negotiations that were necessary to establish the respective

⁶² A. Ward, p. 12.

⁶³ Op. cit.

⁶⁴ A. Moorehead, *The Fatal Impact: The Invasion of the South Pacific 1767 – 1840*, Sydney, 1987, p. 118ff.

values of the goods to be exchanged, was displaced by a more efficient and measurable means of undertaking economic exchange.

With the establishment of money in many communities in the colony, a new range of opportunities for economic development arose, as Raymond Firth noted: ‘...and so we find that he [the Maori] began to engage in trade with avidity not many years after the coming of the white man’.⁶⁵ Firth also described the process by which capitalism tended to extend into some Maori communities:

After his [the Maoris’] first unpleasant experiences with adulterated goods, he became a careful judge of materials, a keen bargainer with an eye to his profit, and would spend long hours in chaffering over the price to be received in return for his pigs and potatoes. Scrutiny of the early records of the contact of Europeans with the native people of New Zealand would soon convince anyone that the various concepts embodied in the notion of trade did not have to be laboriously implanted by the white man in the native, but, once given the stimulus of novel economic and social conditions, sprang up and flowered from a soil which had long contained their seed.⁶⁶

In 1832, the merchant Joel Polack (1807-82), undertook an extensive journey into parts of Northland in order to investigate the extent of trade possibilities that existed in the region. His immediate goal was to purchase ‘...spars for shipping, and the flax, as dressed by the natives, both of which commodities for exportation abounded in that neighbourhood’.⁶⁷ Part of Polack’s success in his trading expeditions was his approach of convincing the chiefs with whom he was about to trade that any exchange or purchase of goods that would take place would ‘...benefit natives and Europeans generally’.⁶⁸ At most of the Maori

⁶⁵ R. Firth, *The Economics of the New Zealand Maori*, Wellington, 1972, p. 431.

⁶⁶ *Ibid.*, pp. 431-2.

⁶⁷ J. Polack, *New Zealand: Being a Narrative of Travels and Adventures During a Residence in that Country Between the Years 1831 and 1837*, London, 1838 (reprint, Christchurch, 1974), in G and S. Ell (eds.), *Great Journeys in Old New Zealand*, Auckland, 1995, p. 31.

⁶⁸ *Ibid.*, p. 38.

settlements Polack visited, irrespective of which hapu or even iwi they were affiliated to, the reaction he recorded was generally the same: these communities were eager to commence and expand trade with the Europeans. Pollack was adamant about the advantages that lay ahead in Maori commerce: 'Few nations delight more in trading and bargaining than this people; a native fair or festival best illustrates this fact. To such an excess are the feelings of the people carried in bartering with each other, that during war, though the belligerent parties seek for the annihilation of each other, yet at intervals a system of trade, as we have already stated, is carried on, that can scarcely be credited by strangers to their customs....Any person having had dealings with them, are aware of their passion for commercial pursuits'.⁶⁹

For many Europeans, though, the need for trade with Maori was based on survival, rather than profiteering. The missionary Henry Williams noted in his diary on 26 March 1827, for example, that he '...attempted to purchase some potatoes and corn; our settlement being filled with natives and several following me for that purpose [but] As we had not any blankets to part with , nor any oil, our bartering was very limited'.⁷⁰ This sort of bartering demonstrated the keenness of local Maori to pursue trade, but at the same time, it was only the exchange of one sort of good for another, and did not really provide Maori communities with the means to propel themselves into a period of rapid economic development. Like Polack, Williams had money, but saw bartering as more profitable. The change which was to bring about the revolution in Maori economic development was the introduction of cash-based trade.

By the 1830s, the growing presence of a European market for certain goods had resulted in changes in the Arawa rohe [region] in production

⁶⁹ Ibid., p. 111.

⁷⁰ H. Williams, Diary Entry, 26 March, 1827, in L. M. Rogers (ed.), *The Early Journals of Henry Williams, Senior Missionary in New Zealand of the Church Missionary Society*, Christchurch, 1961, p. 47.

methods and in the type of goods produced: 'Pigs and potatoes, and later fruit and vegetable crops, were quickly absorbed into the local economy'.⁷¹ The emphasis was on production in return for cash. In the far north of the country, this sort of economic realignment was occurring at even greater speed. The Te Roroa Claim made to the Waitangi Tribunal gave a broad indication of this development: 'Te Roroa occupied the hinterland of two of the northern harbours visited by commercial shipping from the late 1820s, the Hokianga and the Kaipara. A lively shore-based trade in kauri timber, pork and potatoes and ship building developed in the Hokianga in the 1830s and was expanding into the Kaipara by 1840'.⁷²

Ngati Paoa, an iwi from the Hauraki region, were also recorded as active participants in the new trade opportunities that were arising in New Zealand in the 1820s and 1830s: 'A trading station was established at Miranda in 1832 dealing in flax and spars. A mission station opened at Thames in 1833 with a second, soon after, at Puriri. The missionaries described the people as numerous despite fearful devastations, industrious and willing to receive instruction. Ngati Paoa was soon involved in the production of maize, onions, kumara, cabbage, wood and flax and tended herds of pigs, goats, fowls and geese'.⁷³

In other parts of the country, some Maori communities engaged in whaling, initially as providers of goods to the sailors on the ships, but with the intention of building up enough capital to purchase the much-sought-after technology, so that they could carry out their own whaling operations:

from about 1807, Maori became attracted to whaling seeking to extend their role from that of produce suppliers. European whaling technology was far superior to theirs and this was to

⁷¹ The Waitangi Tribunal, *The Pouakani Report*, 1993, section 4.1.

⁷² The Waitangi Tribunal, *The Te Roroa Claim*, 1992, Wai-38, section 1.1.

⁷³ The Waitangi Tribunal, *The Waiheke Island Claim*, 1987, section 3.1.2.

become the only area in fishing where Maori were to be keen to acquire Western skills. Non-Maori were eager to treat, numerous whaling stations being established amongst the tribes though again, principally in the South Island. Whaling was to become mainly shore-based, particularly from the 1820s. It was in the context of much whaling competition that whalers had come to seek from local tribes, exclusive whaling rights in the seas off their lands and the sole right to establish a whaling station upon them. As we shall see the resultant deeds were eventually to come under official scrutiny, but it is apparent that Maori approached these arrangements from the standpoint of their own cultural experience.⁷⁴

These examples give a cursory indication of the spread of capitalism among Maori communities in the decades preceding 1840. However, of more immediate significance in the context of this thesis is the fact that this economic system was unregulated and incapable of being regulated as long as there was no national government presence in the colony.

A useful means of evaluating the character of capitalism in New Zealand prior to 1840 and in the period of 1840 to 1842 (when the state commenced its attempts to direct the economy of the colony) is the employment of the distinction between the subjective and objective division of labour in a capitalist economy. Friedrich List articulated these two forms in the nineteenth century,⁷⁵ and they are especially useful as a lens through which economic activity in New Zealand both before and after 1840 can be viewed. The subjective division of labour describes a situation in which individuals contribute to a single activity, such as the manufacture of a particular product, or the provision of a particular service. In contrast, the objective division of labour allows an individual to simultaneously contribute to a number of different activities with one common object as the ultimate purpose.⁷⁶ Cowen and Shenton have positioned the objective division of labour as a function of the state, as

⁷⁴ The Waitangi Tribunal, *The Muriwhenua Report*, 1987, Appendix 3.

⁷⁵ F. List, *The National System of Political Economy*, New York, 1885.

⁷⁶ M. P. Cowen and R. W. Shenton, 'The Invention of Development', p. 35.

part of its repertoire of intentional development.⁷⁷ List argued that once a state took on the task of constructive development, through directing the objective division of labour, it could realise its full productive potential.⁷⁸ Certainly, in New Zealand's case, as is detailed in Chapter Six of this thesis, the state actively engaged in attempting to reconstitute the colony's capitalist regime to a model which would secure an ultimate purpose: the implementation of the prescribed doctrine of development.

The Role of Order and Progress

Intentional development was partially the product of the need to overcome the disorder that accompanied immanent forms of development. Order could be brought about in communities and societies which were apparently incapable of occasioning their own development, and implicitly were also unable to overcome their own disorder by trustee powers. Cowen and Shenton argue that with trusteeship, '...the remedy for disorder lay with those who had the capacity to utilise land, labour and capital in the interests of society as a whole. Property was the major obstacle to this programme. 'Idle owners' entrusted the instruments of production to the 'hands of a skilful worker' and reaped the profits...this evil could only be overcome if property was placed in the hands of 'trustees' chosen on the basis of their ability to decide where and how society's resources should be invested'.⁷⁹ In this example, Cowen and Shenton cited bankers as the agents of intentional development.⁸⁰ In New Zealand between 1840 and 1842 however, it was the British colonial government, personified in the form of the Governor and his officials, who endeavoured to exercise exclusive trusteeship powers over the colony.

⁷⁷ Op. cit.

⁷⁸ *ibid.*, p. 36.

⁷⁹ *Ibid.*, p. 34.

⁸⁰ Op. cit.

Intentional development was inextricably linked by the capacity of the trustee power to bring order to the society. The distinction between legal and political sovereignty, which is detailed in Chapter Five of this thesis, reveals one of the areas of tension that accompanied the attempts by the British Government to impose its order on New Zealand in the early 1840s. The relationship between order and progress has a significant bearing on the positioning of the notion of development within the context of state-guided attempts at implementing a practice of development. Cowen and Shenton describe how, in the nineteenth century, the perception of development was a ‘...means towards which progress might be ordered, but it was not the idea of progress itself’.⁸¹ Auguste Comte stressed the role of order as the foundation of development,⁸² and described it as the dominant force behind progress: ‘Order is the condition of all Progress. Progress is always the object of Order. Or to penetrate the question still more deeply, Progress may be regarded simply as the development of Order; for the Order of nature necessarily contains within itself the germ of all possible Progress’.⁸³

The two categories of development – intentional development which is deliberately willed, planned, directed, and above all, ordered, and immanent development which is none of these – are assessed in more detail in parts of the remainder of this chapter, and in chapters four, five, and six. At this juncture though, it is useful to consider the positivistic elements that guided much of the development thinking in the early nineteenth century, and which opened up the possibility for ideas relating to intentional development to emerge and evolve.

⁸¹ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 8.

⁸² A. Comte in *ibid*, p. 28.

⁸³ *Op. cit.*

Positivism in Later Eighteenth- and Early Nineteenth-Century Philosophies of Development.

Both Bentham's and particularly Mill's philosophies of development were positivist in character. They were descriptive and normative in that they described to some extent how human thought had evolved, and prescribed norms for how thinking should proceed.⁸⁴ In this period, positivism was closely associated with a fusion of philosophy and science. This was based on the premise that knowledge relating to social trends could be obtained through scientific observation and testing. Thereafter, various value judgements about how societies ought to be could be formulated. Mill's formula for governments of the future run by specialists⁸⁵ epitomised the positivist strain in social thinking at the time. Positivism also harboured an inherent optimism about the future, in part because the present state of things was seen as inadequate. Mankind had '...outgrown old institutions and old doctrines, and ...[had] not yet acquired new ones'.⁸⁶ Social philosophers in the first half of the nineteenth century took on the responsibility of devising schema for the progress and improvement of societies, believing that improvement could be fashioned around an ideal of what the future of societies would look like.

Not all development thinking in this era was so optimistic about the future, however. In one respect, the work of the positivist philosophers in the first half of the nineteenth century can be seen as a direct reaction to a more gloomy vision of what lay ahead for humanity.

A major exponent of this more pessimistic view of development was Thomas Malthus (1766-1834) whose ideas in the context of this thesis are important insofar as they demonstrate that even at this comparatively early

⁸⁴ J. S. Mill, *The Spirit of the Age*, in *The Examiner*, London, May 1831, in G. L. Williams (ed.), *John Stuart Mill on Politics and Society*, Glasgow, 1985, p. 175.

⁸⁵ J. S. Mill, *Considerations on Representative Government*, London, 1861, in J. M. Robson (ed.), *The Collected Works of John Stuart Mill*, Vol. 19, Toronto, 1977, p. 567; *The Spirit of the Age*, p. 178.

⁸⁶ J. S. Mill, *The Spirit of the Age*, p. 170.

juncture, development philosophies were beginning to substantially diverge and that there was no unitary strand of development thought. Malthus, by occupation a minister of religion, published his most influential work – *An Essay on the Principle of Population* – in 1798.⁸⁷ In addition to the alternative economic outlook it prophesised, it became a corrective to the optimism of the later ideas of Mill and Bentham. The wide dissemination of Malthus' work in England made it an important influence on ideas about development in the generation before the rise to prominence of Bentham and Mill's philosophies, and acted as a counterbalance to these two more optimistic philosophers.

In the late eighteenth century and early nineteenth century, there appeared to be abundant evidence in the social unrest that was simmering in England, and boiling over in parts of Europe,⁸⁸ that 'overpopulation', along with mass urbanisation, were key factors in the weakening of social order and discipline. Any increase in national wealth due to a growth in the manufacturing sector, without a corresponding increment in food production, was a deceptive measure of economic and social improvement – according to Malthus – on the basis that:

...it will not be a real and effectual fund for the maintenance of an additional number of workers, unless the whole, or at least a great part of this increase of the stock or the revenue of the society, be convertible into a proportional quantity of provisions; and it will not be so convertible where the increase has arisen merely from the produce of labour, and not from the produce of land. A distinction will in this case occur, between

⁸⁷ T. Malthus, *An Essay on the Principle of Population*, London, 1798 (Harmondsworth, 1970). Malthus produced an enlarged version of this work five years after it was first published.

⁸⁸ R. Turner, *The Tories and the Reform Act of 1832*, London, 1998, chap. 1.

the number of hands which the stock of society could employ, and the number which its territory could maintain.⁸⁹

Malthus' pessimistic outlook presented a dim future in which human nature itself would lead to the economic and social demise of humanity:

The perpetual tendency in the race of man to increase beyond the means of subsistence is one of the general laws of animated nature which we can have no reason to expect will change...it is evident that no possible good can arise from any endeavour to slur it over or keep it in the background. On the contrary, the most baleful mischiefs may be expected from the unmanly conduct of daring not to face the truth...⁹⁰

According to Malthus, it was the reproduction of the human species beyond its means to sustain itself which guided society's development to a fatal conclusion that humans seemed unable to arrest. It was a form of development that was biological and could not effectively be redirected. However, the positivist philosophers of the early nineteenth century adopted a position in which the future was more desirable than the present, and constructed an image of a future state that was achievable with the active guidance of trustees of society.

Immanent and Intentional Development

Malthus predicted a gradual but accelerating regression in the standards of people's lives as the pressures of a growing world population became harder to bear.⁹¹ Although the outcome was cataclysmic, it relied on the unavoidable, 'natural' development of society. Thus, it was still a type of

⁸⁹ T. Malthus, *An Essay on the Principle of Population*, p. 184.

⁹⁰ *Ibid.* pp. 198-9.

⁹¹ T. Malthus, pp. 184-9.

development, irrespective of the outcome it eventually led to. This form of immanent development was an almost ‘...unconscious process...’⁹², and was based on the internal, self-contained factors in the society which were responsible for motivating development. There was certainly no deliberate political or collective will that directed the way in which society would develop. Development simply occurred rather than was made to occur.

Marx constructed his stages of capitalist economic development on this principle of immanent development. For Marx, ‘...economic development was a historical process that happened without being consciously wished by anyone’.⁹³ Marx suggested that the forces of history were more powerful than the capacity of individuals to harness them.⁹⁴ Although his emphasis on the positive abolition of private property⁹⁵ was conceived of in terms of its contribution to historical transformations overall, Marx saw the history of society as one based on class struggle.⁹⁶ This form of immanent historical development was a by-product of ‘...forever changing, developing, differentiating...’ and competing class formations.⁹⁷ It was Marx’s acknowledgement of capitalism’s capacity for self-destruction⁹⁸ that led him to express concerns over the need to develop means of controlling these processes and forces.⁹⁹

The basis of intentional development, however, was far more confident about the capacity of people to alter the course of their own development,

⁹² M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 132.

⁹³ H. W. Arndt, ‘Economic Development: A Semantic History’, in *Economic Development and Cultural Change*, Vol. 29, No. 3, 1981, p. 460

⁹⁴ K. Marx, ‘Letter to Mikhailovsky’, 1877, in D. McLellan (ed.), *Karl Marx: Selected Writings*, Oxford, 1987, p. 572.

⁹⁵ E. Fischer, *Marx in His Own Words*, Harmondsworth, 1987, p. 28.

⁹⁶ K. Marx, *Manifesto of the Communist Party*, Moscow, 1952, p. 40.

⁹⁷ E. Fischer, p. 64.

⁹⁸ K. Marx, ‘Speech on Free Trade’, Brussels, 9 January 1848, in D. McLellan (ed.), *Karl Marx: Selected Writings*, Oxford, 1987, p. 270.

⁹⁹ *Ibid.*, pp. 269-70.

and that of others as well. In the years leading up to and including the early period of Crown rule in New Zealand, a range of considerations and motivations, extending from humanitarian and ethical, to commercial, patriotic, and even racial superiority, encouraged the British authorities to formulate specific policies to develop New Zealand – policies that were essentially positivist in outlook. Any intrusions into Maori society that these plans would cause could be mitigated by the belief that the immanent development of Maori society was counter-productive to Maori. Intentional development would compensate overall for the ‘negative’ elements that could persist and even magnify if Maori society was left to develop free from outside interference or ‘guidance’. From the British perspective, Maori society was seen as being deprived of the means of governing itself as a sovereign body.¹⁰⁰ The British solution to this type of situation lay in the ‘...authority of...more cultivated minds’,¹⁰¹ who, in this case, would be able to steer Maori on a course that would supposedly benefit them.

A Transitional Phase

The positivist development philosophers of the time espoused a version of progress that took place in what was described as a transitional state¹⁰² where circumstances in society could be intentionally altered for the better. However, this transitional state was potentially subject to the instability and chaos of change, and therefore some sort of guidance and control would be required to impose a degree of order on the process of development. Mill had described the goal of development as the stationary state – a natural state in which order would prevail¹⁰³ as the result of the process of development having fulfilled its function. Yet, in order to achieve the goal of a stationary state, it was first necessary to go

¹⁰⁰ Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 37-45.

¹⁰¹ J. S. Mill, *The Spirit of the Age*, p. 175.

¹⁰² *Ibid.*, pp. 174-5.

¹⁰³ *Ibid.*, p. 176.

to the extent of some form of social revolution¹⁰⁴ so that the society would be in a better position to undergo development, and be able to divest itself of those features that acted as barriers to its improvement. In societies where these conditions for development were not present, they would have to be introduced and guided by trustees from societies where they already existed. The principle of trusteeship became the vehicle for delivering an ordered form of development, and to some extent, the promise of a better society justified the principle of trusteeship.¹⁰⁵ Trusteeship could also be used as a device for controlling the substantial change and disruption to the previous vested order brought about by changing economic relations. This was a vital consideration for colonies such as New Zealand, where such tensions were already substantial.¹⁰⁶

The challenge for policy-makers, especially those responsible for colonial policy, was how to impose order in the colonies, in the form of British rule, while at the same time avoiding the risks of rebellion or war in the colonies as indigenous peoples tried to resist the changes being imposed on them. The problem with a society being guided through a state of transition was that it would be exposed to fears, disruption and danger¹⁰⁷ – elements that were hardly conducive to effective colonial government or the imposition of what the British understood ‘civilisation’ to be. This had the potential to become a terminal weakness in the practice of implementing the prevailing ideas about development at the time. The problem was compounded in New Zealand’s case because there were two distinct communities living in the same country: the Europeans, who were nominally ‘civilised’, and the Maori, whom British officials regarded as requiring the forces of civilisation and modernisation to bear down on

¹⁰⁴ For example, Mill’s revolutionary suggestions on the changes in land tenure. See J. S. Mill, *Chapters on Socialism*, p. 353.

¹⁰⁵ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, pp. 38-40.

¹⁰⁶ See S. Marsden to Secretary, Church Missionary Society, 22 September 1820, in J. R. Edler (ed.), *The Letters and Journals of Samuel Marsden, 1765 - 1838*, Otago, 1932, p. 331; S. Marsden, MS, 20 April 1820, in R. Carrick (ed.), *Historical Records of New Zealand South Prior to 1840*, Dunedin, 1903, p. 135.

¹⁰⁷ J. S. Mill, *The Spirit of the Age*, pp. 174-5.

them.¹⁰⁸ Consequently, in New Zealand's situation, both forms of development could occur simultaneously. The extent, therefore, to which intentional development for the purpose of imposing British values on the colony could be enacted relied in part on the extent to which British trusteeship could be effectively extended in the colony – first among the Pakeha (European) population – where only slight modifications might be needed, and then to the Maori, where the real effort of 'civilising' was required.

Allied to this dilemma was another one that was also highly problematic – the issue of individual choice. The importance of choice featured prominently in development thinking in the nineteenth century, and those who did not exercise it were condemned: 'He who lets the world, or his own portion of it, choose his plan of life for him, has no need of any other faculty than the ape-like one of imitation'.¹⁰⁹ Individual choice – the ability to '...use observation to see, reasoning and judgement to foresee, activity to gather materials for decision, discrimination to decide...[and] firmness and self-control to hold to his deliberate decision...'¹¹⁰ – was a prerequisite for development to take place. Indeed, Mill went as far as to assert that '...individuality is the same thing...[as] development'.¹¹¹

However, implicit in the transitional stage of a state's development was some repression of individual choice. This was especially the case in colonial societies, where the efforts at trusteeship rule by the colonial power involved, for example, the suppression of those customs of the indigenous people that did '...not educate or develop in...[them] any of

¹⁰⁸ Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 37-45; J. Stephen to H. Labouchere, 15 March 1839, in W. D. McIntyre and W. J. Gardiner (eds.), *Speeches and Documents on New Zealand History*, Oxford, 1971, pp. 8-10.

¹⁰⁹ J. S. Mill, *On Liberty*, London, 1859, in M. Warnock (ed.), *Utilitarianism*, Glasgow, 1986, p. 187.

¹¹⁰ Op. cit.

¹¹¹ *Ibid.*, p. 193.

the qualities which are the distinctive endowment of a human being'.¹¹² Mill perceived customs as a barrier to tolerance and rational discussion in most cases, even though suppressing such customs potentially removed individuals' rights to the very freedom of choice that he espoused. The tenuous presumption in this line of thinking that resolved this dilemma was that those customs that were removed were the ones that limited individual choice and rational thought in the first place.¹¹³

One of the features that characterised the intentional path of development with respect to colonies in this period was that there was virtually no reference made to the past in Britain (or elsewhere) as a model for the future. This created a vacuum of ideas about the goal of intentional development which was filled in part by contemporary social philosophers who viewed colonies as offering a 'blank canvass'. The intent to develop required a 'blueprint' for the future. As there were apparently no models in history which ideally suited to the future requirements of societies, new models would have to be devised. Therefore, the intent to develop was integrated with, and partly dependent on, the construct of the future that the social philosophers of the time formulated. Without such a vision, the intent to develop would become a meaningless notion, in which order and control were imposed for their own sake. The promise of an improved future, and a vision of what this future looked like, was therefore central to enacting a policy of intentional development.

However, it could equally be argued that in practice, intentional development in New Zealand was paradoxically a system of protection and reactionism as much as it was one of divesting itself of '...old institutions and old doctrines',¹¹⁴ insofar as its actual objective appeared to be the development and re-moulding of Maori into an image that already existed: that of the 'civilised' Englishman. Thus, the means to

¹¹² Ibid., p. 187.

¹¹³ Ibid., p. 131.

¹¹⁴ J. S. Mill, *The Spirit of the Age*, p. 174.

develop had the potential to serve two ends: the first was the achievement of a developed society – a stationary state – as stylised by theorists of the period. The second end involved the readjustment of indigenous peoples in the colonies to meet an existing model of what was perceived by the British as ‘advanced’, or ‘civilised’. This fraying of the end purpose of intentional development opened up space for the implementation of active trusteeship to veer off the path originally envisaged by contemporary development philosophers. Emphasis on transplanting, imposing, and maintaining the existing British model of order in a colony, for example, could take precedence over efforts by the trustee power to direct the development in that colony towards the more idealistic ends of development that these theorists identified.

From the Idea of Development to a Doctrine of Development

The principle of trusteeship in an environment of intentional development was that the trustee power or group held the knowledge about the preferred type of development for a society, and that they were in a trustee position on the basis that they were already at least partially developed themselves.¹¹⁵ Active trusteeship led to the positivist idea of development evolving into a doctrine of development.¹¹⁶ What distinguished the doctrine of development from the idea of development was that it brought ‘...the intention to develop to bear upon the processes of history’,¹¹⁷ thus affecting entire nations. The doctrine of development required development being specifically planned and executed on a national, and in the case of an empire, international scale. This was the transition point from the existence of ideas about development, as devised by philosophers of the time, to the utilisation of those ideas as state policy – in this case in the British policy on the colonisation of New Zealand. That there was a

¹¹⁵ Ibid., pp. 174-5.

¹¹⁶ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 117.

¹¹⁷ Op. cit.

conscious programme of development executed in the early years of Crown rule in New Zealand is one strand of evidence of the intention to develop having become an ideology of development for the British with respect to one of their colonies.

Cowen and Shenton describe the purpose of a doctrine of development as the expression of the intent to develop through state policy.¹¹⁸ The implementation of a doctrinal approach to colonial development by states such as Britain emerged as a reaction to the failure, or even the perceived absence, of earlier periods of immanent development. These previous failures of immanent development could be displaced by a doctrine of intentional development, which would ‘...come to represent the potential and possibility for a linear movement of human improvement’.¹¹⁹ As has already been mentioned, one of the prerequisites for intentional development, particularly when elevated to the level of state policy, was a comprehensive and coherent ideology of development which could be integrated into state practice when and where required. The deficiency that emerged with the doctrine of development that was derived for New Zealand was that there was ample room for expedience and the motives of individuals to override its ideological components. The difference between an ideal of development and the failure of this idea to materialise in practice was labelled by the nineteenth century social philosopher John Henry Newman (1801-1890) as ‘corruption’.¹²⁰ The effects of corruption on the ideals of development for New Zealand are detailed in Chapter Six of this thesis.

While the exigencies of a situation in a colony might compel the colonial ruler to pursue a particular course of action, there was generally no corresponding compulsion to strictly adhere to the philosophical bases that

¹¹⁸ Ibid. p. 57

¹¹⁹ op. cit.

¹²⁰ J. H. Newman, in *ibid.*, p. 10.

supported the doctrine of development. This created space for the doctrine of development devised for New Zealand to be derailed.

The Link Between Ideas on Development and British Colonial Policy

The two main social philosophers under consideration in this thesis, and whose views were reflected in British colonial policy and practice in New Zealand in the late 1830s and early 1840s, are Jeremy Bentham and John Stuart Mill. Bentham, who spent part of his career working for the East India Company, was born into a family of lawyers, and trained in this profession himself. Shortly after graduating though, he turned away from the practice of law to a study of the law itself, how it might be reshaped, and the principles that might support a new system of law. In this sense his ideas were radical, and became influential in the formation of British Government policy during the 1820s and early 1830s.

Bentham's works were initially inspired by a desire to pursue what might now be termed 'the middle ground'. His hatred of the possibility of anarchy and revolution was matched by his aversion to the apologists and 'worshippers' of the established order of 'dead men's bones' as he labelled the British establishment.¹²¹ Bentham saw both of these poles as barriers along the path of rational criticism and reform, claiming that both were equipped with 'poisoned weapons'¹²² which would conceal from people their real interests and make them either submissive to tyranny and oppressive rule by the few, or prone to violence and insurrection.¹²³

The foundation on which Bentham's philosophies were firmly based was the principle of utility. In essence, utility involved achieving the greatest

¹²¹ J. Bentham, *Bentham's Book of Fallacies*, in *Edinburgh Review*, Vol. 42, No. 82, Edinburgh, 1825, in J. Bowring (ed.), *The Works of Jeremy Bentham* Vol. 2, New York, 1962, p. 392.

¹²² *Ibid.*, p. 486.

¹²³ J. Bentham, *A Fragment on Government*, pp. 46-7.

good for all of those whose interests were in question.¹²⁴ How Bentham expanded on this concept, in great detail, is relevant to the emergence of specific ideas on development during this period.

In 1823, Mill, then aged seventeen, commenced employment with the East India Company – a private organisation founded two hundred years earlier, and which had gained a royal charter in 1698 to enable its mercantile and territorial expansions into some of the British colonies to proceed with less hindrance.¹²⁵ It was the same company in which Bentham had earlier found employment. After just a few years of working for the Company, Mill confidently wrote that the purpose of his life had become ‘...to be a reformer of the world’.¹²⁶

Mill’s exposure to and observations of the workings of a firm which was actively engaged in economic and political expansion in the colonies led him to expound new ideas on the potential for progress in colonies specifically, and for all countries in general. Underlying these thoughts was his emerging belief in the possibility of new approaches to the notions of progress and development: ‘I found the fabric of my old and taught opinions giving way in many fresh places, and I never allowed it to fall to pieces, but was incessantly occupied with weaving it anew’.¹²⁷ According to Mill, the system of social, political, and economic organisation as it existed in Europe in the early nineteenth century was not the definitive model. Rather, he believed that, to some extent, the institutions of a nation may have to be adjusted according to changing external and internal circumstances.¹²⁸

¹²⁴ J. Bentham, *An Introduction to the Principles of Morals and Legislation*, London, 1789, in M. Warnock (ed.), *Utilitarianism: John Stuart Mill*, Glasgow, 1986, p. 33.

¹²⁵ G. S. Graham, *A Concise History of the British Empire*, London, 1970, p. 45.

¹²⁶ J. S. Mill, *Autobiography*, London 1873, (London, 1995), p. 111.

¹²⁷ *Ibid.*, p. 127.

¹²⁸ *Ibid.*, Chap. 5.

The evaluation of the impact of contemporary philosophies of development and progress on the period under review in this thesis involves using these philosophies as a device of analysis. This is because so many of the decisions and policies of the British Government relating to New Zealand at this time clearly appear to have been influenced by these philosophies, either directly or indirectly, and therefore have an important bearing on the particular character and shape of development in New Zealand at this time.

The nature of the influence of the philosophies of Bentham and Mill in particular on British colonial policy in the first four decades of the nineteenth century has left few firm strands of evidence. However, this is to be expected. Neither man was directly involved in the workings of the Colonial Office, and so the records kept by the Department naturally make no reference to them. Moreover, it would have been highly inappropriate for most officials to have conceded any overt influence on their decision-making from any partisan group or individual.¹²⁹ However, the philosophies of Bentham in particular, and to a slightly lesser extent Mill, were a significant force in the evolution of British colonial policy in this period. The convergence of British colonial policy and practice with so many of the doctrines preached by Bentham and Mill make the link between their ideologies of development and the official British policies of the period very strong.

In the case of Bentham, his long life and extraordinary written output enabled many of his ideas and suggestions to influence politicians throughout the nineteenth century, irrespective of their political persuasion. Thus did a link emerge between Bentham's philosophies, and the actions of politicians in this period. According to the British historian Llewellyn Woodward: 'Peel, Brougham, and Francis Place learned much

¹²⁹ The influence of the Church of England, and its missionary arm, the Church Missionary Society, could be seen as an exception to this desire to act with impartiality.

from him [Bentham]; the reform of the penal code...and the reform of the poor law were measures which Bentham had supported. The Reform Act of 1832 was a direct, though incomplete application of his principles'.¹³⁰

There was also a group of colonial administrators who were inspired by these new ideas on development: '...the new doctrines were eagerly discussed in correspondence between Raffles in Malaya, Munro in Madras, Elphinstone in Bombay and others...'.¹³¹ India in particular became a location where interest in Bentham's philosophies in particular prevailed among British officials.¹³²

The timing of Bentham's works was a crucial element in the extent of their influence. As the British Empire grew larger and more complex by the close of the eighteenth century, Bentham's comprehensive utilitarian philosophy, which dealt with areas such as colonial government and the administration of laws, served to provide an ideology of empire where none had really existed beforehand to anywhere near the same extent.¹³³ This was first evident with Bentham's 1793 publication 'Emancipate Your Colonies',¹³⁴ which heralded the emergence of a movement in the British Parliament that combined with the Free Trade exponents and began to influence the direction of British colonial policy in this period.¹³⁵ In the same year that 'Emancipate Your Colonies' was published, a British Member of Parliament, Sir Charles Bunbury, argued before the House of Commons in favour of reforming the nature of British rule in the penal colonies. Bunbury's speech '...showed signs of the influence of Bentham,

¹³⁰ L. Woodward, *The Age of Reform 1815 – 1872*, Oxford, 1961, p. 37.

¹³¹ J. S. Furnivall, *Colonial Policy and Practice: A Comparative Study of Burma and Netherlands India*, New York, 1956, p. 28.

¹³² *Ibid.*, pp. 28-9.

¹³³ E. O'Brien, *The Foundation of Australia: 1786 – 1800*, London, 1937, p. 48; C. A. Bayly, *Imperial Meridian: The British Empire and the World, 1780 – 1830*, London, 1989, p. 235.

¹³⁴ J. Bentham, *Emancipate your Colonies!*, London, 1830, in J. Bowring (ed.), *The Works of Jeremy Bentham*, Vol. 4, New York, 1964.

¹³⁵ C. C. Eldridge, *England's Mission: The Imperial Idea in the Age of Gladstone and Russell*, Chapel Hill, 1973, pp. 26-8.

not only in its advocacy of the...scheme, but also in its statement of aim'.¹³⁶

Bentham was not simply a passive observer during this period. By the early 1800s, he was '...taking ministers to task...' over constitutional and humanitarian issues in connection with the founding of new colonies.¹³⁷ After 1825, the philosophies of Bentham and his disciples as they related to colonial rule as well as other areas '...gained practical recognition...' from successive British Governments,¹³⁸ and his reputation as one of the foremost thinkers on colonies was even acknowledged by the head of the Colonial Office, Sir James Stephen.¹³⁹

This influence became even more pronounced in the 1830s. The Utilitarians – Bentham's followers, of whom Mill counted himself as one¹⁴⁰ – came to dominate British policy on India through their control of India House (the governing arm of the East India Company) and through sympathetic colonial officials.¹⁴¹ The attraction of Bentham's philosophies even extended to the permanent head of the Colonial Office from the 1830s, Sir James Stephen, who appropriated Bentham's ideas on the application of British justice to the colonies as part of official British policy.¹⁴² Such was the significance of Bentham's philosophies in terms of influencing Colonial Office policies that advocates of his ideals in parliament – the *Benthamites* – were '...in large part responsible for the annexation of New Zealand'.¹⁴³ Even after Bentham's death, ideas such as

¹³⁶ E. O'Brien, p. 342.

¹³⁷ H. T. Manning, *British Colonial Government after the American Revolution: 1782-1820*, New Haven, 1935, p. 6.

¹³⁸ E. O'Brien, p. 62

¹³⁹ J. M. Ward, *Colonial Self-Government: The British Experience, 1759 – 1856*, London, 1976, p. 108.

¹⁴⁰ J. S. Mill, *Autobiography*, London, 1873 (London 1995), p. 77.

¹⁴¹ J. H. Parry, *Trade and Dominion: The European Oversea Empires in the Eighteenth Century*, London, 1971, p. 314.

¹⁴² H. L. Hall, *The Colonial Office: A History*, London, 1937, p. 143.

¹⁴³ J. W. Cell, *British Colonial Administration in the Mid-Nineteenth Century: The Policy-Making Process*, New Haven, 1970, p. 98.

colonial self-government, and the fostering of ‘...morally wholesome and financially advantageous...’¹⁴⁴ colonies had become a consistent tenet of British foreign policy, and could be traced to Bentham’s influence.¹⁴⁵

Certainly, the doctrines and ideas of Bentham permeated the thoughts and actions of a number of politicians prior to 1840, including Richard Cobden,¹⁴⁶ Sir Francis Burdett,¹⁴⁷ and John Bright,¹⁴⁸ all of whom in addition to being members of the House of Commons were supporters of the Free Trade doctrine and of colonial emancipation through the reduction of restrictive, and especially monopolistic trade practices between Britain and its colonies. A consequence of this influence was that some of Bentham’s ideas contributed to the re-shaping, to some extent, of the Colonial Office’s attitude and policies towards the colonies.¹⁴⁹ The philosophies of Bentham were directly linked to the spirit of reform that was pervasive in British Government departments and among many British politicians in this period.¹⁵⁰ When the Whigs came to power in England in the early 1830s, they were ‘...supported by a radical group professing the doctrines of Bentham...and the progress of reforms proceeded at an accelerated pace’.¹⁵¹ In some cases, reforming legislation that had been passed by Parliament had been drafted by Bentham himself.¹⁵² Overall, the prevalent influence of Bentham’s ideas determined the direction, and in some cases even the pace of change in British Government policy in the 1820s and 1830s in areas as diverse as

¹⁴⁴ Ibid., p. 183

¹⁴⁵ Op. cit.

¹⁴⁶ L. Woodward, pp. 120-2.

¹⁴⁷ M. W. Patterson, *Sir Francis Burdett and his Times*, Vol. 1, Oxford, 1928, pp. 233-5.

¹⁴⁸ Originally a textile manufacturer, Bright entered Parliament as a supporter of the anti-Corn Law League and a proponent of Free Trade.

¹⁴⁹ Minutes of Evidence of the House of Commons Select Committee on the Present State of the Islands of New Zealand, 8 August 1838, in *GBPP 1837-40*, Vol. 21, pp. 243, 246-7, 287; J. S. Furnivall, pp. 29 and 62.

¹⁵⁰ J. S. Furnivall, pp. 29 and 62.

¹⁵¹ D. L. Keir, p. 370.

¹⁵² W. S. Holdsworth, *History of English Law*, Vol. 1, London, 1874, pp. 147-8.

legal reform, taxation and colonial affairs.¹⁵³ Even during periods in the early nineteenth century when the British Parliament was hostile to reform, there were forces outside Parliament, reinforced by Bentham's ideas, which compelled legislation to conform to his philosophies.¹⁵⁴

The changes brought about in British Government policy under the influence of Bentham's teachings were not so much readjustments of the existing system, but instead introduced '...organic changes which reflected the increasing ascendancy of the radical thought invented by Bentham'.¹⁵⁵ It was Bentham, above all the other radicals of the day, who brought about a great change in colonial policy.¹⁵⁶ This change affected not only attitudes towards managing colonies, but also involved combating the bureaucracy of the Colonial Office and the misuses of the system of colonial patronage.¹⁵⁷

Mill, who in many ways was Bentham's ideological successor, also succeeded in exercising influence on Britain's colonial affairs. Indeed, such was his importance as a contributor to colonial policy that in 1849 his name was forwarded by the MP Sir William Molesworth to be a member of a forthcoming Royal Commission on British colonisation.¹⁵⁸

One of the principal factors that helped contribute to the widespread acceptance of the development philosophies of Bentham and Mill in the early nineteenth century was the style of language they employed. Much of the economic and certainly social writings were less 'professionalised' than many of the works of the twentieth century and were therefore accessible by the educated lay person, rather than primarily the university

¹⁵³ D. L. Keir, p. 389.

¹⁵⁴ G. M. Trevelyan, *Lord Grey of the Reform Bill*, London, 1932, pp. 47-8; M. W. Patterson, *Sir Francis Burdett and His Times*, pp. 233-5.

¹⁵⁵ D. L. Keir, pp. 400-1.

¹⁵⁶ L. Woodward, p. 368.

¹⁵⁷ Op. cit.

¹⁵⁸ W. P. Morrell, *British Colonial Policy in the Age of Peel and Russell*, Oxford, 1930, p. 486.

academic. Mill, in particular, employed a prose style that was precise, explicit, and ‘...well-fitted to introduce into the English language the new technical terms of the social and economic sciences...without jargon or pedantry’.¹⁵⁹ This accessibility meant that there was scope for a larger number of people in positions of authority in Britain to be receptive to the ideas that these philosophers were promoting. These factors, combined with Bentham and Mill’s active promotion of their philosophies of development, and the widespread acceptance of many of their views in official and governmental circles, helped to create a climate in which their ideas could be endorsed, and ensured that they assumed the position of the principal ideologues of British colonial policy in the first half of the nineteenth century. By the middle of the century, the ‘new age’¹⁶⁰ in social philosophy in Britain, which Bentham and Mill had contributed to ushering in, had given birth to a ‘...modern imperialism’ which incorporated many of their views.¹⁶¹ Their influence was most significant as the furnishers of an ideology for British imperial activity.

Utility and Utilitarianism

Bentham argued¹⁶² that the interests of society as a whole were the sum of the interests of the individuals in that society.¹⁶³ He assumed that within societies, all human beings were motivated by ‘...two sovereign masters, pain and pleasure’,¹⁶⁴ and that in general, people’s behaviour was predictable on the basis that they acted to acquire pleasure and avoid pain. Without these two primary motivations of human behaviour, Bentham suggested that people would be dealing ‘...in sounds instead of sense, in

¹⁵⁹ L. Woodward, p. 546.

¹⁶⁰ J. S. Furnivall, p. 62.

¹⁶¹ Op. cit.

¹⁶² ‘ad nauseam’ according to Marx, see K. Marx, *The German Ideology*, 1932 (extract), in D. McLellan (ed.), *Karl Marx: Selected Writings*, Oxford, 1987, p. 185.

¹⁶³ J. Bentham, *An Introduction to the Principles of Morals and Legislation*, p. 35.

¹⁶⁴ Ibid. p. 33.

caprice instead of reason, in darkness instead of light'.¹⁶⁵ His concept of utility, based on the pain/pleasure dichotomy, was to be the single measure of the value of any decision, policy, or action, because it was the only measurable and comprehensible one: 'It was also Bentham's single initial axiom, the one extra-empirical assumption underlying the conditions of means of his new science. Everything in the system depended upon it'.¹⁶⁶ At its highest level of application, he envisaged his principle of utility as a fundamental rule for the formation of all legislation, and even as a guiding principle for international law:

The first object of international law for a given nation:- Utility general, in so far as it consists in doing no injury to the other nations respectively, saving the regard which is proper to its own well-being.¹⁶⁷

The clear implication in this segment is that the conscious imposition of utilitarianism was not only permissible, but desirable on the basis that it allegedly avoided injury to any interested party. This hints at an intent to develop on a grand scale: the entire world is portrayed as a realm where the principles of utilitarianism could be enacted.

The idea of utility was not an ethical theory in itself, but an overriding standard and measure for the construction of legislation. In particular, Bentham believed that it would be a device for crafting better alternatives to what he saw as the deficient existing system of British law. In addition, utilitarianism was conceived very much as a practical philosophy. Bentham believed that it could be put into effect as the foundation for the later philosophies he developed, and that it could be incorporated into the

¹⁶⁵ Ibid. p. 34.

¹⁶⁶ M. P. Mack, *Jeremy Bentham: An Odyssey of Ideas 1748-1792*, London, 1962, p. 204.

¹⁶⁷ J. Bentham, *Principles of International Law*, London, c. 1786, in J. Bowring (ed.), *The Works of Jeremy Bentham*, Vol. 2, New York, 1962, p. 538.

government of colonies, which were less encumbered by the inheritance of existing, 'modern' systems of government.¹⁶⁸

Bentham qualified the introduction of utilitarianism into the British colonies by insisting that the utilitarian ideal could not be achieved among 'non-civilised' communities. He denied people in such communities the ability to act with foresight, and asserted that they would be unable to sacrifice the lesser present good for the greater future happiness.¹⁶⁹ He assumed that for the indigenous peoples in non-European communities (as with the underfed and underpaid labourers in Europe), their conditions were little better than those of animals. Indeed, the distinction between animals and 'non-civilised' peoples is very faint in Bentham's assessment:

Take man in his original state...called the savage...in which in so many parts of the planet is still visible. In this state scarce a trace of sympathetic affection is visible....His time is divided between the pursuit of food, enjoyment of means, and reckless apathy. At which of these three times should sympathetic affection find a place in his breast? – while he is tortured by hunger, while he is...gorging himself, or while he is buried in sleep, or in indolence scarce distinguishable from sleep?¹⁷⁰

This definition of non-civilised peoples was not confined to distant colonies. Even within 'civilised', European nations, the inclination towards savagery apparently remained:

Even in the most polished state, in every country, except where political liberty and land in plenty afford a surplus of time after provision is made for indisputable wants, the condition of the great majority is, though not in so high a degree, the same in this respect as that of a savage. Demand for self-regard urgent and continual, room for social regard,

¹⁶⁸ J. Bentham, University College London Manuscript Collection (UCLMC), 1818, Box 164, p. 39.

¹⁶⁹ J. Bentham, *Principles of International Law*, p. 543.

¹⁷⁰ J. Bentham, UCLMC, 1818, Box 164, p. 39

though not absolutely non-existent, still at best more or less scanty.¹⁷¹

In this state of nature, the ‘savages’ acted in a way that excluded everything but their own immediate wants. Any actions carried out with reference to the future were generally uncalculated, and even aimless. Any development that might occur was entirely immanent. However, in a utilitarian society, the savages would have to be brought into a ‘civilised’ state.¹⁷² This would be achieved by the introduction of a comprehensive welfare system, in which the introduction of a universal education system would raise the intellectual horizons of all the citizens in the country.¹⁷³ ‘Dead men’s bones’ might have to prevail in the colonies as an interim measure to enable the eventual transformation of indigenous societies to a point where they were ready to embrace the transition to utilitarianism.

This leads to a point that tends to have been overlooked about the character of this utilitarianism. That is that it was not necessarily a universalistic philosophy. Instead, it seems to have been presented more as a parochial principle which required that not everyone be taken into account, but only those within one’s community. In one of his definitions of utility, Bentham wrote of the benefits, advantages, pleasure, and happiness not to all of humanity, but specifically ‘...to the party whose interest is considered’.¹⁷⁴ The ethical basis of Britain’s colonising could also be justified through this selective utilitarianism, in which the utility of a certain group (those carrying out the colonising) could take priority over the individuals or communities involved (those being colonised).¹⁷⁵

It could therefore be argued that British rule in India, for example, was *primarily* in Britain’s interests, even though Bentham proposed that the

¹⁷¹ Op. cit.

¹⁷² Op. cit.

¹⁷³ Op. cit.

¹⁷⁴ J. Bentham, *An Introduction to the Principles of Morals and Legislation*, p. 34.

¹⁷⁵ *Ibid.*, p. 35.

interest was mutual. The differentiation in the application of utilitarianism in a non-universalist mode would therefore allow the people of a colony to be subjected, arbitrarily, to the will of the colonial power, on the basis that this served the utilitarian interests of that colonial power, and on the much weaker premise that in the future, the interests of the colonial society would somehow also be served through forcing the colonial society to transform so as to allow it to eventually share the benefits of utilitarianism.

This dilemma, of the parochial application of utilitarianism, was highlighted by David Lyons, who drew attention to its striking implications:

The interests of a powerful nation might tragically conflict with the interests of mankind at large, and one committed to testing acts by the interests of the agent's community could therefore find himself endorsing conduct detrimental to the welfare of mankind as a whole. A parochial political philosophy would have frightening possibilities in the realm of international relations.¹⁷⁶

This last sentence is significant in that it implies that utilitarianism could be used as a device which, at least, would not be averse to the processes of colonisation (in the British form). This might appear contrary to Bentham's statement that utility is '...that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the people whose interest is in question'.¹⁷⁷ However, the fundamental question here is: in whose interests was Bentham referring to? Part of the answer to this question lies in Bentham's assessment of the role of governments, in which the interests of the people in a society were served by the government, which fulfilled the function of directing people to their own

¹⁷⁶ D. Lyons, *In the Interest of the Governed: A Study in Bentham's Philosophy of Utility and Law*, Oxford, 1973, p. 26.

¹⁷⁷ J. Bentham, *An Introduction to the Principles of Morals and Legislation*, p. 34.

happiness.¹⁷⁸ Indeed, one of the measures of good government, according to Bentham, was its ability and willingness to be guided by the principle of utility.¹⁷⁹ Thus, the happiness of the community which elects the government is, or ought to be, the principal purpose of the government. However, this would possibly exclude the interests of the people in the colonies controlled by that government, if for nothing else than that there would be no representation of the indigenous populations in the colonial government. Moreover, the nature of government over indigenous populations in colonies could possibly even be anti-utilitarian for those indigenous peoples.

Mill's philosophy of utilitarianism evolved from the form which he inherited from Bentham. Mill stated that Bentham's utilitarianism '..burst upon [him]...with all the force of novelty...'.¹⁸⁰ It was almost a pseudo religious experience: 'The feeling rushed upon me, that all previous moralists were superseded, and that here indeed was the commencement of a new era in thought'.¹⁸¹

There are some familiar themes between the two social philosophers, but in certain areas Mill's utilitarianism represents a substantial departure from Bentham's construction. Like Bentham, Mill's utilitarianism evaluated actions in terms of their utility¹⁸² rather than in terms of any intrinsic properties of the actions alone.¹⁸³ Unlike moral theories, in which actions would be deemed either right or wrong in themselves, according to Mill's utilitarian thinking, the concept of 'the good' was the overriding principle. Mill went as far as to argue that utility was the only basis of morality:

¹⁷⁸ Ibid., pp. 34-5

¹⁷⁹ Ibid., p. 35.

¹⁸⁰ J. S. Mill, *Autobiography*, p. 67.

¹⁸¹ Op. cit.

¹⁸² J. S. Mill, *Utilitarianism*, London, 1863, in M. Warnock (ed.), *Utilitarianism, On Liberty, Essay on Bentham*, Glasgow, 1986, p. 257.

¹⁸³ W. Donner, 'Mill's Utilitarianism', in J. Skorupski, (ed.), *The Cambridge Companion to Mill*, Cambridge, 1998, p. 256.

The creed which accepts as the foundation of morals, Utility, of the Greatest Happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness....pleasure, and freedom from pain are the only things desirable as ends; and that all desirable things ...are desirable either for the pleasure inherent in themselves, or as means to the promotion of pleasure and the prevention of pain.¹⁸⁴

Thus, utility became the basis for moral reasoning – albeit a superficial one. Pleasure and freedom from pain were the only desirable ends.

Mill's notion of 'the good' expanded on Bentham's quantitative and more hedonistic utilitarianism. Mill considered the quality of happiness in addition to just its quantity, as a measure of what constituted the good.¹⁸⁵ This involved a whole extra measure of the good, which was more problematic to define and articulate.

Mill's utilitarianism, considered as a whole, was more inclined to consider society as a collective, rather than just the sum of selfish individuals of which it was comprised. This latter view was consistent with Bentham's utilitarianism,¹⁸⁶ but Mill's revised form of utilitarianism emphasised society's capacity, and the capacity of individuals in society, for unselfish behaviour:

The idea of the pain of another is naturally painful; the idea of the pleasure of another is naturally pleasurable. From this fact in our natural constitution, all our affections both of love and aversion towards human beings...originate. In this, the unselfish part of our nature, lies a foundation, even independently of inculcation from without, for the generation of moral feelings.¹⁸⁷

¹⁸⁴ J. S. Mill, *Utilitarianism*, p. 257.

¹⁸⁵ *Ibid.*, pp. 258-9.

¹⁸⁶ J. S. Mill, *Remarks on Bentham's Philosophy*, London, 1833, in J. M. Robson (ed.), *The Collected Works of John Stuart Mill*, Vol. 10, Toronto, 1969, p. 14.

¹⁸⁷ J. S. Mill, *Sedgwick's Discourse*, London, 1835, in J. M. Robson (ed.), *The Collected Works of John Stuart Mill*, Vol. 10, Toronto, 1969, p. 60.

It was this collective, social dimension to utilitarian motives which, above all, distinguished Mill's utilitarianism from that of Bentham's. In the case of colonial societies like New Zealand's though, where the sharpest of cultural and social divisions existed between the settlers and the indigenous population, uniformly unselfish behaviour was not possible unless the gap in expectations and social make up between the two groups was closed. Thus did a need exist in New Zealand for some form of guided and preconceived plan for the colony's development in order to ultimately impose some uniformity in the expectations and 'behaviour' of both European and Maori in the colony.

A Theory of Government

Bentham's general theory relating to the functions of government was closely connected with his views on the role of the state. Bentham optimistically anticipated the potential for improvement in society through some sort of transformation. However, his utilitarianism was not fundamentally a liberal system. It was more an authoritarian doctrine which emphasised government interference as the device for achieving the utilitarian goal.¹⁸⁸ This sort of benevolent despotism could incorporate democracy, but democratic ideals were not necessarily a prerequisite for a utilitarian society.¹⁸⁹

A change in the existing systems of government and laws was long overdue as far as Bentham was concerned. Whereas religion had achieved benefits from the Reformation, Bentham noted that the system of laws that governed British society had yet to be subjected to a similar upheaval and re-evaluation. Instead, British laws were archaic, moribund, and ineffectual:

¹⁸⁸ J. Bentham, *A Fragment on Government*, chaps. 4 and 5.

¹⁸⁹ *Op. cit.*

I saw crimes of the most pernicious nature pass unheeded by the law...punishments inflicted without measure and without choice: satisfaction denied for the most crying injuries: the doors of justice barred against a great majority of the people by the weight of wanton and unnecessary expense....These were some of the abominations which presented themselves to any view....[These features] I confess resulted in a passionate desire of seeing them done away. It soon appeared that to cleanse the Augean stable to any purpose there was no other way than to pour a body of severe and steady criticism and to spread it over the whole extent of the subject.¹⁹⁰

Far from serving the interests of the community, Bentham criticised the law as an area that was self-serving and an obstacle to the utilitarian ideal. The prospect of a society governed under a new system of laws manifested itself in New Zealand with the colonial Government's rule over Maori between 1840 and 1842, in which the application of British law was strongly tempered by the acknowledgement of the need to allow Maori to continue to administer their own laws in their communities. Moreover, the colony's first Attorney-General, William Swainson, argued that New Zealand's laws should be framed in a way that made them '...simple, concise and intelligible', and which would avoid '...the prolixity and tautology by which our English enactments were usually distinguished'.¹⁹¹ This approach reflected the contemporary ideal of a reformed legal system that would foster rather than obstruct the introduction of utilitarianism. However, Bentham's criticism of the British legal system did not amount in any way to attacking the principles of laws. Neither did his contempt of this system lead him to suggest that laws be disobeyed. Rather, Bentham encouraged patient compliance: 'Bad as the law is, and badly as it is made, it is ...[what] holds society together'.¹⁹²

¹⁹⁰ J. Bentham, UCLMC, 1770s, Box 27, p. 172.

¹⁹¹ W. Swainson, *New Zealand and its Colonisation*, London, 1859, pp. 94-5.

¹⁹² J. Bentham, in M. P. Mack, *Jeremy Bentham: An Odyssey of Ideas 1748 – 1792*, London, 1962, p. 78.

An Environment of Reform

Bentham published all of his works (apart from a few posthumous publications issued with the involvement of other writers) prior to the passage of the Reform Act of 1832. This was a period of disquiet in Britain and elsewhere in Europe. A fresh breath of liberalism was wafting through Europe in the 1820s which left few countries untouched. The revolution in France in July 1830 had produced a constitutional monarchy in that country; Belgium and the Netherlands separated peacefully, if not amicably, and barely containable uprisings were spreading throughout central and eastern Europe. The Duke of Wellington predicted in 1830 that ‘...the Liberal party in every country in Europe will be in operation against the Government’.¹⁹³ Meanwhile, the victory of the Whigs in England foreshadowed a fundamental change in the nation’s constitution.¹⁹⁴ The disintegration of Government authority in many parts of England was causing alarm and it was felt by the electorate that the Tories were unable to contain the widening unrest.¹⁹⁵

The Reform Bill, introduced to Parliament by the Whigs in 1831, was a piece of radical legislation that promised to remove the ‘rotten’ boroughs, and introduce a more comprehensive and egalitarian system of democracy. It emerged following growing dissatisfaction with the administration of parts of England’s cities by corrupt officials who were not, in practice, accountable for their actions. Following the Bill’s defeat in 1831, rioting, arson and general disruption broke out in many parts of England.¹⁹⁶ After further failed attempts at introducing political reform by the British parliament, a ground swell of anti-Government sentiment began to

¹⁹³ Wellington’s Memorandum on the Revolution in France, 14 August 1830, in K. Bourke, *The Foreign Policy of Victorian England 1830 - 1902, Selected Documents*, Oxford, 1970, p. 215.

¹⁹⁴ D. L. Keir, *The Constitutional History of Modern Britain, 1485 to 1937*, London, 1938, p.400.

¹⁹⁵ R. Turner, *The Tories and the Reform Act of 1832*, chapter one; P. Moon, *Hobson: Governor of New Zealand, 1840-1842*, pp. 14-15..

¹⁹⁶ D. Englander, *Poverty and Poor Law Reform in Nineteenth Century Britain, 1834 – 1919*, London, 1998, pp. 12-23.

manifest itself in calls by some of the British public for strikes and boycotts on paying taxes.¹⁹⁷ Britain was on a precipice, facing a plunge into revolution. The tension was partly relieved by the passage of the Reform Act in 1832, which among other things, dramatically extended the criteria for eligibility for voting, although still only one male in six, and no women, possessed this right.¹⁹⁸ Pockets of unrest continued to temporarily scar the social landscape, and the Whig administration, through a series of ill-conceived and poorly-implemented reforms, failed to control these outbursts, and was unable to capitalise on its earlier successes.¹⁹⁹ Britain's leadership, both elected and unelected, was failing to inspire confidence in its citizens. The deficiencies extended to the King himself. A later British leader described William IV as 'Humourless, tactless...and unrespected, he had played his part in lowering esteem for the monarchy, and indeed the vices and eccentricities of the sons of George III had by this time almost destroyed its hold upon the hearts of the people'.²⁰⁰

It was as though the entire edifice of government was about to be dismantled, in part, by Bentham's disciples. Bentham had proposed a new structure of government, in which local assemblies, elected by local communities, were to be established. These assemblies would pass regional legislation, and their officials would belong to a series of new government departments.²⁰¹ However, such reforms, had they ever been implemented, would have ironically have brought about a stronger presence of government, rather than less government involvement in society and the economy. Bentham's programme of administrative decentralisation was never adopted, but it heralded a particular model for future governments, and a goal for his followers to work towards.

¹⁹⁷ R. Turner, chapter 1.

¹⁹⁸ D. Englander, pp. 12-23.

¹⁹⁹ Op. cit.

²⁰⁰ W. Churchill, *A History of the English Speaking Peoples*, Vol. 4, London, 1958, p. 43; ; P. Moon, *Hobson: Governor of New Zealand, 1840-1842*, pp. 14-15.

²⁰¹ E. Halevy, *The Triumph of Reform*, London, 1961, pp. 100-1.

The Character of Utilitarian Government

Bentham did consider the difference between free and despotic forms of government, and argued that the distinction between the two was not the extent of the power that they wielded, but the use of this power.²⁰² He argued that the existence of a just government in a society depended on the wisdom of those creating the laws. The best system to produce a just government, according to Bentham, was a democracy:

The only species of government which has or can have for its object or effect the greatest happiness of the greatest number, is, as has been seen, a democracy: and the only species of democracy which can have place in a community numerous enough to defend itself against aggression at the hands of external adversaries, is a representative democracy.²⁰³

Bentham certainly did not believe that despotic forms of government were necessarily adverse to the interests of society. Despots were equally capable of instituting reforms as were democrats, but with the additional advantage that their power was less likely to be threatened. The two main obstacles that Bentham foresaw for the reform of the legal and governmental regimes of a society were a selfish sovereign and a prejudiced populace, but these were not insurmountable.²⁰⁴

An issue linked to the form of government was the purpose of legislation.²⁰⁵ Bentham argued that the interests of individuals, in striving to achieve their utilitarian goals (their private ethics), tended in great measure to be consistent with the community's utilitarian goals, almost as though the latter was the sum total of the former. The role of government, through the art of legislation, was to both guide and express this utilitarianism. Thus, legislation,

²⁰² J. Bentham, *A Fragment on Government*, pp. 41-3.

²⁰³ J. Bentham, *Constitutional Code*, in J. Bowring (ed.), *The Works of Jeremy Bentham*, Vol. 9, New York 1962, p. 47.

²⁰⁴ J. Bentham, *Fragment on Government*, pp. 46-7.

²⁰⁵ J. Bentham, *Constitutional Code*, chap. 3.

...has for its general end in view, the greatest happiness of the greatest number; namely, of the members of this political state: in other words, the promoting or advancement of their interests. By the universal interest, understand the aggregate of those same interests. This is the all-comprehensive end....²⁰⁶

As for the ultimate reason for government, Bentham distinguished between the desired reason for government, and its purpose in reality:

The right and proper end of government in every political community, is the greatest happiness of all the individuals of which it is composed, say, in other words, the greatest happiness of the greatest number....The *actual* end of government is, in every political community, the greatest happiness of those, whether one or many, by whom the powers of government are exercised.²⁰⁷

He then went on to suggest that the tendency for governments to act to achieve the actual rather than the right and proper ends was attributable to human nature:

...every human being is led to pursue that line of conduct which, according to his view of the case, taken by him at the moment, will be in the highest degree contributory to his own greatest happiness, whatsoever be the effect of it, in relation to the happiness of other similar beings, and or all of them taken together.²⁰⁸

Bentham cited the qualification by which a government was utilitarian in its actions through '...the tendency which it has to augment the happiness of the community [which] is greater than any which it has to diminish it'.²⁰⁹ He deliberately avoided making this utilitarianism absolute so that it

²⁰⁶ J. Bentham, *Leading Principles of a Constitutional Code for Any State*, London, 1823, in J. Bowring (ed.), *The Works of Jeremy Bentham*, Vol. 2, New York, 1962, p. 269.

²⁰⁷ J. Bentham, *Constitutional Code*, p. 5.

²⁰⁸ Op. cit.

²⁰⁹ J. Bentham, *An Introduction to the Principles of Morals and Legislation*, p. 35.

could accommodate the imperfection of human beings, including those in government. The absence of absolutism in the above quote could also be attributable to the implicit acknowledgement in Bentham's works that '...government does not actually 'direct' those under its laws in a sense that it implies continuous active control'.²¹⁰ Instead, laws were more like standing orders than simple commands, and therefore, the country's utility was guided and influenced by laws, rather than specifically directed by them in every single circumstance of public life.

One of the major critiques of Bentham's utilitarianism in the nineteenth century came from Karl Marx. Marx rejected the basis of Bentham's utilitarianism because it failed, he argued, to consider the important element of class struggle. Marx drew attention to what he saw as the 'stupidity'²¹¹ of merging all the complex and varied relationships of people in society into one utilitarian relationship on the grounds that such an abstraction arose '...from the fact that, in modern bourgeois society, all relations are subordinated in practice to the one abstract monetary-commercial relation'.²¹² Marx went as far as to describe Bentham's utilitarianism as a 'theory of exploitation'²¹³ because it was developed during the period of rapid industrialisation in England, when the inequalities that this industrialisation brought to society were already fully evident, and which were exaggerated in the colonies.

Rather than addressing these inequalities directly, in relation to Bentham's writings, Marx simply accused Bentham of misrepresenting the role of the bourgeois class to the point where they were no longer presented as simply a constituent class in society, but had instead become '...the class whose conditions of existence are those of the whole society'.²¹⁴

²¹⁰ D. Lyons, p. 85.

²¹¹ K. Marx, *The German Ideology*, (extract), in D. McLellan (ed.), *Karl Marx: Selected Writings*, Oxford, 1987, p. 185.

²¹² Op. cit.

²¹³ Op. cit.

²¹⁴ Ibid., p. 188.

Therefore, even though Bentham had questioned much about the society he lived in, Marx was critical about the narrowness of these explorations, and the fact that they appeared to be prejudiced by the bourgeois conditions he accused Bentham of favouring.

Marx concluded that, far from Bentham's utilitarianism being a prescription for a new form of society, it became the opposite: '...a mere apologia for the existing state of affairs',²¹⁵ in which the only force that would bring people together would be '...the selfishness, the gain, and the private interests of each'.²¹⁶

The Notion of Transition

While Bentham worked at detailing the application of utilitarian principles in his vision of a utopian future, exactly how this ideal was to be achieved was explored by Mill. Mill fused some of his earliest thoughts relating to development (among other subjects) into his essays published under the collective title 'The Spirit of the Age', in May 1831.²¹⁷ Here, he began to articulate some ideas about the possibility of improvement for countries, stating that in particular impoverished regions, there was '...a certain order of possible progress'.²¹⁸ He commenced his analysis by suggesting that the world was in a state of transition: 'Mankind have outgrown old institutions and old doctrines, and we have not yet acquired new ones'.²¹⁹ Mill's disillusionment with the social, economic and even political state of Britain led him to propose the notion that progress, on a national scale, was not just possible, but desirable and necessary – concluding with an appropriate metaphor from the Industrial Revolution that was under way at the time:

²¹⁵ Ibid., p. 198.

²¹⁶ K. Marx, 'The Sale of Labour Power' (extract), in D. McLellan (ed.), *Karl Marx: Selected Writings*, Oxford, 1987, p. 455.

²¹⁷ J. S. Mill, *The Spirit of the Age*, pp. 170-8.

²¹⁸ J. S. Mill, in L. Woodward, p. 10.

²¹⁹ J. S. Mill, *The Spirit of the Age*, p. 170.

Much might be said...of the mode in which the old order of things has become unsuited to the state of Society and of the human mind. But when almost every nation on the continent has achieved, or is in the course of rapidly achieving, a change in its form of government; when our own country, at all times the most attached in Europe to old institutions, proclaims almost in one voice that they are vicious in the outlines and the details, and *shall* be renovated, and purified and made fit for civilised man, we may assume that a part of the effects of the cause just now pointed out, speak sufficiently loudly for themselves....Society demands, and anticipates, not merely a new machine, but a machine constructed in another manner. Mankind will not be led by their old maxims...and they will not choose either their opinions or their guides as they have heretofore.²²⁰

Mill attributed the fact that this transition was possible to an increased awareness among England's wider population of political issues. This did not imply, however, that the population was necessarily wiser. Rather, he saw the diffusion of knowledge as being not:

...an increase in wisdom, but a cause of the reality of which we are better assured, may serve to account for the decay of prejudices; and this is, increase in discussion. Men may not reason better, concerning the great questions in which human nature is interested, but they reason more. Large subjects are discussed more, and longer, and by more minds. Discussion has penetrated deeper into society; and if no greater numbers than before have attained the higher degrees of intelligence, fewer grovel in the state of abject stupidity'.²²¹

It was the spread of this general education that was the new 'social machine' which would establish the conditions for progress and improvement.²²² This matched closely with the Colonial Office's endorsement of missionary education in New Zealand as a means of

²²⁰ Ibid. pp. 170-1.

²²¹ Ibid., pp. 172-3.

²²² J. S. Mill, *The Principles of Political Economy*, London, 1847, in J. M. Robson (ed.), *The Collected Works of John Stuart Mill*, Vol. 10, Toronto, 1969, pp. 763-4.

‘improving’ Maori.²²³ The term ‘education’ was used in its widest sense by Mill, including areas such as electoral and land reform, birth control, women’s rights, and the rights of labour.²²⁴ Education was seen as a prerequisite for the construction of the new ‘social machine’. If improvement was to be achieved, the minds of a society’s population would also have to be improved.²²⁵

Mill’s proposed improvements to society were consistent with the basic tenets of Bentham’s philosophy, to the extent that he believed that his ideas could be successfully integrated with those of his predecessors.²²⁶ However, Mill’s philosophies are distinguishable by the augmenting of Bentham’s ideas, and the supplementing of new concepts. In addition to the introduction of universal education, which Bentham espoused, Mill supported those institutions, such as democracy and competitive capitalism, which would enable the sum of the actions of the self-interested individuals which made up the society to lead to the general happiness of the society. He extended this idea further by infusing the notion of moral feelings, such as mutual cooperation, which could lead, for example, to democratic majorities accepting various ‘counter-majoritarian’ constitutional checks designed to prevent majority domination over minorities.²²⁷ Such views, if they entered into the economic sphere, could have the potential to transform competitive capitalism into a much more cooperative system, with a reducing inequality in the distribution of wealth. Mill’s view was that this system could evolve further into a type of decentralised socialism ‘...in which

²²³ See G. Grey, *Education Ordinance 1847*, in which Colonial Office assistance to missionary schools was finally officially sanctioned after almost a decade of the practice.

²²⁴ J. S. Mill, *The Principles of Political Economy*, Chap. 8. Also see M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 39.

²²⁵ J. S. Mill, *The Principles of Political Economy*, pp. 763-4.

²²⁶ J. S. Mill, *Autobiography*, pp. 65-71, 77; J. Riley, ‘Mill’s Political Economy: Ricardian Science and Liberal Utilitarian Art’, in J. Skorupski (ed.), p. 293.

²²⁷ J. S. Mill, *Considerations on Representative Government*, pp. 422-34.

competition among small-scale worker cooperatives is constrained by some higher morality of distributive justice'.²²⁸

It was Mill's belief that the discredit into which many of the existing institutions and doctrines had fallen was a deserved state. His outlook was optimistic though. He announced himself as '...a firm believer in the improvement of the age'.²²⁹ Political societies, he suggested, could only exist in one of two states – one of them was the 'naturally durable', or stationary state, and the other, the 'transitory' one.²³⁰ These two states were to be central to Mill's construct of development. The naturally durable state was what could be described as self-sustaining in the terminology of the twentieth-century Modernisation theorist Walt Rostow.²³¹ Mill foresaw that such a state would be governed by the most competent people in it.²³² The stationary state was not a negation of progress, but a 'natural state' in which material progress would occur because people in the society would be motivated by the prospect of 'intellectual and moral improvement...'.²³³ Tolerance and rational discussion were necessary preconditions for societies intending to achieve a stationary state. If customs and traditions got in the way of tolerance, rational discussion, and other liberties, then trusteeship by a despotic power might be necessary to create the conditions for development through the removing of those customs and traditions. This line of thought would certainly provide justification for British officials in colonies to override those indigenous customs and traditions, such as the system of Maori chiefly power for example, which the British perceived were obstacles to rational government.²³⁴ Mill was particularly clear about

²²⁸ J. Riley, p. 294.

²²⁹ J. S. Mill, *The Spirit of the Age*, p. 172.

²³⁰ J. S. Mill, *Principles of Political Economy*, pp. 752-7.

²³¹ W. W. Rostow 'The Take-Off Into Self-Sustained Growth', in *Economic Journal*, New York, March 1956, pp 25-48.

²³² J. S. Mill, *Considerations on Representative Government*, p. 390.

²³³ J. S. Mill, *Bentham*, London, 1838, in M. Warnock (ed.), p. 115.

²³⁴ George Grey, who was Governor of New Zealand after 1845, argued in 1840 that British law should supersede native customs as soon as possible, see A. Ward, p. 72.

the type of rule that could be exercised over 'uncivilised' peoples: 'Despotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement'.²³⁵

The sort of development that Mill proposed was dependent to a certain degree on the 'national character' of the society for which the improvement was envisaged. He went as far as to suggest that national character was a feature upon which a society's future development could hinge:

That which alone causes any material interests to exist, which alone enables any body of human beings to exist as a society, is national character: *that* it is, which causes one nation to succeed in what it attempts, another to fail; one nation to understand and aspire to elevated things, another to grovel in mean ones; which makes the greatness of one nation lasting, and dooms another to early and rapid decay....A philosophy of laws and institutions, not founded on a philosophy of national character, is an absurdity.²³⁶

Implicit in this argument about national character was the suggestion that the British national character was suitable to the country achieving 'greatness', and therefore was a model which the colonies could be shaped to imitate. In contrast, the transitional state was in a condition approaching chaos:

In an age of transition, the divisions among the instructed nullify their authority, and the uninstructed lose their faith in them. The multitude are without a guide, and society is exposed to all the errors and dangers which are to be expected when persons who have never studied any branch of knowledge...attempt to judge for themselves upon particular parts of it.²³⁷

²³⁵ J. S. Mill, *On Liberty*, p. 136.

²³⁶ *Ibid.*, p. 105.

²³⁷ J. S. Mill, *The Spirit of the Age*, pp. 174-5.

Because of these varying types and states of national character, a particularist approach was favoured on the basis that ‘...a philosophy of laws and institutions, not founded on a philosophy of national character, is an absurdity’.²³⁸ Consequently, the prescription for laws and social policies for each society, at each stage of its historical development, had to be considered separately:

The same laws would not have suited our wild ancestors, accustomed to rude independence, and the people of Asiatics bowed down by military despotism: the slave needs to be trained to govern himself, *the savage to submit to the government of others* [original italics]. The same laws will not suit the English, who distrust everything which emanates from general principles, and the French, who distrust whatever does not so emanate. Very different institutions are needed to train to the perfection of their nature, or to constitute into a united nation and social polity’.²³⁹

To demonstrate this point, Mill listed some of the general observations he had made about the alleged national characteristics of the people of Germany and Italy, as though this satisfactorily verified his argument. In what might now be seen as national stereotypes, or worse, he referred to:

...an essentially subjective people, like the Germans, and an essentially objective people like those of Northern and Central Italy; the one affectionate and dreamy, the other passionate and worldly; the one trustful and loyal, the other calculating and suspicious; the one not practical enough, the other overmuch; the one wanting individuality, the other fellow-feeling; the one failing for want of exacting enough for itself, the other for want of conceding enough to others.²⁴⁰

Notwithstanding these differences in national characteristics, implicit in the notion of the stationary state was the idea that there was a reasonable threshold of national wealth and population that would need to be

²³⁸ J. S. Mill, *Bentham*, p. 105.

²³⁹ *Ibid.*, p. 112.

²⁴⁰ *Ibid.*, p. 113.

achieved in order for the society to be considered as having reached the ideal economic and social equilibrium:²⁴¹

But howsoever we may succeed in making for ourselves more space within the limits set by the constitution of things, we know that there must be limits. We cannot alter the ultimate properties either of matter or mind, but can only employ those properties more or less successfully, to bring about the events in which we are interested.²⁴²

The reasons for this acceptance of a ceiling for development were the constraints on production, technology, and capital, which were seen as imposing finite limits on the possibilities of economic growth:

Whether mankind like it or not, their production will be limited by the amount of their previous capital accumulation, and, that being given, it will be proportional to their energy, their skill, the perfection of their machinery, and their judicious use of the advantages of combined labour.²⁴³

Mill classified Britain at the time he was alive as being ‘...constantly on the verge of the stationary state’.²⁴⁴ This was because he saw Britain’s economy as being in a healthy condition on the basis that its national output was large, and that there was virtually no supply of idle fertile land.²⁴⁵ One of the barriers, however, to Britain actually achieving the desired stationary state was that the present economic growth the country was experiencing tended to enrich the owners of the resources without improving the economic status of the workers.²⁴⁶ In this respect, Mill foreshadowed the dissatisfaction with capitalism that was to be given far more detailed and explicit form by Marx, and that was carried on also by

²⁴¹ J. Riley, p. 297.

²⁴² J. S. Mill, *Principles of Political Economy*, p. 199.

²⁴³ *Ibid.*, pp. 199-200.

²⁴⁴ *Ibid.*, p. 738.

²⁴⁵ *Ibid.*, pp. 737-8.

²⁴⁶ *Ibid.*, pp. 731-3.

the Fabians towards the end of the century. The basis of Mill's criticism rested with the inequalities that capitalism tended to produce:

The economical progress of a society constituted of landlords, capitalists, and labourers, tends to the progressive enrichment of the landlord class; while the cost of the labourer's subsistence tends on the whole to increase, and profits to fall [to their customary minimal level].²⁴⁷

Colonies afforded the opportunity of adding to the supply of land for the colonising power, and of distributing the surplus population over this greater land mass, thereby also leading to a greater redistribution of wealth. This notion of colonies absorbing surplus populations has, as a possible sub-text, the concerns Malthus expressed in the previous century about the economic and social dangers of an ever-expanding population. However, as Cowen and Shenton have suggested, the absorption by the colonies of Britain's surplus population was predicated on the existence on an official doctrine of development for these colonies.²⁴⁸

Another departure from the Benthamite view of economic development was Mill's rejection of the idea that ongoing economic growth was commensurate with the ongoing advance of civilisation. Mill stated that a stationary state was compatible with increases in the levels of civilisation in the state, and that even if the economic performance of the state levelled out, its standard of civilisation could continue to increase. His basis for this stance lay with his view that once an equilibrium in technological knowledge and economic prosperity had been achieved, the benefits of any subsequent improvements in technology should not be used for further economic growth for its own sake, but instead, to support

²⁴⁷ Op. cit.

²⁴⁸ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 174. In this vein, a direct reference to increased future European immigration to New Zealand was made in the Treaty of Waitangi. See the Preamble to the Treaty of Waitangi, Appendix Two of this thesis.

the ‘higher pursuits’ of society.²⁴⁹ Civilisation was not merely that kind of development which distinguished ‘...a wealthy and powerful nation from savages and barbarians’,²⁵⁰ but was instead perceived of in a larger sense. This larger sense of civilisation was described as ‘...more eminent in the best characteristics of Man and Society; farther advanced in the road to perfection; happier; nobler; wiser’.²⁵¹ The aesthetic dimension to this development was stressed as an almost vital component in individual and social action, and as an important component in his system of public morality:

Every human action has three aspects: its moral aspect, or that of its right and wrong; its aesthetic aspect, or that of its beauty; its sympathetic aspect, or that of its loveableness [sic]. The first addresses itself to our reason and conscience; the second to our imagination; the third to our human fellow-feeling. According to the first, we approve or disapprove; according to the second we admire or despise; according to the third we love, pity, or dislike. The morality of an action depends on its foreseeable consequences, its beauty, and its loveableness, or the reverse, depend on the qualities which it is evidence of.²⁵²

It was this larger sense of civilisation, Mill argued, which superseded the need for ongoing economic growth, which was adopted and modified by the Fabian movement decades later. Mill’s emphasis on aestheticism was an especially important thematic precursor. His criticism of what he saw as the two types of education universities were offering in the early nineteenth century – intellectual and moral education – was made on the basis that there was a third kind of education which should be vigorously promoted, based on an asceticism:

There is a third division, which, if subordinate, and owing allegiance to the two others, is barely inferior to them, and not less needful to the completeness of the human being; I mean

²⁴⁹ J. Riley, p. 314.

²⁵⁰ J. S. Mill, *Civilisation*, London, 1836, in J. M. Robson (ed.), *The Collected Works of John Stuart Mill*, Vol. 18, Toronto, 1977, p. 119.

²⁵¹ Op. cit.

²⁵² J. S. Mill, *Bentham*, p. 121.

the aesthetic branch; the culture that comes through poetry and art, and may be described as the education of the feelings, and the cultivation of the beautiful.²⁵³

It could be suggested that Mill's use of the term 'civilisation' implies a moral judgement about the comparative value of Western and non-Western cultures. To some extent, this would be true insofar as the Eurocentric view of the world common among European writers of the age can also be detected in Mill's works. However, Mill's treatment of the notion of civilisation is less judgemental, and perhaps more narrow than may have been expected. He portrayed civilisation as differing from 'savage' states primarily on the basis of their respective approaches to improvement.²⁵⁴ There were other factors, too, which Mill asserted distinguished civilisation from the savage state. 'Civilised' states generally had much denser populations, fixed boundaries and locations, and practiced more advanced forms of commerce, agricultural production, and manufacturing.²⁵⁵ Another important differentiation was that in savage life:

...there is little or no law, or administration of justice; no systematic employment of the collective strength of society, to protect individuals against injury from one another; every one trusts to his own strength or cunning, and where that fails, he is generally without resource.²⁵⁶

In early colonial New Zealand, the 'civilising' function of Government in respect of Maori became a theme which was discernible in many Government policies. This urge to civilise reached its ultimate manifestation in the creation of the Office of the Protector of Aborigines which is examined in Chapter Six of this thesis in the context of its role as

²⁵³ J. S. Mill, *Inaugural Address Delivered to the University of St. Andrews*, London, 1867, in J. M. Robson (ed.), *The Collected Works of John Stuart Mill*, Vol. 21, Toronto, 1984, p. 251.

²⁵⁴ J. S. Mill, *Civilisation*, p. 119.

²⁵⁵ J. M. Robson, 'Civilisation and Culture as Moral Concepts', in J. Skorupski, (ed.), *The Cambridge Companion to Mill*, Cambridge, 1998, p. 350.

²⁵⁶ J. S. Mill, *Civilisation*, p. 121.

a civilising force, and as one which aimed to contribute to order and to the fostering of Maori progress and improvement.

Mill was not uncritical of the civilised state, however. He saw the rise of the middle classes in Britain as a partially detrimental development in that he believed that they were focussed predominantly on money-making, while the upper classes were almost exhausted of their energy and influence, and the working classes were not receiving a fair distribution of the wealth that they were involved in creating.²⁵⁷

In this model of civilisation, power within society passes increasingly from individuals, or small clusters of individuals, to the masses. As a result of the comparative insignificance to which the individual falls, every person:

‘...becomes dependent, for more and more of what most dearly concerns him, not upon his own exertions, but upon the general arrangements of society [which]...corrupts the very fountain of the improvement of public opinion itself; it corrupts public teaching; it weakens the influence of the more cultivated few over the many’.²⁵⁸

Moving Towards Social and Economic Improvement

In Mill’s transitional state, there were no longer any established doctrines, as the opinions of the society became disordered²⁵⁹ as it moved towards eliminating the causes of its stagnation. However, it was the means of achieving this transition that was the critical part of Mill’s thesis.

Mill’s use of the terms improvement and progress were not interchangeable. Progress was associated more with the process of

²⁵⁷ Ibid., pp. 129, 133-4.

²⁵⁸ Ibid., pp. 133-4.

²⁵⁹ J. S. Mill, *The Spirit of the Age*, p. 177.

transformation and did not necessarily lead to social improvement, which was the focus of Mill's theorising in relation to development:

The words Progress and Progressiveness are not...to be understood as synonymous with improvement and tendency to improvement. It is conceivable that the laws of human nature might determine...a certain series of changes in man and society which might not in every case...be improvements.²⁶⁰

Progress could equally lead to a reduction in social order, and possibly even chaos.²⁶¹

In particular, the social component of improvement was a vital element of Mill's conception of development. He did not perceive the attainment of individual genius as a characteristic that was in itself a prerequisite of social improvement, even though at the time, it was commonly interpreted as evidence of community progress.²⁶² Instead, it was Mill's suggestion that improvements ought to take place throughout all levels of society. This became one of the principal tenets of his emerging philosophy of development.²⁶³

Mill's approach to improvement was not strictly a paternalistic one, insofar as he avoided precisely describing his own specific view of what the interests of society were, or ought to be. Instead, he was more concerned with the ability of society to be able to voice its own interests

²⁶⁰ J. S. Mill, 'On the Inverse Deductive, or Historical Method', in *System of Logic*, London, 1843, in G. L. Williams (ed.), *John Stuart Mill on Politics and Society*, Glasgow, 1985, p. 58.

²⁶¹ S. Corbridge, p. 730. This notion was similar, albeit in a rudimentary form, to Andre Gunder Frank's model of underdevelopment, which incorporated the ideas of dislocation, internal incoherence, and a lack of international state coherence. See A. G. Frank, *Sociology of Development and Underdevelopment of Sociology*, pp. 18-26; '1492 and Latin America at the Margin of a World-System History: East-West Hegemonial Shifts 992 - 1492 - 1992', 32nd Annual Meeting of the International Studies Association, Atlanta, April 1-4, 1992, pp. 1-4.

²⁶² J. S. Mill, *The Spirit of the Age*, p. 173.

²⁶³ In the case of New Zealand's Office of the Protector of Aborigines (established in 1840), the colonial Government's policies on Maori were informed by an overriding belief that they would lead to social improvement for Maori. G. Clarke, *Notes on Early Life in New Zealand*, Hobart, 1903.

more clearly.²⁶⁴ Once society had developed, according to its own determined stationary state, he believed that it would possess the following features:

...a well-paid and affluent body of labourers; no enormous fortunes, except what were earned and accumulated during a single lifetime; but a much larger body of persons than at present, not only exempt from the coarser toils, but with sufficient leisure, both physical and mental, from mechanical details, to cultivate freely the graces of life.²⁶⁵

The means by which progress would be achieved bordered on being radical. Instead of simply making adjustments or modifications to existing social and political systems, Mill urged that there be a ‘...moral and social revolution’,²⁶⁶ which, although it would probably not immediately affect property rights or endanger people’s lives, would nonetheless ‘...leave to no man one fraction of unearned distinction or unearned importance’.²⁶⁷ Even a series of such ‘revolutions’ might be necessary to overturn the political power and moral influence of society, after which time the society would be ‘...once more in its natural state, and resumes its onward progress at the point where it was stopped before by the social system which it had shivered’.²⁶⁸ The discarding of social and political systems was much more achievable in colonies such as New Zealand, where no system of national administration or justice had previously existed.²⁶⁹ There was no specific reference to violent

²⁶⁴ J. S. Mill, *Autobiography*, pp. 206-7.

²⁶⁵ J. S. Mill, *Principles of Political Economy*, p. 755.

²⁶⁶ J. S. Mill, *The Spirit of the Age*, p. 176.

²⁶⁷ Op. cit.

²⁶⁸ Ibid. p. 178.

²⁶⁹ There are strong echoes of this idea of social transformation in the works of some of the Modernisation theorists of the twentieth century. Halpern noted that: ‘Modernisation demands of all systems of society... the ability to persist continuously in the enterprise of responding to the challenge of new questions, new facts, and inadequate solutions’, see M. Halpern, ‘The Rate and Costs of Political Development’, in *Annals of the American Academy of Political and Social Science*, 358, March 1965, pp. 21-3; Similarly, Rostow observed that economic progress required ‘...political, social, and institutional changes’, see W. W. Rostow, ‘The Take-Off into Self-Sustained Growth’, in *Economic Journal*, New York, March, 1956, p. 25.

revolution as the means to overturning political power, and neither did revolutions necessarily require the forceful imposition of the will of one group of society on another. Indeed, it was possible that the affected groups in society could give their consent for such a revolution to take place.

A fundamental theme in Mill's thesis on improvement was that social transformation was a temporary and transitional phase until an improved, 'stationary' state could be achieved. This stationary state would presumably be self-sustaining until a further transition would be required. For such a development to take place, there was a need to balance out the conflicting interests that were present in society, and that were an obstacle to the improvement of society:

Human improvement is a product of many factors, and no power ever yet constituted among mankind includes them all: even the most beneficial power only contains in itself some of the requisites of good, and the remainder, if progress is to continue, must be derived from some other source. No community has ever long continued progressive, but while a conflict was going on between the strongest power in the community and some rival power; between the spiritual and temporal authorities...the king and the people; the orthodox and religious reformers.²⁷⁰

Once such tensions were resolved, a society could move to the next stage of development.

The Post-Transitional Phase

Despite its name, the stationary state did not imply that there would be no change in such a society. Mill acknowledged, for example, that technological knowledge was unlikely to remain fixed, and therefore proposed that the workers in the stationary state might be encouraged to develop tastes for material comforts – brought about by improvements in

²⁷⁰ J. S. Mill, *Considerations on Representative Government*, p. 459.

technology – beyond their subsistence requirements. He also anticipated that workers could be encouraged by society ‘...to develop the capacity and desires for moral and aesthetic rewards...’ distinct from material wealth.²⁷¹

Mill departed from the views of Bentham and others, who saw the continuance of the developed, or stationary state, depending on its inhabitants acting predominantly out of self-interest for material gain. Instead, Mill emphasised the non-material benefits that could be fostered in the stationary state: benefits which would allow the society to become even more happy and ‘civilised’:

It is scarcely necessary to remark that a stationary condition of capital and population implies no stationary state of human improvement. There would be as much scope as ever for all kinds of mental culture, and moral and social progress....Even the industrial arts might be as earnestly and successfully cultivated, with this sole difference, that instead of serving no purpose but the increase of wealth, industrial improvements would produce their legitimate effect, that of abridging labour.²⁷²

Accordingly, material abundance would no longer be the ultimate social goal, but more a means to an end, the end being a happier, more cooperative and egalitarian society.²⁷³

This utopian society would be made up of highly-educated workers, inclined to work in collectives to assist in the equitable distribution of income, and as technology improved, so too would the amount of leisure time available to workers increase. For this vision to materialise and be maintained, stress was placed on the need to enhance equality and individual rights within the society:

²⁷¹ J. Riley, ‘Mill’s Political Economy: Ricardian Science and Liberal Utilitarian Art’, in J. Skorupski (ed.), p. 318.

²⁷² J. S. Mill, *Principles of Political Economy*, p. 756.

²⁷³ *Ibid.*, pp. 819-22.

We hold with Bentham, that equality, although not the sole end, is one of the ends of good social arrangements; and that a system of institutions which does not make the scale turn in favour of equality, whenever this can be done without impairing the security of the property which is the product and reward of personal exertion, is essentially a bad government – a government for the few, to the injury of the many.²⁷⁴

The transition to the utopian society ought to be a cautious one as far as Mill was concerned. Because some degree of security had been achieved (albeit imperfect), in the existing society, this security should be preserved as much as possible rather than being swept away, to be replaced by something entirely new and unknown. It was Mill's belief that a reduction in existing security would not necessarily be balanced or offset by increases in other values.²⁷⁵ The need for mass education, and for the protection of existing rights as society moved towards the stationary state, gave the transition towards this utopia more of a gradual, evolutionary character, rather than a sudden, revolutionary one.

Colonial Trusteeship

The philosophies of Bentham and Mill as they relate to the principle of trusteeship form the basis of a major focus of this thesis, particularly because of the connection that existed between their views on development and British colonial policy in the first half of the nineteenth century. However, there were distinct thematic precursors to their work in the area of trusteeship which warrant an overview at this point so as to provide a setting from which subsequent ideas about trusteeship can be assessed.

²⁷⁴ J. S. Mill, *Vindication of the French Revolution of February 1848*, London, 1849, in J. M. Robson (ed.), *The Collected Works of John Stuart Mill*, Vol. 20, Toronto, 1985, p. 354.

²⁷⁵ J. S. Mill, *Principles of Political Economy*, pp. 819-22.

One of the starting points for the examination of formative ideas about social, political and economic trusteeship was the perceived need for a ‘...remedy for disorder’.²⁷⁶ The positivist French philosopher, Claude-Henri Saint-Simon (1760 – 1825) conceived of trusteeship in terms of its predominantly economic benefits – specifically as a means of better-organising land, labour and capital for the economic benefit of society as a whole.²⁷⁷ Such a craving for order as a means to economic development may have had its origins in the chaos and near-anarchy of the French Revolution, but it was an idea that gained currency in the works of Auguste Comte (1798 – 1857), who stressed the need for progress to be made compatible with order.²⁷⁸ For progress to be worthwhile, and for its benefits to be felt by all in the society, it had to be actively guided by those who possessed a superior knowledge of the workings of society.²⁷⁹

Trusteeship and British Colonial Policy

Bentham’s disciples in and outside of Parliament – known as the Radicals²⁸⁰ – argued that there were basically just two types of colony in Britain’s possession. The first of these, and by far the most common, was the colonial dictatorship. An extreme example of this category of colony was India, where British officials ruled almost as feudal lords over a native population of 100,000,000. At the other end of the spectrum were colonies such as America, which had served the purposes of absorbing Britain’s surplus population and products, and had subsequently emancipated themselves economically and politically, thereafter ceasing to be an expensive or uncertain burden to Britain.

²⁷⁶ M. P. Cowen and R. W. Shenton, ‘The Invention of Development’, in J. Crush (ed.), *Power of Development*, London, 1995, p. 34.

²⁷⁷ Op. cit.

²⁷⁸ Op. cit.

²⁷⁹ Ibid., pp. 34-5.

²⁸⁰ J. S. Mill, *Bentham*, London, 1838, in M. Warnock (ed.), p. 113

The notion of colonies developing to the point where they were able to achieve self-sustaining growth was a theme later detailed by Rostow as part of the prescription for the modernisation of traditional societies.²⁸¹ While the late eighteenth and early nineteenth century American colonial model was the ideological ideal of the Radicals, in practice, the temptations offered by acquiring colonies dominated any consideration of their later emancipation, to the extent that by the mid-1830s, those who had preached Bentham's doctrine in Parliament were proposing an active programme of emigration, trade, and colonisation, thus contributing to the growth of the British Empire.²⁸² Richard Cobden, for example, who was one of the most prominent Free Trade supporter in the British Parliament, developed his ideas about the importance of Free Trade as a device to achieve world peace and prosperity based on the arguments espoused by Bentham.²⁸³

Early on in his writings, Bentham had developed the view that the possession of colonies was neither in the interests of the colony itself, nor of the colonising power: 'What is it you want to govern them for? What, but to monopolise and cramp their trade? What is it they can want you to govern them for? Defence? Their only danger is from you'.²⁸⁴

After 1776, when America broke off from British rule and declared independence, Bentham announced that the independent United States of America was a more developed country than it had been when it was a colony, regretting perhaps that the change to independence had not come about sooner, and was not occurring elsewhere.²⁸⁵ He admired that '...newly created nation [the United States of America], one of the most

²⁸¹ W. W. Rostow, 'The Take-Off Into Self-Sustained Economic Growth', pp. 25-47; N. J. Smelser, pp. 119-120.

²⁸² E. Halevy, *The Triumph of Reform*, pp. 225-7.

²⁸³ F. H. Hinsley, *Power and the Pursuit of Peace*, Cambridge, 1967, pp. 96-7.

²⁸⁴ J. Bentham, *Emancipate your Colonies!*, p. 409.

²⁸⁵ J. Bentham, *An Introduction to the Principles of Morals and Legislation*, p. 34.

enlightened, if not the most enlightened, at this day on the globe',²⁸⁶ but was weary about the basis for the changes:

Who can help lamenting, that so rational a cause should be rested upon reasons, so much fitter to beget objections, than to remove them? But with men who are unanimous and hearty about measures, nothing so weak but may pass in the character of a reason: nor is this the first instance in the world, where the conclusion has supported the premises, instead of the premises the conclusion.²⁸⁷

Bentham believed that the absence of an overbearing empire had been partly responsible for America's economic and constitutional improvement since independence. At the heart of America's new democracy ran the vital thread of simplicity.²⁸⁸ By contrast, the colonies brought only complexity to the functions of government. Bentham neatly contrasted the difference between the American and colonised forms of government, stating that British colonial government: '...excludes the possibility of a popular government by the incapacity of the people to comprehend the business of government'.²⁸⁹

The other issue that comes under consideration here is that Bentham's example of the United States, and the subsequent approach by the Colonial Office to colonies such as New Zealand, were implicitly predicated on these colonies having substantial white populations. In such colonies, increased European settlement rather than resource extraction was a major motive for further intervention. However, the presence of substantial British settler populations in a colony often led to complex and heavily bureaucratic colonial government structures evolving. The Colonial Office seems to have responded to the criticism of the complexity of its colonial administrations by avoiding the establishment

²⁸⁶ *Ibid.*, p. 35

²⁸⁷ *Op. cit.*

²⁸⁸ J. Bentham, UCLMC, c. 1789, Box 25, p. 120.

²⁸⁹ *Op. cit.*

of colonies with representative institutions from the 1820s,²⁹⁰ in favour of the appointment of Governors and Residents, who in the short term presided over much simpler administrations.

Bentham's concession that the British colonies could serve as an outlet for surplus population in the colonising country was a compromise position in that it accommodated the fact the Britain already possessed colonies, and so rather than labelling them as useless, Bentham could argue that they fulfilled a possible purpose in serving as extra space for England's growing population.²⁹¹ If this was to be the role of the colonies in the future, then they eventually needed to be societies which were fully democratic and representative of their populations if any development in them was to occur.

Bentham's views on the evolution of British colonies partially influenced the direction of British colonial policy from the 1830s.²⁹² In particular, he was critical of what he saw as the cumbersome and archaic operation of the Colonial Office:

His [Bentham's] belief in [colonial] self-government on democratic principles led him to oppose the bureaucratic methods of the Colonial Office, and the misuse of colonial patronage; he believed also that the good sense and British sympathies of the colonists would keep the new territories bound to the home country. The catchwords... 'representative government' for the colonies offered a robust and positive programme.²⁹³

The will of the 'surplus' population that entered the colony could be exercised more effectively by a democratic colonial administration rather than a purely despotic one that carried out policies formulated in Britain

²⁹⁰ G. S. Graham, p. 126.

²⁹¹ England's population grew from 7.9 million in 1821, to 15.9 million in 1841, *Whittaker's Almanac 1941*, London, 1941, p. 21.

²⁹² L. Woodward, p. 368.

²⁹³ *Ibid.*, pp. 368-9.

rather than in the colony itself. However, such a view came with the implicit proviso that the settler population was sufficiently ‘civilised’ to participate in a democratic system of government.²⁹⁴

An Emerging Philosophy of Trusteeship

In the interim, before a fully democratic government could be installed in a colony, Bentham concluded that some form of trusteeship was a necessary characteristic of the functions of governments.²⁹⁵ This trusteeship was the convergence of a paternalistic view of the nature of government with the belief that colonies in particular required the ‘guidance’ of the imperial power to achieve their utilitarian destiny. The concept rested with the establishment of an implicit social contract²⁹⁶ between the society and the government of the day. Trusteeship would be necessary insofar as governments assumed some of the responsibilities for the members of their societies:

Constitutional power is property in trust...In a certain respect the Constitutional Code is the private civil code over again...changing only the persons that are the subjects. The [sovereign]... being the master in trust, that is, the guardian of his subjects.²⁹⁷

In a few cases, including New Zealand, the genuine intent to articulate such a social contract manifested itself in the form of a treaty. In many other British colonies, however, such an arrangement between the indigenous society and the nominally settler government was simply assumed by the colonising power, without specific limits to either's power ever being put to paper in the form of an agreement. Indeed, in this matter, New Zealand seems to have been the exception rather than the rule

²⁹⁴ J. Bentham, UCLMC, 1818, Box 164, p. 39

²⁹⁵ J. Bentham, UCLMC, 1795, Box 170, p. 182.

²⁹⁶ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, pp. 261 and 268.

²⁹⁷ J. Bentham, UCLMC, 1795, Box 170, p. 182.

in British colonial policy in the first half of the nineteenth century. In colonies such as New South Wales (then later Australia as a whole), the Cape Province, Ceylon, Singapore, Aden, and Labuan, full British annexation and subsequent rule took place without a formal written agreement with the indigenous peoples. Hong Kong's cession to Britain, confirmed by the treaty of Nanking (1842),²⁹⁸ and the Anglo Dutch-Treaty (1824)²⁹⁹ which divided up the colonies of the Malay archipelago, were agreements between colonising powers, rather than between the colonising power and those being colonised.

Other treaties were often ad hoc arrangements made without the knowledge of the Colonial Office, such as the treaty which granted rights of residence to British subjects in Hawaii.³⁰⁰ In Africa, as is explored in Chapter Five of this thesis, treaties were often used by the British as a cynical device of expedience when determining national boundaries in the continent.

Bentham developed his principles of trusteeship in an environment, therefore, in which agreements with indigenous peoples and colonising powers for the purpose of fostering colonial development, and specifically indigenous development, were practically unheard-of. His trusteeship principles articulated a specific division of power in his construction of the constitutional role of governments, emphasising that the fiduciary component of governmental power ought to be exercised for the benefit of the entire community, in line with his utilitarian ideals:

Power is...either beneficial [over oneself] or fiduciary [over one or more other individuals]. When fiduciary it is coupled with trust. What concerns beneficial power, whether over

²⁹⁸ G. S. Graham, p. 167.

²⁹⁹ D. G. E. Hall, *A History of South East Asia*, Fourth Edition, London, 1988, pp. 552-4.

³⁰⁰ I. C. Campbell, 'Sovereignty and Indigenous Rights', in W. Renwick (ed.), *Sovereignty and Indigenous Rights: The Treaty of Waitangi in International Contexts*, Wellington, 1991, pp. 70-1.

things or over persons, and fiduciary where the benefitee is an individual, or an assemblage of individuals, belongs to the Private Law: what concerns fiduciary power where the benefitee is the whole community...belongs to the public or Constitutional branch.³⁰¹

When it came to the practical example of the merits of trusteeship, Bentham quoted the case with which he was most familiar – that of Britain’s most populous colony, and the one which was ruled as a colonial dictatorship: India. In this instance, Bentham infused the notion of racial superiority into his analysis of the application of trusteeship over a British colony:

Ascendancy of the English over the native, in strength of body and mind: in acts and aims: in wisdom and understanding. As the Bramin is by nature superior to the [untouchable]...so is the European to the Bramin: so is the Englishman to another European.³⁰²

Bentham’s view of the need for British trusteeship over India – the ‘greatest blessing’ of an explicit code of laws managed by the British³⁰³ – was much more than mere idle political theorising. Following the United States of America’s achievement of independence in 1776, the ‘Indian question’ emerged as Britain’s most pressing foreign policy issue. Bentham’s prescription for British rule over India assumed the form of a despotic trusteeship. This was the model he believed would bring about the greatest good for the greatest number of people on both Britain and India, but particularly Britain.³⁰⁴

Yet, at this stage, the exact limits of community membership were vague, and therefore, the limits on one of the partners in the trusteeship relationship were correspondingly unclear.³⁰⁵ For example, the status of

³⁰¹ J. Bentham, UCLMC, 1795, Box 170, p. 182.

³⁰² J. Bentham, UCLMC, 1775, Box 169, p. 97.

³⁰³ Op. cit.

³⁰⁴ Op. cit.

³⁰⁵ J. Bentham, *An Introduction to the Principles of Morals and Legislation*, p. 126.

indigenous peoples in the colonies who became de facto or de jure British subjects was never clearly defined, even though such categories were vital for consideration because of Bentham's parochial utilitarianism, which included only 'their interests' as opposed to all interests in its definition, as has previously been discussed. This is important because these indigenous peoples would fall, to some extent, within the scope of the community's laws, which in turn would affect their own power structures and status.

It was Bentham's definition of a law which clarified and emphasised the supremacy of a sovereign and sovereign power, and the obligations for those who are *supposed* to be subject to that sovereign's power. However, how or why those subjects come to be under this sovereign power was left open:

A law may be defined as an assemblage of signs declarative of a volition conceived or adopted by the *sovereign* in a state, concerning the conduct to be observed in a certain *case* by a certain person or persons, who in the case in question are or are supposed to be subject to his power: such volition trusting for its own accomplishment to the expectation of certain events which it is intended such declaration should on occasion be a means of bringing to pass, and the prospect of which it is intended should act as a motive upon those whose conduct is in question.³⁰⁶

Within a law-governed sovereign society, there was always the potential for people to be coerced by laws, but this was an essential and unavoidable aspect of laws.³⁰⁷ One of the purposes of this imperative theory of law, as Bentham saw it, was to prevent an individual's pursuit of happiness impinging on the ability of other individuals to pursue their happiness. There could be no personal rights without correlative obligations which laws would enforce. In the case of colonies, there was

³⁰⁶ J. Bentham, *Of Laws in General*, Vol. 1, London, 1970, p. 1.

³⁰⁷ J. Bentham, *Leading Principles of a Constitutional Code for Any State*, p. 269.

an implicit assumption that the indigenous peoples would no longer be subject to their own laws, but to those of the colonising power.

Bentham's conception of the law, however, went beyond its capacity simply to prohibit or sanction certain types of behaviour in communities. He saw the law as a potential device to influence society as a whole, and even motivate it. There was no reason why laws could not be used as a system to alter the characteristics of society.³⁰⁸ This understanding of one of the functions of the law was put into practice in some of the British colonies, including New Zealand, where British colonial administrators encountered indigenous societies which required to be controlled in some way once they became part of the Empire, voluntarily or otherwise.

There is a distinction, however, between the international and internal forms of trusteeship as used by Bentham. The essence of both forms was fundamentally the same, but in their application, Bentham's international trusteeship appears to have been more coercive. The difference between his views on the independence of the former American colony, and his insistence on the need for British trusteeship over India, could also lead to the conclusion that the extent to which trusteeship was exercised in a colony rested in part on the extent of white settlement in the colony.

Trusteeship and a 'Rational' Democracy

The despotic and often harsh character of British rule in India compelled Mill to devise a more inclusive type of trusteeship – inclusive, that is, of the indigenous peoples in the colony. He expressed the belief that there ought to be a convergence of interests between those of the government and those of the people. However, this was a goal which Mill conceded was impossible of achieving completely, but which was more '...an end to be incessantly aimed at, and approximated to as nearly as circumstances

³⁰⁸ J. Bentham, *Of Laws in General*, Chap. 1.

render possible'.³⁰⁹ This did not automatically mean, though, that democracy had to extend to as many potential voters in society as possible. On the contrary it was conceivable that a comparatively small group of specially-educated people could be sufficient for the task of good government, and cited the example of British rule in India as evidence of this,³¹⁰ in which local elites participated in the exercise of Britain's colonial dictatorship over India. It is quite possible that Mill envisaged government by a cluster of specialists as being especially suitable for the British colonies, where mass democracy would not necessarily equate with an informed democracy.³¹¹ From the 1820s, the Colonial Office ceased installing representative assemblies in its colonies in favour of their direct rule by Governors.³¹² This way, trusteeship power could be more effectively exercised, with the decisions, in New Zealand's case, about the shape and direction of development for the colony being made by policy-makers in the British Government, not by officials in the colonies themselves – officials elected by settlers who did not necessarily possess the ability to make an 'informed' choice for their representatives.

Mill's experience with the East India Company was almost certainly influential in the development of his views on democracy, particularly the relativity of different forms of governmental institutions, and the belief that existing institutions of government should neither be despised nor revered. Democracy, of the sort that existed in England at the time, was therefore rejected by Mill as an indispensable element in his analysis of government and society:

...I ceased to consider representative democracy as an absolute principle, and regarded it as a question of time, place, and circumstance; though I now looked upon the choice of political institutions as a moral and educational question more

³⁰⁹ J. S. Mill, *Democracy and Government*, in *London Review*, Vols. 1 and 2, London, 1835, in G. L. Williams (ed.), p. 180.

³¹⁰ Op. cit.

³¹¹ J. S. Mill, *The Spirit of the Age*, pp. 172-3.

³¹² G. S. Graham, p. 126.

than one of material interests, thinking that it ought to be decided mainly by the consideration, what great improvement in life and culture stands next in order for the people concerned, as the condition of their further progress, and what institutions are most likely to promote that; nevertheless this change in the premises of my political philosophy did not alter my practical political creed as to the requirements of my own time and country.³¹³

Instead of depending solely on the democratic model, Mill believed that the relationship between a state and its people, under whatever system of government, ought to be the overriding consideration in the nomination of a particular governmental regime:

The worth of a State, in the long run, is the worth of the individuals composing it; and a State which postpones the interests of their mental expansion and elevation, to a little more of administrative skill, or of that semblance of it which practice gives, in the details of business; a State which dwarfs its men, in order that they may be more docile instruments in its hands even for beneficial purposes – will find that with small men, no great thing can be accomplished; and that the perfection of machinery to which it has sacrificed everything, will in the end avail it nothing, for want of the vital power which, in order that the machine might work more smoothly, it has preferred to banish.³¹⁴

Mill even went as far as to suggest that good government had in the past been produced ‘...without any expressed accountability to the people’.³¹⁵ Mass democracy was therefore not to be perceived of as a necessary prerequisite for social or economic improvement. In fact, there was a distant cynicism in Mill’s view on mass democracy: ‘Universal suffrage is never likely to exist where the majority are *proletaires*’.³¹⁶ Likewise, he accepted despotic forms of government on the basis that there was ‘...no positive oppression by officers of state, but in which all the collective

³¹³ J. S. Mill, *Civilisation*, p. 119.

³¹⁴ J. S. Mill, *On Liberty*, pp. 249-50.

³¹⁵ J. S. Mill, *Democracy and Government*, p. 181.

³¹⁶ J. S. Mill. *M. de Tocqueville on Democracy in America*, in *Edinburgh Review*, No. 72, Edinburgh, 1840, in G. L. Williams (ed.), p. 201.

interests of the people are managed for them'.³¹⁷ The autocratic character of British colonial rule was certainly much more acceptable when viewed in the context of Mill's analysis of the role and extent of democracies. In the case of India, Mill implied that improvements in education, the economy, and society in general – that is, development – could be fostered only if the country was governed despotically by an incorruptible imperial cadre.³¹⁸ Mill summarised this idea of the 'rational' democracy by stating that it was not so necessary for the people to govern themselves, but rather that they had security for good government.³¹⁹

These ideas were heavily qualified, however, by the observation that there always existed the potential for abuse of power in government by a small group of experts.³²⁰ Accordingly, constitutional safeguards would ultimately be ineffectual to prevent abuses of power. Mill saw the ultimate control as being '...the good sense of the people themselves'.³²¹ In the case of the colonies however, 'the people' whose good sense would be relied on, tended to reside not in the colonies themselves, but in Britain.

Mass democracy, however, was far from the panacea for the abuses of government. On the contrary, Mill identified and was critical of the potential for political tyranny by the masses, in which the individual liberties of some members of the society could be quashed to the point where society became an enemy to itself:

...reflecting persons perceived that when society is itself the tyrant – society collectively, over the separate individuals who compose it – its means of tyrannizing are not restricted to the acts which it may do by the hands of its political functionaries. Society can and does execute its own mandates: and if it issues wrong mandates instead of right, or any mandates at all in

³¹⁷ J. S. Mill, *Considerations on Representative Government*, p. 401.

³¹⁸ M. P. Cowen and R. W. Shenton, 'The Invention of Development', p. 41.

³¹⁹ J. S. Mill, *Democracy and Government*, p. 182.

³²⁰ *Ibid.* p. 183.

³²¹ *Op. cit.*

things with which it ought not to meddle, it practices a social tyranny more formidable than many kinds of political oppression, since, though not usually upheld by such extreme penalties, it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself.³²²

The element of transition in Mill's rational democracy was an important one. In particular, he noted that changes in the nature and application of democracy would correspond with the transitions in social and economic organisation that would take place – especially changes in the class structure of society: 'The ascendancy of the commercial class in modern society and politics is inevitable, and, under due limitations, ought not to be regarded as an evil'.³²³ The rising commercial class need not be all powerful, but it would be the predominate force in the emerging societies in Europe, as Mill foresaw it. In the colonies, particularly through his work with the East India Company, Mill would have been aware of the rise of the merchant class, and the increasing power they were wielding in the colonies. Indeed, in 1837, William Hobson (who became Governor of New Zealand in 1840) proposed that the creation and expansion of commercial enterprises in New Zealand would be the best way to achieve British rule over the colony.³²⁴

The Evolution of Property Rights

The indigenous title to land, and the allied concepts of indigenous sovereignty were problematic issues facing British Governments in their dealings with their colonies during the nineteenth century. In the case of New Zealand, for example, the Colonial Office acknowledged Maori Sovereignty, but only '...so far as it is possible to make that acknowledgement in favour of a people composed of numerous dispersed and petty tribes who...are incompetent to act or even deliberate in

³²² J. S. Mill, *On Liberty*, pp. 129-30.

³²³ J. S. Mill. *M. de Tocqueville on Democracy in America*, p. 247.

³²⁴ W. Hobson to R. Burke, 9 September 1837, in *GBPP 1840*, Vol. 23, pp. 3-6.

concert',³²⁵ and that '...the uncivilised inhabitants of any country have but a qualified dominion over it, or the right of occupying only'.³²⁶ Such a view created space for the British to impose their own forms of property tenure in the colony.

In reviewing some of the formative ideas of socialism, Mill suggested that the idea of private property was not fixed but variable. He saw the possibility of private property as being modified at some future point as a result of '...an entire renovation of the social fabric, as is contemplated by Socialism, establishing the economic constitution of society upon an entirely new basis, other than that of private property and competition'.³²⁷ Mill seemed reluctant to exclude the possibility of a utopian future, in which the nature of land tenure was altered, despite the theoretical deficiencies in such a change. He cited the changing nature of property rights in Europe and elsewhere as evidence at least of the possibility that the prevailing belief in Britain at the time of the virtual sanctity of private land might be just a transitory stage:

In the early states of society, the right of property did not include the right of bequest. The power of disposing of property by will was in most countries of Europe a rather late institution....Where bequest is not permitted, individual property is only a life interest....Then again, in regard to proprietary rights over immovables, these rights were of varying extent and duration. By the Jewish law, property in immovables was only a temporary concession...³²⁸

Mill enlarged on Bentham's view of the potential for changes in land tenure by suggesting that private property may be abandoned altogether in favour of equal rights for members of self-managed socialist enterprises.³²⁹

³²⁵ Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 23, pp. 37-8.

³²⁶ G. Gipps, in Report from the Select Committee of the House of Commons on New Zealand, 29 July 1844, in *GBPP 1844*, Vol. 13, pp. 5-6.

³²⁷ J. S. Mill, *Chapters on Socialism*, p. 353.

³²⁸ *Ibid.*, p. 355.

³²⁹ J. Riley, p. 296.

he acknowledged that in some of the colonies, prior to European intervention, the concept of individual property rights was only weakly developed, if at all.³³⁰ He described such a status as neither negative nor positive – it simply demonstrated one of the possible variations in land tenure available to societies. The adoption by the colonies of European ideas of property rights at this time would only be desirable if they led to growth and improvement for the societies, although the same principle of changing land status also applied to the European countries as well: ‘...society is fully entitled to abrogate or alter any particular right of property which on sufficient consideration it judges to stand in the way of the public good’.³³¹ In the case of Ireland, Mill made a direct link between the redistribution of property from the wealthy land-owners to the Irish peasants, and the social development of the country which would ensue:

The possession of property would make him [an Irishman] an orderly citizen. It would make him a supporter of the law, instead of a rebel against all law but that of his confederacy. It would make him industrious and active, self-helping and self-relying, like his Celtic brother of France. And it would (if anything would) make him, like the same Celtic kinsman, frugal, self-restraining, and provident, both in other things, and in the main article of all, population.³³²

Allied to the differing possibilities of the types of land ownership, particularly in the colonies, was the role of the culture of the indigenous peoples. Indigenous customs were not objectionable in themselves, and could even be maintained (or perhaps, permitted) provided that these customs did not interfere with the potential for the society to improve ‘...to conform to custom, merely as custom, does not educate or develop’.³³³ Instead, the emphasis was on the importance of individual

³³⁰ J. S. Mill, *Chapters on Socialism*, pp. 355-6.

³³¹ *Ibid.* p. 358.

³³² J. S. Mill, *The Conditions of Ireland*, 1846, in J. M. Robson (ed.), *The Collected Works of John Stuart Mill*, Vol. 24, Toronto, 1986, p. 974.

³³³ J. S. Mill, *On Liberty*, p. 187.

choice and independent thinking as fundamental prerequisites for social improvement:

He who lets the world, or his own portion of it, choose his life plan for him, has no need of any other faculty than the ape-like one of imitation. He who chooses his plan for himself, employs all of his faculties. He must use observation to see, reasoning and judgement to foresee, activity to gather materials for decision, discrimination to decide, and when he has decided, firmness and self-control to hold to his deliberate decision... It is possible that he might be guided by some good path, and keep out of harm's way without any of these things. But what will be his comparative worth as a human being?³³⁴

Yet, Mill was cautious about dangers that a communist system posed to his ideas about changes in land tenure, even though the views of communists on the collectivisation of land ownership may have had some superficial similarities with his own ideas:

Already in all societies the compression of individuality by the majority is a great and growing evil; it would probably be much greater under Communism, except so far as it might be in the power of individuals to set bounds to it by selecting to belong to a community of persons like-minded with themselves.³³⁵

When Mill cast his eye beyond Britain towards the colonies, he began to devise ideas about colonial development that were informed to some extent by certain attitudes towards non-European peoples. In general, he saw the European colonising power as being responsible for exercising a qualified fiduciary duty over its colonies – even if this traversed the rights of the indigenous peoples to self government.³³⁶

³³⁴ Ibid. pp. 187-8.

³³⁵ J. S. Mill, *Chapters on Socialism*, p. 347.

³³⁶ J. S. Mill, *The East India Company's Charter*, 1852, in J. M. Robson, (ed.), *The Collected Works of John Stuart Mill*, Vol. 30, Toronto, 1990, p. 34.

Central to the idea of trusteeship was the proposition that colonies were capable of improvement, but that assistance for this improvement from the imperial power was vital because of the belief in ‘...the incapacity of ‘native populations’ to break out of the fetters imposed upon them by ‘racial inferiority’, and a ‘harsh environment’’.³³⁷ Of course, this implied that some of the basic preconditions for development were present in the colonies in question. If these preconditions did not exist in the appropriate configurations or quantities, then the solution for the colonies was fairly straightforward:

‘...[they] must be governed by the dominant country, or by persons delegated for that purpose by it. This mode of government is as legitimate as any other if it is the one which in the existing state of civilisation of the subject people, most facilitates their transition to a higher state of improvement’.³³⁸

Mill believed that a government would be unable to perform effectively unless it met certain preconditions, which included a willingness on behalf of the people to accept it, a preparedness to uphold a particular form of government, and a willingness to perform those duties the government required of them.³³⁹ A colonial society which could not, or would not comply with these preconditions would not be fit for development.³⁴⁰ The Treaty of Waitangi, which according to its English text, confirmed the nominal cession of Maori sovereignty to the Crown,³⁴¹ thereby contained precisely this element of popular consent by indigenous peoples to colonial rule about which Mill wrote.

³³⁷ S. Corbridge, p. 730. Corbridge has argued that this view of indigenous populations did not carry through to the post-1945 development theories. However, some modernisation theorists were adamant about the need for indigenous societies to abandon those aspects of their culture that might impede development. See W. W. Rostow, ‘The Take-Off into Self-Sustained Growth’, in *Economic Journal*, New York, March 1956, p. 27.

³³⁸ J. S. Mill, *Considerations on Representative Government*, p. 567.

³³⁹ C. L. Ten, p. 372.

³⁴⁰ Op. cit.

³⁴¹ Article the First, Treaty of Waitangi, see Appendix Two of this thesis.

Trusteeship grew into a doctrine in the first half of the nineteenth century by which those who saw themselves as developed (that is, usually representing an imperial power) acted to determine the process of development or improvement for those in the colonies who were considered to be less developed.³⁴² This was an early attempt at defining a developmental problem and prescribing a solution.

From a political perspective, trusteeship could also serve as a remedy and a justification for clamping down on colonial disorder³⁴³ through the deliberate, planned organisation of the factors of production in the colony to produce benefits for the society as a whole. Mill even opposed the 1857 transfer of the administration of parts of India from the East India Company to the British Crown on the basis that there was the potential for Crown rule to be corrupted through the introduction of democracy, and consequently, it would not be in the best interests of Indian society. However, the best interests of Indian society, in this example, and the best interests of colonised groups in general, were very much seen by Mill in terms of European definitions of progress and improvement. Mill's trusteeship did not conceal its European origins, and included no role for indigenous peoples in the colonies to contribute to the process of determining their own best interests.

The Status of Property

The nature of property ownership in relation to the trusteeship of colonies by an imperial power was a problematic issue in relation to emerging ideas about development. Privately-owned property did not necessarily mean that the property would be used most efficiently, and neither did it promise that the resources produced by private interests would be distributed equitably within the society, or would even be in the interests

³⁴² J. S. Mill, *Considerations on Representative Government*, p. 567; M. P. Cowen and R. W. Shenton, 'The Invention of Development', p. 28.

³⁴³ M. P. Cowen and R. W. Shenton, 'The Invention of Development', p. 34.

of the society in general. However, Mill was entirely flexible on the question of what sort of land tenure a society might select in order to bring about the benefits to the community as a whole, and did not simply negate the value of any particular type of land tenure:

...Society is fully entitled to abrogate or alter any particular right of property which on sufficient consideration it judges can stand in the way of the public good....a full consideration [is needed] of all means by which the institution may have a chance of being made to work in a manner more beneficial to that large portion of society which at present enjoys the least share of its direct benefits...³⁴⁴

For Mill, some form of community tenure would be the most beneficial to the whole community³⁴⁵ based on the moral rightness of the benefits that this would bring to society, rather than the wealth generated for the individuals owning the land. However, there was no requirement for compulsion in the achievement of this improved society. Improvement was to be achieved by the society itself, rather than an external force, and the means of undertaking this path of progress could vary among different societies.³⁴⁶ In the meantime, while society was developing into its stationary state, Mill foresaw the continuation of the existing system of land tenure: 'The political economist, for a considerable time to come, will be chiefly concerned with the conditions of existence and progress belonging to a society founded on private property and individual competition'.³⁴⁷ Therefore, as in the case of New Zealand, the emphasis the colonial Government put on securing individual private land tenure was not necessarily in conflict with Mill's longer-term vision of community ownership of land.

As for the role and position of the individual in this new society, there was a paradox in Mill's demand for individual liberty. He was prepared to

³⁴⁴ J. S. Mill, *Chapters on Socialism*, p. 358.

³⁴⁵ *Ibid.* pp. 353-8.

³⁴⁶ J. S. Mill, *Principles of Political Economy*, p. 200

³⁴⁷ *Ibid.*, p. 214.

accept a much greater measure of state activity, and even state control, if that meant that individual liberties could be protected and enhanced: 'The social problem of the future we considered to be, how to unite the greatest individual liberty of action, with a common ownership in the raw material of the globe, and an equal participation in all the benefits of combined labour'.³⁴⁸ Increased state activity was seen by Mill as the device which would ultimately deliver the requisite level of individual liberty to a society,³⁴⁹ just as private land ownership might eventually enable a society to move towards the predominance of communal land tenure.

The trusteeship principal was a central element of development philosophies in Britain in the early nineteenth century, and was partially reactionary³⁵⁰ in that it was intended initially to harness and direct progress rather than to displace it with a completely new and different model. This need to guide development came from the belief that the patterns of progress within a society occurred without being consciously willed by anyone.³⁵¹ But if such immanent development was to be displaced by a programme of intentional development, trusteeship responsibilities would have to be assumed by colonial powers for the welfare of the indigenous peoples.³⁵²

The enactment of trusteeship, however, presented a problem for Mill in that it could potentially be construed as a coercive measure. Mill had stressed that the damage caused by coercion far outweighed the extra benefits of compelling people in a society to do all they could for that society,³⁵³ which is what trusteeship would at least partially necessitate. Mill attempted to resolve the potential problem of a coercive trusteeship

³⁴⁸ J. S. Mill, *Autobiography*, p. 175.

³⁴⁹ *Ibid.*, pp. 175-6.

³⁵⁰ M. Watts, 'A New Deal in Development', in J. Crush (ed.), p. 48.

³⁵¹ D. J. Porter, 'The Homesickness of Development Discourse', in J. Crush (ed.), p. 69.

³⁵² *Op. cit.*

³⁵³ J. S. Mill, *Bentham*, pp. 114-6.

by distinguishing between caring about the quality of life of other persons on the one hand, and the potential for using this concern as a license for coercion on the other.³⁵⁴

Free Trade

The significance of Free Trade in the context of this thesis – as both a principle espoused by Bentham and Mill, and as a policy subsequently adopted by several British politicians – is that it was effectively one of the ‘keys’ which would unlock the capability of a colony to free itself from social, economic and political dependence on its colonial power. Without the implementation of a Free Trade doctrine by Britain, there always remained the potential for the processes of economic, social and political development in the colonies to be impeded.

Prior to the nineteenth century, Britain viewed its colonies as a legitimate source of national wealth.³⁵⁵ The expansion of the British Empire from the seventeenth century had been attributed to the protected trade Britain experienced with its colonies.³⁵⁶ In 1641, Lewes Roberts, a director of the East India Company, argued that ‘It is not our conquests, but our Commerce...’ that led to the growth of British imperial power.³⁵⁷ By the beginning of the nineteenth century, Britain had substantial commercial involvement and a corresponding political commitment in India, Ceylon, Burma,³⁵⁸ and shortly Singapore and Malaya.³⁵⁹

³⁵⁴ Ibid. pp. 115-7.

³⁵⁵ P. Fryer, *Black People in the British Empire: An Introduction*, London, 1988, p. 3.

³⁵⁶ Op. cit.

³⁵⁷ L. Roberts, in op. cit.

³⁵⁸ V. G. Kiernan, *The Lords of Human Kind: Black Man, Yellow Man, and White man in an Age of Empire*, London, 1988, pp. 76-9,

³⁵⁹ *ibid.*, pp. 81-3.

Bentham's criticisms of the mother-country being enriched by its colonies was strident.³⁶⁰ He cited any form of commercial regulations, including trade protectionism, as forces that would ultimately hinder colonial development and prosperity.³⁶¹ However, Bentham provided an important qualification to this laissez faire argument. He observed that those colonies that were not yet ready to benefit from Free Trade needed to be '...protected and directed in their condition of comparative weakness and ignorance'.³⁶² He then went as far as to suggest that the present state of dependency on Britain by some colonies was necessary in order to nurture law and order and to safeguard the colonies from anarchy.³⁶³

The principle of Free Trade, which gradually displaced the 'economic imperialism'³⁶⁴ that characterised Britain's approach to its colonies in the eighteenth century was strongly endorsed by Mill. Mill saw trade, like other dimensions of national activity, predominantly as a social act³⁶⁵ on the basis that trade affected the interests of society in general, and not just those directly involved in it. Free Trade was therefore closely linked with other aspects of a country's development. Mill's justification of Free Trade commenced with his identification of the failure of governments in fixing prices and regulating manufacturing. The removal of such intervention would bring advantages to society as a whole:

...it is now recognised...that both the cheapness and the good quality of commodities are most effectively provided for by leaving the producers and sellers perfectly free, under the sole check of equal freedom, to bypass for supplying themselves elsewhere.³⁶⁶

³⁶⁰ J. Bentham, *Manual of Political Economy*, London, c. 1820, in J. Bowring (ed.), *The Works of Jeremy Bentham*, Vol. 3, New York, 1962, pp. 56-7.

³⁶¹ Op. cit.

³⁶² Ibid., p. 56.

³⁶³ Op. cit

³⁶⁴ K. Bourne, *The Foreign Policy of Victorian England 1830-1902*, Oxford, 1970, p. 4.

³⁶⁵ J. S. Mill, *On Liberty*, p. 227.

³⁶⁶ Op. cit.

For Mill, Free Trade and liberty shared a similar basis, in part because restrictions in trade would have adverse flow-on effects for individual liberty. Therefore, there were social as well as economic advantages to the promotion of Free Trade, although these advantages focussed mainly on Britain as the colonising power, and only to a much lesser extent on the colonies themselves. However, when Mill did review the effects of Free Trade on colonies, his assessment was that the nature of the impact of such unencumbered trade could be considerable, especially in the ensuing increase in emigration to the colony that would flow from such a policy.³⁶⁷

By the 1840s, the idea of Free Trade was gaining greater political momentum among members of the British Government.³⁶⁸ Palmerston addressed the House of Commons in 1842, endorsing Free Trade as a major component in the development of domestic and international relations: ‘...that commerce may freely go forth, leading civilisation with one hand, and peace with the other, to render mankind happier, wiser, better.’³⁶⁹ In a similar vein, Richard Cobden, one of the leading British advocates of Free Trade, saw its benefits extending well beyond the commercial sphere:

I see the Free-Trade principle that which shall act on the moral world...drawing men together, thrusting aside the antagonism of race, and creed, and language, and uniting us in the bonds of eternal peace...I believe that the desire and the motive for large and mighty empires will die away.³⁷⁰

Mill’s interpretation of Free Trade departed slightly from the utopian expectations of Cobden and Palmerston. For Mill, the British Empire

³⁶⁷ J. S. Mill, *Principles of Political Economy, With Some of Their Applications to Social Philosophy*, London, 1847, chap. 2, in J. M. Robson (ed.), *The Collected Works of John Stuart Mill*, Vol. 2, Toronto, 1965.

³⁶⁸ G. S. Graham, p. 160; E. A. Walker, *The British Empire: Its Structure and Spirit, 1497 – 1953*, Cambridge, 1953, p. 53.

³⁶⁹ Palmerston, Speech to the House of Commons, 16 February 1842, in *Hansard*, 3rd Series, vol. 60, London, 1842, pp. 618-9.

³⁷⁰ R. Cobden, Speech on Free Trade, Manchester, 15 January 1846, in J. Bright and J. E. T. Rogers, *Speeches on Questions of Public Policy by Richard Cobden M. P.* Vol. 1, London, 1987, pp. 362-3.

might continue to exist indefinitely, despite the demands of Free Trade which seemed on the surface to conflict with those of an empire. This apparent paradox was justifiable because of what Mill believed was the co-operative and peaceful basis of the Empire:

But though Great Britain could do perfectly well without her colonies, and though on every principle of morality and justice she ought to consent to their separation, should the time come when, after full trial of the best form of union, they deliberately desire to be dissevered; there are strong reasons for maintaining the present slight bond of connection, so long as not disagreeable to the feelings of either party. It is a step, as far as it goes, towards universal peace and generally friendly co-operation among nations. It renders war impossible among a large number of otherwise independent communities...It at least keeps the markets of the different countries open to one another....And in the case of the British possessions it has the advantage, specially valuable at the present time, of adding to the moral influence and weight in the councils of the world, of the Power which, of all in existence, best understands liberty....³⁷¹

This optimistic, almost naïve view of the fundamental character of the British Empire was indicative of a common and pervasive belief in Britain at the time of the mutually beneficial relationship between Britain and its colonies. Mill's preoccupation, though, was with the Free Trade possibilities among colonies of the Empire, rather than the political and economic ties that bound the Empire together. However, the Free Trade ideal was a substantial shift away from the two preceding centuries of British Government policy, in which the purpose of acquiring colonies had been '...the gain supposed to accrue from the Monopoly of their commerce'.³⁷² William Huskisson, a member of the House of Commons in the mid-1820s, articulated the reasons for these changes in British colonial policy:

³⁷¹ J. S. Mill, *Considerations on Representative Government*, p. 164.

³⁷² H. E. Egerton, *A Short History of British Colonial Policy*, London, 1897, p. 328.

...the long-established policy of all the European powers possessing colonies...was that of an entire and rigid exclusion of those colonies from all commercial intercourse...I would ask any man, whether...emancipation from commercial thralldom of the colonial system has really been prejudicial to the trade and industry of Great Britain...the answer is that it has not been prejudicial.³⁷³

At this time, Free Trade was emerging as a pivotal component in the extension of any national system. Mill recognised trade as possessing political and social implications which affected ‘...the interests of the other persons, and of society in general’.³⁷⁴ Paradoxically however, he allowed for exceptions, including government intervention, in his definition of Free Trade as expedient measures for achieving ‘abundance’.³⁷⁵

The emphasis contemporary development philosophers put on Free Trade as a vital ingredient for the economic, social, and political development of a colony was absorbed into British policy in New Zealand as the old systems of protectionism began to break down.³⁷⁶ The expansion of British settlement in some colonies and the spread of Free Trade went ‘...side-by-side’ in this period.³⁷⁷

However, the employment of Free Trade principles contained potential difficulties for policy-makers. There was a paradox between the use of Free Trade to assist with colonial emancipation, and the maintenance of the political dependence of colonies on their colonising power as a means of enabling the practices of colonial trusteeship and the associated doctrine of intentional development to continue. Furthermore, the economic dependence between a colony and a colonising power would remain as long as the colony’s government lacked the means to support

³⁷³ W. Huskisson, Speech to the House of Commons, 21 March 1825, in P. Burroughs, *British Attitudes Towards Canada 1822 – 1849*, Ontario, 1971, pp. 9-10.

³⁷⁴ J. S. Mill, *On Liberty*, p. 227.

³⁷⁵ J. S. Mill, *Principles of Political Economy*, pp. 936-71.

³⁷⁶ E. A. Walker, p. 53.

³⁷⁷ Op. cit.

itself financially. These were issues that would emerge in New Zealand following annexation in 1840.

Trusteeship and Colonial Treaties

Because the intent and character of British treaties with some of its colonies varied so greatly throughout the first half of the nineteenth century, as is discussed in the next chapter, it would be mistaken to imply that treaties were simply used by British colonisers solely in order to 'legitimise' or enable them to exercise trusteeship functions in the territories they annexed. Rather, they served a large range of purposes, including settling borders; full annexation; the establishment of protectorates; and the fostering of trade. However, in the case of New Zealand, the Treaty of Waitangi was used precisely for the purpose of legitimising Britain's formal rule of the colony as a precursor to developing New Zealand. Because of the New Zealand focus of this thesis, and the central role of the Treaty of Waitangi, it is important to consider the issue of treaties in the context of their relationship to the exercise of trusteeship. The following discussion in this section examines this relationship from a mainly theoretical perspective, and some of the possibilities that are raised when a treaty was used in connection with a doctrine of intentional development.

Characteristics of British Colonial Treaties

The extent of variation in both the intent and execution of British colonial treaties, particularly in the nineteenth century, makes it difficult to reach any generalised conclusions about their characteristics. Indeed, such is the wide variety of purposes for which treaties have been used that international law specialists have found it problematic to have a single set

of rules that covers all types of treaties.³⁷⁸ However, there are some general features of British colonial treaties during the nineteenth century that help to provide a theoretical context for the Treaty of Waitangi.

The first broad characteristic of colonial treaties was the usually unequal relationship between the signatories.³⁷⁹ There was an impression that the British, for example, were the dominant party, and the indigenous peoples with whom they concluded their treaties were the subservient party. However, the relationship was not always completely one-sided despite this outward appearance. The emphasis the British sometimes placed on obtaining the free and intelligent consent of indigenous peoples when signing their treaties, and the concerns expressed by the British Government in the 1830s about the possibility of disadvantaging indigenous peoples through treaties containing ambiguous language,³⁸⁰ indicates that the treaty relationships the British entered into with their colonies were not totally dominated by the coloniser in all instances. There was, at the very least, a nominal concern for the rights of the indigenous peoples, and therefore the preference existed for the cooperation rather than the coercion of these peoples when concluding treaties. An 1819 Treaty between the British East India Company and the Sultan of Johore, for example, established a British settlement in Singapore, but with the proviso that all major decisions made by the British administration would have to be approved by the Sultan.³⁸¹

Certainly, in the example of New Zealand, the British were not in a position, militarily, in early 1840 to enforce the terms of the Treaty of

³⁷⁸ D.J. Harris, *Cases and Materials on International Law*, Second Edition, London, 1979, p. 586. It was not until 1969 that the Vienna Convention on Treaties was formulated.

³⁷⁹ W. Renwick, 'A Variation of a Theme', in W. Renwick (ed.), p.199.

³⁸⁰ M. P. K. Sorrenson, 'Treaties in British Colonial Policy: Precedents for Waitangi', in R. Renwick (ed.), p. 15; Report of the House of Commons Committee of Aborigines in British Settlements, 26 June 1837, *GBPP 1837-8*, Vol. 40, pp. 3-26.

³⁸¹ F. Swettenham, *British Malaya: An Account of the Origins and Progress of British Influence in Malaya*, London, 1955, p. 316.

Waitangi if Maori consent was not forthcoming, and indeed, many Maori representatives chose not to sign the agreement without facing any repercussions from the British.³⁸²

Another characteristic of British colonial treaties was that they could not easily be enforced. Unless ratified by the legislative body of either state (they were not ratified by the British Parliament because making treaties was a Crown prerogative³⁸³), treaties tended to exist as an extra-judicial and extra-legislative device. Consequently, a treaty's effectiveness was dependent much more on the mutual goodwill of the signatories, rather than the threat of enforcement if one party was to breach a provision of the agreement. It is partly for this reason that the British sometimes demanded the genuine consent to their treaties from all signatories. The devices for the enforcement of international law in this period, particularly with territories outside '...a few kindred nations of western Europe...'³⁸⁴ were non-existent, unless one of the parties to a treaty had the military means to enforce its will on the other party.³⁸⁵

This leads to a more general feature of British treaties, and that is that they were neither acts of direct hostility, nor of overt conquest, but rather, they served almost as a statement of permission which allowed British government – at whatever level was deemed appropriate – to commence or be confirmed in the colony. From the early seventeenth century, the British favoured some sense of international legality to uphold their colonial activities, and refused to assume that they had a divine right to

³⁸² The two most prominent Maori iwi which refused to give their consent to the Treaty were Tainui and Te Arawa, and despite Te Arawa's refusal to sign, they became loyal Crown allies in the land wars of the 1860s. K. Sinclair, *The Origins of the Maori Wars*, Wellington, 1957, pp. 228-9.

³⁸³ F. Hackshaw, 'Nineteenth Century Notions of Aboriginal Title', in I. H. Kawharu (ed.), *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi*, Auckland, 1989, p. 106. In the United States, however, Treaty ratification is a function of the Senate, W. D. Burnham, *Democracy in the Making: American Government and Politics*, Second Edition, New Jersey, 1983, p. 41.

³⁸⁴ D. J. Harris, p. 1.

³⁸⁵ Op. cit.

rule other countries.³⁸⁶ While this worthy sentiment may have been obscured by the frequently violent practices that accompanied British colonisation, it none-the-less persisted as the basis for British treaty-making.³⁸⁷ Consent rather than coercion was the underlying consideration when entering into treaties with colonies.³⁸⁸

Underlying the practice of the British concluding treaties with colonies was the assumption that the indigenous party to a treaty would have ‘...the necessary legal capacity to enter into such a treaty’.³⁸⁹ While there may have been legal and possibly even moral reasons for the recognition of indigenous sovereignty, in practice, there was always the temptation to assert the sovereign status of an indigenous group for the sake of expediency, as occurred in the partitioning of Africa throughout the nineteenth century.³⁹⁰ In such circumstances (and it will be argued in Chapter Five of this thesis that New Zealand was partially such an example), it seems that the desire to obtain (superficial) legal legitimacy for the practice of colonisation by obtaining indigenous consent outweighed the moral imperative to honestly determine whether the indigenous group possessed the type of legal capacity necessary to sign a treaty. As will be seen in New Zealand’s experience, the Colonial Office resolved this dilemma by asserting on the one hand that Maori possessed some sovereign authority (presumably enough to represent themselves for the purpose of signing a treaty) but by also stating on the other hand that this sovereignty was a highly qualified one, and implicitly inadequate to enable Maori to continue their self-government in the face of European

³⁸⁶ P. G. McHugh, ‘Constitutional Theory and Maori Claims’, in I. H. Kawharu (ed.), p. 29. Ironically, the principle of the Divine Right to rule within England was upheld by James I and Charles I in the early seventeenth century, see D. L. Keir, pp. 206 and 238.

³⁸⁷ P. G. McHugh, ‘Constitutional Theory and Maori Claims’, pp. 29-31.

³⁸⁸ Treaties could, however, be made at the termination of a conflict, as in the case of peace treaties, but these fall under a different category, see P. Cobbett, *Leading Cases and Opinions on International Law*, London, 1892, pp. 231-2.

³⁸⁹ B. Kingsbury, ‘The Treaty of Waitangi: Some International Law Aspects’, in I. H. Kawharu (ed.), p. 121.

³⁹⁰ M. P. K. Sorrenson, ‘Treaties in British Colonial Policy’, pp. 16-19

involvement in the colony.³⁹¹ Maori were also not deemed to be effective enough trustees over their own land, capital and labour if some form of external trusteeship and authority was needed to fully realise the capacity of these indigenous resources.

A Realignment of Authority

One of the functions of a colonial treaty could be to give recognition and legitimacy to a new order in the colony. It could, in an extreme case such as New Zealand's, be the spearhead of a revolution in a state, in which the holders and executors of power and authority in the state would be replaced by a new group – usually the indigenous leaders being displaced by rulers from the colonising power. For British trusteeship to be exercised in New Zealand, such a revolution would be vital. The revolutionary nature of treaties is suggestive of the existence of certain preconditions being met by both the colonising power, and the people being colonised. In some cases, there must already be an intent on behalf of the colonising power to effect changes in the colony before a treaty is deemed appropriate. In New Zealand's experience, the point in time when the Treaty of Waitangi appears is perhaps premature insofar as the Treaty indicated an intent to assert British sovereignty and to exercise trusteeship power over those in the colony, even though the means to achieve this intent and to implement this trusteeship were inadequate at the time. This raises the importance of treaties in their capacity to serve as an indicator of the future direction of colonial policy, rather than necessarily reflecting existing realities. It also indicates a high degree of confidence on behalf of the colonising power that they have the will to follow through with their plans for a colony, even though the means may not yet be available to do so in the immediate future.

³⁹¹ Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, p. 37.

Although the realignment of authority through a treaty could be interpreted as being revolutionary, the very existence of a treaty may suggest that the revolution would not be a violent one. Where treaties were used, the colonising power required, by definition, the formal consent of the existing holders of authority in the colony if the revolution was to occur.³⁹² In the context of ideas about trusteeship, the issue of consent is an important one. By a group freely ceding their rights of self-government to a colonising power, they are also giving their consent for that colonising power to make decisions about their development on their behalf. From the point of view of the group being colonised, however, there is also a large element of trust involved in the cession of their rights of self-government. To surrender these rights indicates that the colonised group has sufficient faith in the capabilities of the colonising power to make better decisions for them than they themselves are capable of making. From the British perspective, the fact that the Treaty of Waitangi was translated into Maori signified a desire that the terms of this realignment of authority ‘...be seen through Maori eyes’³⁹³ – thus revealing the importance the British viewed the issue of consent, and the implications for the Maori acceptance of British trusteeship rule that this entailed.

From the standpoint of nineteenth-century ideas about development, the issue of genuine consent was similarly seen as imperative – particularly in the act of colonising. Emphasis was put on the fact that no community ‘...has the right to force another to be civilised’,³⁹⁴ and that coercion, when taken too far, was counter-productive to ideas about progress and improvement in a society.³⁹⁵ Therefore, without consent and individual

³⁹² P. G. McHugh, ‘Constitutional Theory and Maori Claims’, p. 47

³⁹³ E. T. J. Durie, ‘The Treaty in Maori History’, in W. Renwick (ed.), p. 156.

³⁹⁴ J. S. Mill, *On Liberty*, p. 224.

³⁹⁵ J.S. Mill, *Autobiography*, London 1873 (London 1995), pp.206-7.

choice³⁹⁶ (provided the capacity to choose was present among the population),³⁹⁷ trusteeship could not accurately said to be present in a colony, even if the colonial administration was working to a doctrine of development, in what it believed was in the best interests of all the people in the colony. In this context particularly, the Treaty of Waitangi was of critical importance to the British intent to develop New Zealand because it appeared to demonstrate Maori willingness to be ruled by the British, and implicitly for their development to be guided by the colonising power.

One of the consequences of the realignment of authority – as the product of a colonial treaty – was the possibility of substantial social change.³⁹⁸ Chapter Four of this thesis details how, from around 1837, British colonial officials considering New Zealand expressed their belief in the need for intervention on the basis that it would arrest the declining behaviour of British settlers in the colony.³⁹⁹ A treaty, supported by a specific doctrine of development, allowed not only for attempts to halt such behaviour, but to go further and bring about contemporary British notions of improvement to the society, particularly among the indigenous population. Ironically, this was despite calls for British intervention by missionaries in the colony from the mid-1830s being based on the disorder they witnessed mainly among European settlers in the colony.⁴⁰⁰

With a revolutionary realignment of authority in a state – brought about by accession to a treaty – came a corresponding shift in, or at the very least, a clearer articulation of the rights of the various peoples in the state. Colonial treaties could be especially important in this regard in that they

³⁹⁶ J. S. Mill, *On Liberty*, pp.187-8; J. S. Mill, *Considerations on Representative Government*, p. 164.

³⁹⁷ J. Bentham, UCLMC, c. 1789, Box 25, p. 120.

³⁹⁸ J. S. Mill, *The Spirit of the Age*, p. 170

³⁹⁹ A. Ward, p. 30.

⁴⁰⁰ A typical example occurs in D. Coates, 'Evidence Before the House of Commons Committee on New Zealand', 14 May 1838, in W. D. McIntyre and W. J. Gardiner (eds.), *Speeches and Document on New Zealand History*, Oxford, 1971, p. 5.

may be the first written statement of rights of the indigenous people of the colony.

The definition (or redefinition) of rights through a treaty was a fundamental measure in the process of implementing a doctrine of development. The rights defined, granted, or altered in a treaty would therefore have to be consistent with the doctrine of development designed for a colony. Chapter Five of this thesis investigates the wording of the Treaty of Waitangi and considers how certain rights were defined and expressed against the backdrop of the plans for the development of the colony that had been devised by the Colonial Office.

Treaties as Constitutional and/or Legal Documents

Whether the Treaty of Waitangi was ever intended by its authors to be a long-standing constitutional document is unclear. There is simply insufficient evidence to be certain either way. However, it is worthwhile considering the status of the British colonial treaties in the context of prevailing ideas about development in the first half of the nineteenth century as this could obliquely signify the purpose of the Treaty of Waitangi in terms of its constitutional standing. In this context, the assumption is that a treaty has a constitutional status if it contributes to a body of rules determining or providing the necessary procedures for determining the organisation, personnel, powers, and duties of the organs of government.⁴⁰¹ The principle measure for establishing whether a treaty is a legal document *within* a state (as opposed to under the customs of international law) is whether the treaty can be enforced by the domestic judicial regime.

⁴⁰¹ K. J. Scott, *The New Zealand Constitution*, Oxford, 1962, p. 1.

Certainly, in the early nineteenth century, some social philosophers in England saw British treaties with colonies as definite constitutional documents because of the power a treaty had to enable the British to exercise trusteeship functions over persons in the colonised state.⁴⁰² The realignment of authority that a treaty heralded necessarily represented fundamental changes in the constitutional arrangement of the colony. The issue remains, though, of how the indigenous party to a treaty viewed such agreements.

Manuka Henare has argued that in the case of the Treaty of Waitangi, Maori did perceive the document as having constitutional and legal implications.⁴⁰³ He further suggests that this was in part because the act of signing a treaty with a sovereign power had the effect of heightening the sense of awareness of the sovereignty that Maori themselves possessed.⁴⁰⁴

Yet, although the Treaty of Waitangi was the basis of major constitutional and legal change in the colony, this is not the same as asserting that the Treaty itself was either a legal or constitutional document. In the decades since its signing, the Treaty has not been legislated or otherwise enshrined as a constitutional document.⁴⁰⁵ Neither can it be enforced through the normal court system, principally because it remains as part of international and not domestic law. This means that its enforcement (if indeed it could be enforced) could only be effected by an international institution. However, this is notwithstanding efforts that have been made by the Waitangi Tribunal⁴⁰⁶ – a quasi-judicial body – to make recommendations

⁴⁰² J. Bentham, *The Limits of Jurisprudence Defined*, pp. 298-9.

⁴⁰³ M. Henare and E. Douglas, 'Te Reo o the Tiriti Mai Ra Ano: The Treaty Always Speaks', in *The April Report of the Royal Commission on Social Policy*, Vol. 3, Part 1, 'Future Directions Associated Papers', Wellington, 1988, p. 88.

⁴⁰⁴ Op. cit.

⁴⁰⁵ Prime Minister Geoffrey Palmer attempted to have the Treaty of Waitangi enshrined in his proposed Bill of Rights in the late 1980s, but failed to do so, in part because the wording of the Treaty was too ambiguous to form the basis of such a declaration of rights.

⁴⁰⁶ Established under the Treaty of Waitangi Act 1975.

to the Crown on how historical breaches of the Treaty should be resolved. Even the head of the Tribunal, Judge Eddie Durie, has conceded that the strength of the Treaty has no basis in legislation, but that rather its strength lies in a ‘...philosophy of good faith’.⁴⁰⁷

The history of the Treaty of Waitangi in the decade or so following its signing suggests that the legal and constitutional bases of the Treaty were quickly fading from significance in the colony – at least from the perspective of the new colonial administration. Almost immediately after the Treaty had received all its signatures, the colonial Government failed to give recognition to it, partly because it lacked the will to do so, and partly because there was no formal basis or mechanism for the colony’s British administration to uphold the provisions of the Treaty.⁴⁰⁸ And even if there was such a mechanism in place to uphold the provisions of the Treaty, the rights and obligations contained within it would have to be carefully defined against the legislative supremacy of Parliament,⁴⁰⁹ which was formally conferred on the New Zealand legislature in 1852.⁴¹⁰ In retrospect, it appears that the Treaty of Waitangi served as a demonstration of the consent Maori had granted the Crown to accept British rule. The specific style and constitution of that rule could be decided by the British, under the umbrella of consent granted by the Treaty, and not specifically because of the Treaty’s provisions with respect to the constitutional arrangements in the colony.

Yet, from the perspective of some Maori, the significance of the Treaty as a lasting constitutional document – as opposed to an agreement which

⁴⁰⁷ E. T. J. Durie, ‘The Treaty in Maori History’, p. 156.

⁴⁰⁸ F. M. Brookfield, ‘The Constitution in 1985, the Search for Legitimacy’, Inaugural Lecture at the University of Auckland, Auckland, 1985.

⁴⁰⁹ B. J. Somers, J., ‘Court of Appeal Judgement in the *New Zealand Maori Council v Attorney-General et al.*’, in P. Haig (ed.), *New Zealand Administrative Reports*, Vol. 6, part 12, Wellington, 1987, p. 399.

⁴¹⁰ The New Zealand Constitution Act 1852 (passed by the House of Commons in London), see M. Lawrence, *Legal Studies: A First Book on New Zealand Law*, Second Edition, Palmerston North, 1990, p. 110.

gave permission for constitutional arrangements to be made – persisted long after the Treaty was signed.⁴¹¹ Maori claimed to the Crown from the mid-1840s for the protection of their rights specifically under the provisions of the Treaty.⁴¹² In 1987, Tamati Reedy, the then head of the Ministry of Maori Affairs, argued that Maori ‘...had always seen the Treaty as a fundamental constitutional fact that provides the basis for economic, cultural and social rights’.⁴¹³ The strong belief, among some Maori, that the Treaty was an ongoing constitutional document was further enhanced by the fact that it was prepared, explained, and promoted to most Maori before its signing by missionaries,⁴¹⁴ at a time when Christianity and the British law were seen by Maori as being effectively the same thing,⁴¹⁵ thus giving the Treaty an enduring, almost religious quality for many Maori.

For some Maori, the product of this mixture of constitutional, legal and spiritual dimensions to the Treaty was a perception which was substantially different from the British understanding of the agreement as being a formal indication of permission for British trusteeship rule over Maori to commence. However, this difference in perception of the status of the Treaty does not necessarily negate the principle of intentional development which the Treaty officially introduced to the colony. Both the Maori and Pakeha interpretations of the Treaty in the decade or so following its signing can accommodate the fact that the Treaty

⁴¹¹ Op. cit.

⁴¹² J. Williams, *Politics of New Zealand Maori*, London, 1969, pp. 51-2.

⁴¹³ T. Reedy, ‘Submissions to the Royal Commission on Social Policy’, draft prepared for the Secretary, Department of Maori Affairs, Wellington, 1987, p. 1.

⁴¹⁴ R. M. Ross, ‘Te Tiriti o Waitangi, Texts and Translations’, in *New Zealand Journal of History*, Vol. 6, 1972, pp. 129-157; C. Orange, *The Treaty of Waitangi*, Wellington, 1987, p. 39.

⁴¹⁵ M. Henare, ‘Nga Tikanga me Nga Ritenga o te Ao Maori: Standards and Foundations of Maori Society’, in *The April Report of the Royal Commission on Social Policy*, Vol. 3, Part 1, ‘Future Directions Associated Papers’, Wellington, 1988, p. 33; A. Ngata and I. L. G. Sutherland, ‘Religious Influences’, in I. L. G. Sutherland (ed.), *The Maori People Today: A General Survey*, Wellington, 1940, pp. 334-5.

foreshadowed major changes in the government in the colony, and the prospect of guided development which would accompany these changes.

The Connection Between a Treaty and Trusteeship Responsibilities

In the case with which this thesis is concerned – the intent to develop New Zealand through the British exercise of trusteeship functions – the fact of a treaty of cession of sovereignty, which the Waitangi treaty was, carries with it assumptions about the objectives of the colonising power to subsequently not only rule, but guide the progress and improvement of the colony. The Treaty of Waitangi specifically established New Zealand as a Crown colony, in which the British Crown, through a governor, would exercise full sovereign powers and authority in the colony. This is in contrast to the type of sovereign power that was exercised in British protectorates in the mid-nineteenth century.⁴¹⁶ Within a protectorate, ‘The Crown would assume responsibilities for the international relations and affairs of a region...whist leaving undisrupted the internal government’.⁴¹⁷ It would be hard to see a doctrine of development being applied to a protectorate because the ability of the colonising power to orient development in a protectorate would be impeded by its own reluctance to direct the region’s internal affairs.

Accompanying the creation of the Treaty of Waitangi was an accelerating momentum in the process of the British ‘civilising’ Maori. Such was the confidence in this process – brought on in part by the extent to which Maori embraced many Pakeha values – that the Treaty could be seen as an opportune device to articulate and then enforce the course of development that was already evident in the colony, and enhance this development with a specific doctrine devised for the colony by British officials. As a corollary to this, the Treaty could also serve the purpose of curtailing the

⁴¹⁶ P. G. McHugh, ‘Constitutional Theory and Maori Claims’, p. 39.

⁴¹⁷ Op. cit.

immanent development that prevailed in areas less influenced in particular by missionaries and to a lesser degree other Pakeha. In this light, a colonial treaty could be interpreted as an apparatus which would sanction the trustee power to formalise, continue, and augment the processes of intentional development in the colony that may have already been present in the work of groups such as missionaries prior to the colony's annexation.

British colonial treaties of the period of the Waitangi treaty were predicated on what has been described by Benedict Kingsbury as a Doctrine of Good Faith.⁴¹⁸ That is, partners to a treaty were expected to conduct themselves in good faith when agreeing to the terms of a treaty.⁴¹⁹ In addition to the requirement to act in good faith was an implicit acknowledgment that both parties to a treaty held certain rights when going into the relationship, but that these rights were not reasons in themselves for an evasion of treaty obligations.⁴²⁰ This elevates a colonial treaty to being a potentially central element in the exercise of colonial trusteeship insofar as it could effectively negate those existing rights that were inconsistent with its provisions, or with the subsequent decisions made by the new colonial administration in the wake of a treaty being agreed to. Therefore, if a treaty had been devised with the intent to develop a colony, then those rights exercised by the indigenous signatories to the treaty could be dissolved if they were found to be in conflict with the treaty. Existing laws, rights and customs in a colony therefore could become subservient to a treaty, and not vice versa. This line of thinking has a strong resonance of the principle promoted by some social philosophers at the time of 'non-civilised' peoples divesting themselves of those elements in their culture which were seen as 'uncivilised' as a

⁴¹⁸ B. Kingsbury, p. 127.

⁴¹⁹ Op. cit.

⁴²⁰ Op. cit.

prerequisite to their subsequent development.⁴²¹ Thus, a treaty could be used to represent the formalising of this process and the intention to civilise indigenous peoples as a prelude to their development.

Another link between some colonial treaties and the principle of trusteeship is that of order. Chapter Four explores the common theme of a fear of disorder at the heart of many of the calls for further and formal British intervention in New Zealand. The Protestant missionaries in particular were concerned that their work to improve Maori – both spiritually and temporally – was constantly being undermined by the lack of order that prevailed in the colony, particularly among sections of the settler population. The ideas of progress and order would have to be amalgamated to enable intentional development to take place,⁴²² and it was the device of a treaty that was ultimately selected by the Colonial Office to achieve this integration in New Zealand.

Conclusion

The purpose of this review of the major components of contemporary philosophies as they related to development has been not only to identify their constituent parts and their defining characteristics as emergent paradigms of development, but also to offer a general theoretical alternative to current development frameworks for the analysis of New Zealand's early period of Crown colony government, in addition to examining the influence of the historical philosophies on the development of official British policy on New Zealand in the late 1830s and early 1840s.

There are two principal criteria for determining the usefulness and validity of the ideas about development contained in this review as a framework

⁴²¹ J. Bentham, UCLMC, 1818, Box 164, p. 39; J. S. Mill, *Civilisation*, p. 126.

⁴²² M. P. Cowen and R. W. Shenton, 'The Invention of Development', p. 34.

for understanding New Zealand's colonial experience between 1840 and 1842. The first is that these philosophies can be applied and tested as particular devices for contextualising events in the colony in this time within a new analytical perspective. The second criterion is to determine the extent to which official British policy on New Zealand in this period reflected the elements of these philosophies, and how the British adopted a doctrine of intentional development to give effect to these ideas. The subsequent chapters in this work examine in detail the nature of British rule in New Zealand in the period under review, and demonstrate how they were either influenced by or were reflective of the general themes of the nineteenth-century development philosophies included in this discussion, and how the practice of implementing a doctrine of intentional development for the colony veered away from the ideals the doctrine espoused.

Mill and Bentham were responsible for prescribing positivist ideas of development which served, in practice, as the philosophical component of the doctrine of intentional development that the British exercised in New Zealand. One of the tasks of this development doctrine was '...to provide a foundation for state policy',⁴²³ which in the case of colonies would be enacted by trustees appointed by the state. This leads on to the other major theme that is incorporated in the following chapters: the overriding intent by the British Government to actively develop the New Zealand colony, rather than to allow its development to 'drift' without direction.

The following chapter examines and evaluates the methods and reasons for British colonial activity in the first half of the nineteenth century, and Chapter Four examines the path of British intervention in New Zealand. Assessments are provided in Chapter Five of the role of the Treaty of Waitangi as the device which asserted the British intention to commence their trusteeship role in the colony. Policies of Crown intervention and

⁴²³ Op. cit.

control, which are examined in detail in Chapter Six, were introduced into the colony in order to achieve development, and assumed varied forms in practice. Throughout this chapter, contrasts are highlighted between the British intent to develop, and the results of implementing these attempts. As the development economist William Glade has noted in more recent cases, the desire for development should not be taken to mean that governments directing development necessarily perform their functions in this area effectively.⁴²⁴

The gap between the intent to develop and the process of development could emerge as a gulf between an abstract, almost nebulous goal of a developed society, and the immediate 'realities' of carrying out the day-to-day functions of colonial government. Given difficult circumstances in an unfamiliar environment, the intent to develop could lose its proactive essence as the colonial administration increasingly found itself reacting to pressures that it encountered.

Certainly in New Zealand's case in the early 1840s, the failure of many of the Government's endeavours to actively develop the country were significant, and debilitated any efforts to reach the sort of improved society these efforts were aimed at, thus prolonging the period of New Zealand's absolute political dependence on Britain. One of the underlying reasons for this, aside from corruption and incompetence, was the fact that the basis for British involvement in many of its colonies in the early nineteenth century was not part of a strategic British Government plan for the Empire. Instead, British intervention in colonies tended to be driven by a chaotic mixture of usually disintegrated motives, in which the British Government initially played a passive and reactionary role. Only when the commitment to a colony seemed inevitable were particular policies relating to specific colonies devised by the British Government. In order to appreciate one of the reasons why the doctrine of intentional

⁴²⁴ W. Glade, in M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 65.

development was applied to the New Zealand in the early 1840s, it is therefore important to examine the characteristics of the British Empire in the early nineteenth century, and the forces determining the relationship between the British Government and its colonial possessions. It is these issues that are addressed in the following chapter.

3. ASPECTS OF BRITISH COLONIALISM 1800 - 1850

This chapter will survey some of the broad themes relating to Britain's colonial activity during the first half of the nineteenth century, focussing mainly on Britain's approach to the colonisation of New Zealand in the context of its wider imperial activity. The purpose of this chapter is to examine the numerous and often disparate forces which contributed to the overall character of British colonisation in this period in New Zealand specifically, and the British Empire generally. The application of contemporary development philosophies to official British involvement in New Zealand between 1840 and 1842 needs to be viewed through the lens of the motives and processes of British imperial activity in the preceding decades. This chapter therefore concentrates primarily on the nature of British colonialism during the early nineteenth century, and where applicable, draws on the concepts and ideas of development that have been reviewed which either influenced or reflected aspects of British colonial expansion. What is clear from this analysis is that, generally speaking, British colonial activity from roughly 1800 to the 1850s was driven less by any single motive than by a whole range of factors.¹

One of the discernible features of British colonialism in this period, amid the din of conflicting clusters of different interest groups influencing Britain's colonial policy, was that there was a trend towards intentional development in certain colonies, including New Zealand. This is a theme which recurs throughout this chapter, and is evidence that for British colonial policy-makers there was a definite emerging ideology of development that extended well beyond the subsequent, and more

¹ Graham describes this period as 'The Age of the Evangelicals', see G. S. Graham, p. 121, while Egerton cites ideological concerns, such as the welfare of indigenous peoples, as a major basis for British colonial activity after 1831 in particular, see H. E. Egerton, pp. 281 ff. Marx, on the other hand, argued that the expansion of capitalism was one of the chief causes of the extension of colonialism, see D. McLellan, *The Thought of Karl Marx*, Second Edition, London, 1980, p. 228.

rudimentary Marxist assessment of the role of colonies, in which colonies were simply an extension of the immanent capitalist exploitation that was already occurring in bourgeois societies in Europe.²

The Absence of a Single Doctrine Supporting British Colonisation

The first step in examining the influence of contemporary ideas about development on the nature of British colonialism in New Zealand is to survey the broader issue of what constituted British colonisation generally in the first half of the nineteenth century. Although there are a myriad of variations of the types of colonisation possible, in most instances colonisation involves the subjugation, either physically and/or psychologically, of a group or culture by a colonising power.³ In the early nineteenth century, the success of British colonialism in many parts of the world was attributable not so much to Britain's military capacities, or its technical prowess, but to its ability to establish hierarchies which either superseded the traditional, indigenous political structures in the colony, or which sometimes used the existing political structures and superimposed layers of British authority on them.⁴ These new Western hierarchies had the effect of opening up '...the non-West to the modern...spirit',⁵ and of eventually forcing out of power the existing governing structures of the indigenous peoples. When the situation demanded it, the British were capable of attempting to impose an entire regime of order on the indigenous peoples of their colonies, and conscious attempts would be made at making development happen. Inherent in this approach was the 'doctrine of development before settlement',⁶ in which a specific ideology of development was already formulated and ready to be applied, given the

² D. McLellan, *The Thought of Karl Marx*, p. 228.

³ P. W. Preston, p. 137; A. Escobar, 'Imagining a Post-Development Era', in J. Crush (ed.), p. 213.

⁴ J. S. Furnivall, pp. 35-9.

⁵ A. Nandy, *The Intimate Enemy: Loss and Recovery of Self Under Colonialism*, Delhi, 1983, p. i.

⁶ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, pp. 173-4.

appropriate configuration of circumstances in the colony. The significance of this doctrine was that it *anticipated* large-scale British settlement in a colony, rather than being a reaction to it. The Preamble to the Treaty of Waitangi perfectly demonstrates this point, referring as it does to the anticipation of ‘...the rapid extension of Emigration from both Europe and Australia...’ into New Zealand.⁷

H. W. Arndt has suggested that within the British Empire at various times during the nineteenth century, distinct efforts were made at fostering development, citing one official who advised that ‘...it is more than ever necessary that the economic resources of the Empire should be developed to the utmost’.⁸ As an indication of this intent to develop, Arndt looks at Australia, where the absorption of surplus population from Britain was seen by some British officials and in the 1830s and 1840s as a prerequisite for the further development of the colony,⁹ and cites a journal article published in Canada in the 1840s which argued that the country’s resources ‘...must be developed’.¹⁰ This, he suggests, demonstrates the presence of an emerging doctrine of intentional development in anticipation of increases in the European population in those colonies.¹¹

Cowen and Shenton highlight how the emergence of a doctrine of development for Australia required some form of state guidance in order to be brought to fruition.¹² However, they diverge from Arndt’s suggestion that such a doctrine necessarily preceded large-scale European immigration into a colony,¹³ observing that doctrines of development emerged in Australia and Canada during periods of high unemployment,¹⁴

⁷ See Preamble, Treaty of Waitangi, in Appendix Two of this thesis.

⁸ Milner, in F. D. Lugard, *The Dual Mandate in British Tropical Africa*, London, 1926, p. 489, in H. W. Arndt, ‘Economic Development: A Semantic History’, in *Economic Development and Cultural Change*, Vol. 29, No. 3, Chicago, 1981, p. 460.

⁹ H. W. Arndt, p. 461.

¹⁰ Op. cit.

¹¹ Op. cit.

¹² M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 174.

¹³ Op. cit.

¹⁴ Op. cit.

when the need for further immigration would have been slight. Implicit in Cowen and Shenton's thesis with respect to the arrival of surplus populations of Europeans in the colonies is that the size of the European populations in certain British colonies bore no direct relationship with the materialisation of doctrines of development in those colonies.¹⁵

Another point brought out by Cowen and Shenton, which has a bearing on the Treaty of Waitangi, is the connection between colonial self-government and doctrines of colonial development.¹⁶ In essence, the suggestion is that if a colonial power has the intent to direct the development in one of its colonies, then the political link between the colonial power and its colony would have to be a firm one in order to enable this doctrine of development to be dictated by the colonising power.¹⁷ This, however, represents a dilemma for a doctrine of development based on the philosophies of development that influenced Colonial Office policy on New Zealand from the mid-1830s. On the one hand, the political link between a colonising power and a colony would have to remain sufficiently strong to enable the former to direct development in the latter. Yet on the other hand, the philosophy of colonial development that had been gaining ground in the Colonial Office during this period favoured the goal of colonial development leading to colonial autarky – not ongoing dependence.¹⁸ The British Government failed to address this dilemma when formulating its doctrine of intentional development for New Zealand, and this may account for the particular character of British rule in the colony between 1840 and 1842, which will be discussed in Chapter Six.

¹⁵ Op. cit.

¹⁶ Ibid., p. 184.

¹⁷ Ibid., pp. 184-5.

¹⁸ J. Bentham, *Emancipate Your Colonies!*; J. S. Mill, *On Liberty*, p. 227; J. S. Mill, *Principles of Political Economy*, chap. 2; C. C. Eldridge, pp. 26-8; Normanby to W. Hobson, 14 August 1839, in *GBPP 1840*, Vol. 33, p. 4; Russell to W. Hobson, 9 December 1840, in *GBPP 1841*, Vol. 17, p. 26.

The Lack of a Unified British Policy on Colonisation

One of the reasons why Britain did not actively plan for New Zealand's independent political development when creating its doctrine of development for the colony was that British imperialism throughout the nineteenth century was not the product of a single, coherent strategy that unequivocally aimed at intentional development in every colony that became part of the British Empire. In fact, the opposite was often more true:

Colonialism was not a rational or planned condition. It was rather the product of a unique set of circumstances before and during the later nineteenth century that resulted unpredictably in the formal partition of much of the world between the great powers. Few of those...had a coherent preconceived idea of what they would do with the territories they had claimed or of the problems they would create.¹⁹

In the Pacific in particular, the absence of a prescribed, overall policy resulted in officials being reactive rather than proactive in their approach to managing this area of the Empire:

British...officials devised remedies for particular evils and policies in particular situations when decisions had to be taken, but they certainly did not think continuously about Pacific Island problems. These were a tiresome nuisance.²⁰

Intentional development for the colonies was therefore not always a first option for the British, but was an option that could be utilised if necessary. In Borneo, for example, a British citizen, James Brooke, unilaterally declared himself Rajah of Sarawak in 1841.²¹ The state eventually became accepted by the Colonial Office as a British protectorate without there ever having been a British policy to annex the territory.²² There were certainly no prescribed British plans for Sarawak, and the state

¹⁹ D. K. Fieldhouse, *Colonialism 1870 - 1945: An Introduction*, London, 1983, pp. 41-2.

²⁰ W. P. Morrell, *Britain in the Pacific Islands*, Oxford, 1960, p. vii.

²¹ G. S. Graham, p. 193.

²² Op. cit.

continued to be administered by British commercial interests for the next four decades.²³

In another example, Penang was acquired by the British for motives of naval strategy,²⁴ similarly with no additional policy for the colony having been devised. Burma was conquered by the British in 1826 not because there was any plan to do this, but simply because of ‘...the sheer force of circumstances...’ that was ‘...ultimately to bring about complete annexation no matter how unwilling they [the British] were to extend their territorial commitments’.²⁵ Indeed, rather than any doctrine of development being evident as a basis for Britain’s colonial activity in the first half of the nineteenth century, much of Britain’s colonial intervention, especially in parts of South East Asia, were followed by decades of inactivity.²⁶ Thus, British acquisition did not necessarily mean that specific intentions for a colony had been formulated.

The Transition from Intervention in a Colony to a Doctrine of Development

There are two inherent and related contradictions which lie at the heart of British colonialism in the first half of the nineteenth century, both of which are related to the emergence of a doctrine of development for New Zealand by Britain’s colonial administration. The first contradiction is between the specific and frequently limited functions empire was intended or believed to fulfil, and the fact of full administration of colonial territories. The second contradiction or paradox is between the character of colonial governments, and those conditions which alone might make alien rule tolerable to the peoples being subjected to colonialism.²⁷

²³ Op. cit.

²⁴ D. G. E. Hall, p. 530.

²⁵ Ibid., p. 642.

²⁶ R. Emerson, *Malaysia, A Study in Direct and Indirect Rule*, New York, 1937, p. 91.

²⁷ D. K. Fieldhouse, pp. 19-20.

One of the features of British colonialism throughout this period was that it was often not initially accompanied by a comprehensive system of government and administration. The perceived advantages imperialists obtained from colonies were usually unhindered by the absence of a full governmental regime. It was only when commercial or strategic interests became more pressing that a greater official administrative presence emerged:

Security for trade did not automatically involve full territorial control....But once Europeans wanted more than freedom to trade with coastal areas, arguments for some degree of internal political control were likely to arise....Capital investment...required greater political security than was provided by indigenous political systems. White settlers expected a more secure title to land than non-European law and custom provided.²⁸

These sorts of considerations obliged the British to expand their involvement and commitments within their colonies - in many cases to a point that exceeded the requirements to safeguard settlers' and merchants' rights - effectively as a reaction to the changes that were taking place in the region that affected British interests. One of the reasons for this extra extent of involvement was that the act of colonising a country actually brought the British into direct contact with indigenous peoples. The British view of their own colonising prowess, and their perception of the general inferiority of indigenous peoples,²⁹ compelled them to devise an approach to actively shape the characteristics of these people so that they could integrate into an ideal which was being articulated by the social philosophers of the period. In New Zealand, for example, the creation of the Office of Protector of Aborigines aimed in part at eventually assimilating Maori into European society. The Protector of Aborigines,

²⁸ Ibid., p. 21.

²⁹ See section on the rhetoric of British imperialism later in this chapter.

George Clarke, intended that Maori should one day be subject to British laws, and dispense with their traditional community rules.³⁰

There is a distinct seam of utilitarianism running through the extension of British government of its colonies at this time. If community happiness in the colonies was augmented by such expansion, even if merely through reducing some of the worse excesses of lawlessness in a colony, then this would be the measure of a government being ‘...comfortable to the principle of utility’.³¹ However, this utilitarian ideal was strictly parochial, in that community happiness was measured in European terms.

More significantly, though, initiatives such as the Protector of Aborigines strongly reflected the element of trusteeship in the colony. Maori were not to be directly ruled as a means of controlling or subjecting them. Rather, under the trusteeship principle, Maori would be guided by the colonial administrators so that the greatest good (however defined by the British) could be spread among the greatest number of people in the colony – both settlers and indigenous. This guidance was vital. Relying on immanent development was tantamount to an abrogation of the responsibility of the colonising power in its capacity as trustee over the indigenous people in the colony. Moreover, it also had the potential to threaten British interests in a colony. Thus did intentional development acquire strategic as well as benevolent dimensions.

As for the second contradiction of British colonies, it is possible that most of the primary objectives of the British Government could have been satisfied in the colonies without seriously disturbing indigenous political and social institutions, and leaving the native peoples generally

³⁰ G. Clarke, in P. Adams, *Fatal Necessity: British Intervention in New Zealand 1830–1847*, Auckland, 1977, p. 220.

³¹ J. Bentham, *An Introduction to the Principles of Morals and Legislation*, p. 35.

unaffected. However, notwithstanding a few exceptions,³² this was almost never done: ‘...practically all colonial governments inexorably destroyed or overlaid indigenous social and political forms’.³³ From a contemporary development perspective, however, good government required that the government would constantly aim to represent the interests of all those in the society,³⁴ even if a distinct group in the society had never given its consent to be ruled by this government. Thus, the need existed for indigenous peoples to be guided towards a developed state in order that they could be included in the society whose interests, it was hoped, would be represented by ‘good’ government. The fact that, in New Zealand’s case, Maori were frequently denigrated as ‘uncivilised’³⁵ and ‘barbarians’,³⁶ served only to provide additional impetus for the colony’s Government to advance along the path of ameliorating these ‘adverse’ characteristics in the Maori portion of the population. The reasons for this initial process of extending colonial rule to cover the indigenous peoples are complex, but some principles and motives can be identified which account for the British expansion into full and comprehensive colonial administration.

The first of the reasons for the comparative ease of British expansion in the first half of the nineteenth century – more so than with any other colonial power at the time – was that Britain expected many of its colonies to be self-funding.³⁷ The costs of running a colonial administration were expected to only be short-term, until the economy of the colony was able to provide for its own government. Taxation was the most obvious solution, and in order to enforce a system of taxation, colonial government

³² In parts of Africa, the British experimented with ‘grafting’ British rule onto existing indigenous political systems as a seemingly expedient means of acquiring and maintaining control over the colony.

³³ D. K. Fieldhouse, p. 22.

³⁴ J. S. Mill, *Democracy and Government*, pp. 179-80.

³⁵ G. Gipps, in Report of the Select Committee of the House of Commons on New Zealand, 29 July 1844, in *GBPP 1844*, Vol. 13, p. 5.

³⁶ Evidence of D. Coates before the House of Commons Select Committee on New Zealand, 14 May 1838, in W. D. McIntyre and W. J. Gardiner (eds.), p. 5.

³⁷ Russell to W. Hobson, 9 December 1840 in *GBPP 1841*, Vol. 17, p. 26.

evolved from fulfilling a supervisory function, to one of effective rule.³⁸ The *Benthamites*,³⁹ among others, succeeded in directing British colonial policy in the 1830s to minimise, as far as possible, the costs of administering colonies.⁴⁰ Because of their general philosophical objection to colonies, the *Benthamites* argued that if colonies were to be maintained at all, then efforts should be made to ensure that they would eventually become self-funding.⁴¹

Once settlers and merchants became involved in a colony, they invariably expected that their commercial interests and physical assets would be protected by the colonial power.⁴² For Bentham, the interests of these individuals were identified as partly constituting the interests of the community insofar as promoting individuals' interests contributed to the sum total of the community's interests.⁴³ In order to achieve this protection, colonial powers often found themselves suppressing indigenous opposition and imposing full control.⁴⁴

In early colonial New Zealand, the regulation of land was a key area where the settlers' commercial interests were often upheld regardless of their legal rights to ownership of that land. The Land Claims Ordinance, passed in New Zealand in August 1840, established a system in which settler title to land could be examined, and once upheld by the Crown, could no longer be challenged. British legal definitions of ownership overrode traditional Maori protocols regarding the use and possession of land when it came to the colonial Government exercising its power in this

³⁸ Stanley to Officer administering the Government of New Zealand, 13 March 1843, in *GBPP 1843*, Vol. 23, p. 43.

³⁹ Mainly members of the House of Commons who were advocates of Bentham's philosophies.

⁴⁰ D. L. Keir, pp. 444-5.

⁴¹ E. Halevy, p.p. 225-7.

⁴² *New Zealand Journal*, 21 August 1841.

⁴³ J. Bentham, *An Introduction to the Principles of Morals and Legislation*, p. 35.

⁴⁴ S. H. Alatas, *The Myth of the Lazy Nation: A Study of the Image of the Malays, Filipinos and Javanese from the Sixteenth to the Twentieth Century and its Function in the Ideology of Colonial Capitalism*, London, 1977, p. 2.

area.⁴⁵ Mill's view on this matter would seem to support the actions of the colonial government in New Zealand at this time with respect to land. He argued that one of the primary functions of a government, in a society where private property existed, was to ensure the equal protection under the law of all property holdings.⁴⁶ In this sort of case, the potential for coercion inherent in this form of trusteeship was mitigated to some extent by the fact that the European nations were, according to a belief held by some Britons, the fittest countries⁴⁷ in the world to rule colonies, and to thereby create the conditions for development to a stationary state.

Similarly, the concept of colonies moving towards complete self-rule might require a period of trusteeship to facilitate the process. It was this supposedly benign despotism that accompanied the trusteeship idea which would guide colonies to their utilitarian goal. To some extent, irrespective of these almost utopian ends, the means of achieving development was predicated on the process of installing trustees – in the form of colonial administrators – who would actively reconstruct the social, cultural, religious, political, and economic make-up of the indigenous people as the basis for developing the colony. It was believed that any incursions on the individual or collective liberties of the indigenous people would be compensated for by the capacity of the doctrine of intentional development to reduce the 'social misery'⁴⁸ which it was believed arose from the immanent processes of development.

The personal ambition of colonial rulers and administrators was another important development in the nature of British imperial activity in the first half of the nineteenth century. The colonial rulers in the British Empire were a branch of a civil service system which from the 1820s based promotion or other forms of reward to a great extent on individual

⁴⁵ W. Swainson, *New Zealand and its Colonisation*, London, 1859, pp. 89-90.

⁴⁶ J. S. Mill, *On Liberty*, pp. 202-3.

⁴⁷ J. S. Mill, *Considerations on Representative Government*, p. 401; G. Bennett, *The Concept of Empire: Burke to Attlee, 1774 – 1947*, London, 1953, pp. 26-7.

⁴⁸ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 116.

performance.⁴⁹ In such an achievement-based regime, these rulers – usually Governors – sometimes acted out of motives other than the best interests of all the inhabitants of the colony, and made decisions that, however damaging, were irreversible.⁵⁰ In New Zealand's example, the monetary expenses incurred in awarding pay increases to senior officials in 1842 were a contributing factor in the colonial Government's move to use its pre-emptive right to purchase Maori land for profiteering rather than protecting Maori land holdings, as had been the intention of the pre-emption clause in the Treaty of Waitangi.⁵¹ The ensuing alienation of Maori land by the Crown, frequently for motives of profit, resulted in grievances arising for which Maori would later attempt to seek resolution.⁵² This was exceeding the limits of trusteeship beyond what had been prescribed by Bentham or Mill. Instead of the colonial Government nurturing the conditions in that colony so that it could undergo a transition to a stationary state, the New Zealand administration, through its actions, retarded the prospects of such a transition occurring as rapidly as it otherwise might have. Ironically though, this less-than-ethical approach to dealing with Maori land did not necessarily have to conflict with the broader principles of intentional development, provided that the colonial government could eventually justify that such actions assisted in the overall development and improvement of the colony.

The Missionary Demand for Maori Development in New Zealand

A further reason for the extension of British colonisation within a colony beyond the immediate administrative requirements was an urge to 'civilise' indigenous populations. This urge was most common among missionary movements, many of which equated 'civilisation' with their

⁴⁹ J. W. Cell, pp. 51-2.

⁵⁰ Ibid., pp. 48-52.

⁵¹ Article the Second, Treaty of Waitangi, 1840. See Appendix Two of this thesis.

⁵² In particular, the Crown's reluctance to intervene in many of the Maori grievances relating to the unethical purchases of their land in 1841 and 1842 was a source of ongoing friction between Maori and the Crown. See C. Heaphy, *Narrative of a Residence in Various Parts of New Zealand*, London, 1842, pp. 112-3.

interpretation of Christianity. In the period between 1800 and 1850 missionary activity was at its height in the Empire.⁵³ The desire to 'civilise' indigenous populations went to the extent that some believed it necessary to first become 'civilised' before conversion to Christianity was possible.⁵⁴ In New Zealand's case, Dandeson Coates, head of the powerful Church Missionary Society [CMS] in England, argued that permanent British rule in New Zealand was necessary because Maori were too 'uncivilised' and therefore unable to govern themselves.⁵⁵ A trustee role was therefore required to be taken on by the colonial Government to address this alleged deficiency. Accompanying the religious function of many missionaries was one of education, which served to 'soften' the native peoples to the onslaught of more rampant forms of colonial activity.⁵⁶ The Colonial Office gave its tacit approval to the intervention of missionaries, and chastised those who dared to argue against this policy.⁵⁷ One of the bases of intentional development was that civilisation had to be actively upheld in order to prevent it denigrating to the point where barbarianism '...should revive and conquer a civilisation'.⁵⁸ The importance of mass education in fostering social progress and improvement⁵⁹ was also a critical component in the doctrine of development. In particular, Mill had later stressed that the whole or any large part of the education of the society should be in the state's hands⁶⁰ - something that the missionary schools were effectively already close to

⁵³ G. Bennett, pp. 13 and 99-112; P. Knaplund, *James Stephen and the British Colonial System, 1813 - 1847*, New York, 1953, p. 85.

⁵⁴ D. Coates, *Documents Exhibiting the Views of the Committee of the Church Missionary Society on the New Zealand Question, and Explanatory of the Present State of that Country*, London, 1839, p. 44.

⁵⁵ Op. cit.

⁵⁶ These points are outlined in D. K. Fieldhouse, pp. 22-23; also see W. Gairdner to Lord Glenelg 24 August 1838, in T. Williams, 'James Stephen and New Zealand 1838-1840', in *Journal of Modern History*, Vol. 13, March 1941, p. 22.

⁵⁷ See P. Moon, 'Barzillai Quaife: An Early Advocate of Indigenous Land Rights in New Zealand and Victim of Censorship', in *The Journal of Pacific History*, Vol. 32, No. 2, 1997.

⁵⁸ J. S. Mill, *On Liberty*, p. 225.

⁵⁹ J. Riley, p. 320.

⁶⁰ J. S. Mill, *On Liberty*, p. 239.

being.⁶¹ Education became one of the vital conditions identified for development to take place, both in Britain and its colonies.⁶²

Among the most pronounced proponents of intentional development in New Zealand were the CMS missionaries. Whilst usually not as mercenary in their means as some of the British land speculators in the colony, all of the major missionary organisations operating in New Zealand acted, to a greater or lesser extent, with the intention of assimilating Maori into the 'civilised' British way of life. The assessment of the need to 'break' the Maori culture was encapsulated by the Reverend Montagu Hawtrey in a line of thinking which was typical of the missionaries' understanding of Maori at the time:

I see them wandering within their narrowed boundaries, a separate and inferior race, without prospect of wealth or impulse to civilisation, their numbers dwindling, their spirit broken, their untouched districts standing as melancholy blanks on the landscape of the century's prosperity, till the last of these bars to British enterprize [sic] are swept away, and the scanty remnants of the old lords of the lands dispersed as menials among the British settlers.⁶³

Similarly, another settler, Thomas Bunbury, observed the effects of missionaries in assimilating Maori into the British social, cultural and economic systems:

The enthusiastic zeal of the Missionaries, who were of the Church Mission and Wesleyan Societies, enabled them to struggle with innumerable difficulties, and eventually as far to ameliorate the character of the New Zealanders [Maori], that intercourse between them and our countrymen met with little or no interruption. The faculty of communication being once created, the adventurous and enterprising spirit of Britons

⁶¹ The control of the missionary schools through state funding in New Zealand culminated in Governor George Grey's 1847 Education Ordinance.

⁶² D. L. Keir, pp. 420-1, 502-3, 521, 530-1; L. Woodward, pp. 475-80, 482-3, 487-501.

⁶³ M. Hawtrey, in A. Ward, p. 35.

soon produced its effect, in the establishment of commercial houses, and the occupation of the soil.⁶⁴

With Sir James Stephen, the permanent head of the Colonial Office, also serving as a director of the CMS, there was official endorsement at the highest levels of the British Government of converting Maori to a vague model of what the British understood civilisation to be.

The House of Commons Committee on Aborigines

In June 1837, the House of Commons Committee on Aborigines in British Settlements⁶⁵ issued its findings following a lengthy period of hearings.⁶⁶ Because of the timing of the meeting of this Committee, the findings were to influence the shaping of British policy on New Zealand, acting as an influential force on some Colonial Office officials who were firming up their position on the nature of the planned intervention in New Zealand. The report was crucial because it accommodated the humanitarian concerns of people such as the Colonial Secretary, Lord Glenelg and organisations such as the CMS, within a framework that allowed and in some instances almost encouraged further intervention. The well-worn objections to further involvement were addressed and overcome by the Committee. The report observed that the achievement of humanitarian aims need not be a concept that was mutually exclusive to the expansion of the Empire. It commenced by providing a moral basis for intervention, arguing that ‘...it is our [the British Government’s] office to carry civilisation and humanity, peace and good government, and, above all, the knowledge of the true God, to the uttermost ends of the earth’,⁶⁷ thus appeasing Church objections in most cases.⁶⁸ This was an important position in that it had a strong resonance with contemporary, secular ideas

⁶⁴ T. Bunbury, p. 61.

⁶⁵ Report of the House of Commons Committee on Aborigines in British Settlements, 26 June 1837, *GBPP 1837-8*, Vol. 40, pp. 3-26.

⁶⁶ *Ibid.*, p. 4.

⁶⁷ *Op. cit.*

⁶⁸ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, Auckland, 1998, p. 34.

about development. But of even more significance, the Committee advocated a doctrine of intentional development, in which the state would actively pursue a policy of developing Maori. The text was similar in essence to many of the prevailing doctrines which also stressed the need for civilisation,⁶⁹ good government,⁷⁰ and peace⁷¹ as corequisites for colonial intervention. The importance of the Committee's findings in this context was that they supported the trusteeship principle as one of the key tenets of subsequent official British involvement in New Zealand.

The report was realistic in the challenges and impositions that the extension of the British Empire would bring to prospective as well as existing colonies. In particular, attention was given to the prospective clash of their two legal systems:⁷²

It is obviously difficult to combine in one code rules to govern our intercourse with nations standing in different relationships towards us. Some are independent communities; others are, by the nature of treaties, or the force of circumstances, under the protection of Great Britain, and yet retain their own laws and usages; some are our subjects, and have no laws but such as we impose. To this variety in their circumstances must be added a variety as great in their moral and physical condition. They are found in all the grades of advancement, from utter barbarism to semi-civilization.⁷³

One solution to this sort of dilemma was Bentham's recommendation that the art of government ought to be directed towards achieving the goal of utility for the society.⁷⁴ Government interference in the country was a necessary co-requisite in achieving this end.⁷⁵ However, ultimately, in one sense there was no dilemma because the role of any government, through legislation, was to direct development in society.⁷⁶ This

⁶⁹ J. Bentham, UCLMC, 1818, Box, 164, p. 39.

⁷⁰ J. Bentham, *An Introduction to the Principles of Morals and Legislation*, p. 35.

⁷¹ F. H. Hinsley, pp. 96-7.

⁷² P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 35.

⁷³ Report of the House of Commons Committee on Aborigines in British Settlements, 26 June 1837, *GBPP 1837-8*, Vol. 40, p. 6.

⁷⁴ J. Bentham, *An Introduction to the Principles of Morals and Legislation*, p. 35.

⁷⁵ E. Halevy, p. 100.

⁷⁶ J. Bentham, *An Introduction to the Principles of Morals and Legislation*, p. 35.

philosophy of development provided a justification for the sort of intervention in New Zealand that the British were beginning to devise, in which a specific vision of the future would be worked towards under the direction of the colonial power in the colony.

Mill later qualified Bentham's observation by stressing that a government must not simply reflect popular sentiments, but must also perform those duties the government required of them.⁷⁷ He also pointed out that a failure of a government to perform appropriately would impair a society's prospects for improvement.⁷⁸ The prevailing philosophy in this period was converging with the formation of a specific Government policy on New Zealand.

Overall, the Select Committee assumed the position that the indigenous people in the British-ruled colony be incorporated into the system of colonial rule, rather than be excluded from it.⁷⁹ The inclusion in the Select Committee report of the need to protect indigenous peoples from the harm which accompanied British intervention was a major theme, on which the report's recommendations were clear: 'The protection of the Aborigines should be considered as a duty...administered either in this country or by the Governors of the respective Colonies'.⁸⁰ This paved the way for British rule, to whatever extent, over the indigenous people on the basis that it would be in their best interests. Trusteeship had triumphed over non-intervention as the new philosophical basis for British policy on New Zealand.

However, the preparedness by the British Government to support the trusteeship principle as the basis for formal British rule in New Zealand still left open the issue of the specific type of development that would take place in the colony under this umbrella of British trusteeship. For

⁷⁷ C. L. Ten, p. 372.

⁷⁸ Op. cit.

⁷⁹ Report of the House of Commons Committee on Aborigines in British Settlements, 26 June 1837, *GBPP 1837-8*, Vol. 40, pp. 3-26.

⁸⁰ *Ibid.*, pp. 20-1.

example, it is conceivable that if the views of the CMS became official British policy, British trusteeship might amount to providing protection to Maori from the consequences of large-scale Pakeha settlement so that the work of the missionaries could continue without ‘outside’ interference. This was an unlikely outcome, but the point remains that although the principle of trusteeship had been accepted, it had yet to be ‘fleshed out’ with details of the methods and ends of the proposed development for the colony – details that would not only have to be practical, but which would also have to satisfy the various groups that had an influence on British policy at the time.

Of particular concern to the Committee was the issue of land purchase. The private, land-trading New Zealand Company had already commenced its programme of voracious land acquisition and the settlement of colonists. However, there was anxiety among British officials over the future implications of such unregulated land dealings.⁸¹ The Committee reflected these concerns in its findings regarding the need to protect Maori land as British sovereignty was extended over the country:

So far as the lands of the Aborigines are within any territories over which the dominion of the Crown extends, the acquisition of them by Her Majesty’s subjects, upon any title purchase, grant or otherwise, from their present proprietors, should be declared illegal and void. This prohibition might also be extended to lands situate within territories, which, though not forming part of the Queen’s dominions, are yet in immediate contiguity to them.⁸²

Implicit in this apparent offer of protection for the lands in the possession of Maori was the requirement that their land holdings be more specifically defined than their existing communal state made them. Thus, the protection on offer was predicated on altering the status of Maori communal land to a European system of tenure. It was not protection of

⁸¹ Ibid., p. 21; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 35.

⁸² Report of the House of Commons Committee on Aborigines in British Settlements, 26 June 1837, *GBPP 1837-8*, Vol. 40, p. 22.

Maori per se, but only the protection of European land rights which it was anticipated Maori would adopt.

As for Glenelg, both he and his desire for non-intervention were fading from predominance within the Colonial Office. Ideas such as the need for Free Trade,⁸³ and the potential benefits from the spread of utilitarianism provided seemed to be in the ascendancy. They also combined with the demands from the CMS and officials such as Bourke and Hobson (and even Busby) for active official British involvement in New Zealand's affairs.⁸⁴

Glenelg was accused of suffering from general incapacity and weakness, and was finally removed from his position in 1839 because of his '...incompetence to administer colonial affairs'.⁸⁵ Glenelg's departure cleared the way for an increasingly assertive policy. His replacement, Lord Normanby, was able to use the pretext of fear over the actions of the New Zealand Company in unethically acquiring Maori land as a justification for a more interventionist approach.⁸⁶ By this stage, factions within the British Government and the Colonial Office had already faced up to the inevitability of increased British intervention in New Zealand. All that was at issue by 1838 was the precise nature of this intervention.⁸⁷

Richard Bourke's role as Governor of New South Wales in the late 1830s afforded him the opportunity to view the situation in the South Pacific colonies at close quarters, and a trace of cynicism can be detected in his attitude towards the work of those in England who desired on humanitarian grounds to protect the indigenous peoples of British colonies from the various adverse effects of colonisation. In a dispatch to the Colonial Office, Bourke recommended Hobson's plan for intervention in New Zealand, and sarcastically implied that the opponents to intervention

⁸³ K. Bourke, p. 4.

⁸⁴ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 35.

⁸⁵ H. E. Egerton, p. 292

⁸⁶ C. Orange, *The Treaty of Waitangi*, Wellington, 1987, p. 30.

⁸⁷ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 35

were unrealistic in their opposition to increased British involvement in New Zealand.⁸⁸

The details of the proposed measure [i.e. Hobson's] may be varied to suit whatever circumstances may arise; and this, without giving any reasonable cause for jealousy on the part of the other states, or exciting alarm in the breasts of those philanthropists who so creditably and powerfully advocate the rights of the aborigines all over the world. It is neither possible nor desirable to put a stop to the growing intercourse between the English colonies in these seas and New Zealand....⁸⁹

A Select Committee of the House of Lords reported in early 1838 that the responsibility of extending the Empire rested with the British Government,⁹⁰ and argued that further official British intervention in New Zealand would be beneficial to Maori. The Committee therefore resolved to:

...support in whatever way it may be deemed most expedient to afford it, of the exertions which have already beneficially affected the rapid advance of the religious and social condition of the Aborigines of New Zealand, affords the best present hopes of their future progress in civilisation.⁹¹

Britain's increased involvement in New Zealand would take the form of a trustee power, harnessing and directing progress and improvement in the colony.

The philosophy behind the proposed intervention was developing a clearer focus. Maori would not be ignored or excluded from future official British involvement in New Zealand, but instead would be 'guided' into a transformation from their existing traditional state into a more

⁸⁸ Ibid. pp. 35-6.

⁸⁹ R. Bourke to Glenelg, 9 September 1837, in *GBPP 1837-8*, Vol. 40, p. 2.

⁹⁰ Report of the House of Lords Select Committee on the Present State of the Islands of New Zealand, 8 August 1838, in *GBPP 1837-40*, Vol. 21, pp. 78-9.

⁹¹ Op. cit.

economically developed position.⁹² Changes in personnel in the Colonial Office ensured that intervention of whatever sort would occur sooner rather than later. The replacement of Glenelg with Lord Normanby hastened the process of colonisation in New Zealand. It would be Normanby's instructions to Hobson⁹³ that formed the conceptual basis of the Treaty of Waitangi, and which unmistakably outlined a doctrine of intentional development, with an enlightened colonial administration constructing a framework for the development of the colony which incorporated the prevailing ideas of progress leading to an improved future.

A Shift Towards a Doctrine of Development for New Zealand, 1837 – 1840.

In 1837, King William IV died and was succeeded by an eighteen-year-old princess: Victoria. Victoria's accession to the throne heralded a new age of stability and economic prosperity for Britain, and a rekindled interest in the Empire.⁹⁴ However, the policies of the Colonial Office were yet to match the expectations of an expanding Empire that were being articulated by some politicians at the time. The concept of an Empire was being revived, but the means of implementing this vision of an expanding Empire had yet to be realised. It has been suggested by Lord Elton that leadership was the missing element in the scheme to expand Britain's Empire:

...this new Empire was a framework without a soul. The various qualities personified by Cook, Nelson, Wellington and Castlereagh were alive in it, as they were undoubtedly the qualities of an imperial people, but as yet they were not directed

⁹² Report of the House of Lords Select Committee on the Present State of the Islands of New Zealand, 8 August 1838, in *GBPP 1837-40*, Vol. 21, pp. 78-9; also see N. J. Smelser, p. 128.

⁹³ Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 37-45.

⁹⁴ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 15.

to an imperial goal....And as to the future of the new British settlements overseas no one had even suggested an idea'.⁹⁵

However, the horizons of the Colonial Office's political masters were slowly beginning to widen. As a whole, though, British colonial policy was still neither clear-cut nor intelligible. Economic initiatives collided with moral imperatives, and the vision of self-sufficient colonies diverged from the expensive and messy commitments in which Britain frequently found itself entangled. After over a century of colonial expansion, Britain had yet to reconcile the political control of its colonies with its avowed mission to spread the free institutions of parliamentary democracy and Protestantism to the Empire. If these dilemmas were not sufficient in themselves, Britain's loss of America, and the gradual realisation that the Indian sub-continent was sapping Britain's economic strength, appeared to outsiders to signal the decline of this maritime kingdom. But, for the British, these setbacks in no way heralded the end of the Empire, as much as foreign observers might have wished. British optimism still abounded. Perhaps because successive British administrations had not understood the reasons for the Empire's success, they similarly remained undeterred by any failures. Into this slightly confused environment, the 'New Zealand issue' emerged.⁹⁶

In this vacillating state of policy development, there is no evidence to suggest that during the 1820s and 1830s, Britain somehow saw benefit in the acquisition of further colonies with the intention to make them economically dependent on Britain. The eventual official British involvement in New Zealand was the fruit of a series of reactions to events by the Colonial Office. Despite that department being responsible for administering the world's largest empire, it moved clumsily and hesitatingly throughout the 1830s. The spirit of aggressive empire-building that characterised British imperial activity in the second half of

⁹⁵ Elton, *Imperial Commonwealth*, London, 1945, p. 268.

⁹⁶ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, pp. 16-17.

the nineteenth century had yet to be ignited.⁹⁷ A rather dark caricature of the operations of the Colonial Office, written in the 1830s, contained within it a strong resonance of truth, suggesting that individual responsibility for the operations of the Empire did not exist, and that there was no coherent plan to which the Colonial Office was working.⁹⁸ It was precisely the absence of such a plan that created the space for contemporary ideas about development to filter into the Government and take root.

Formal and Informal Imperialism

The distinction between the formal colonialism, directed by the British Government through the Colonial Office, and the informal process, dependent on the generally unconnected activities of private interests, is not necessarily a clear one in practice. From around 1815, the British Government facilitated the extension of informal imperialism because it provided assistance with the increasing need for new markets and sources of supply. The extension of informal imperialism, in turn, left at least part of the responsibility for establishing precisely where the frontiers of the colony existed, and the defence of these frontiers, in the hands of these private interest groups.⁹⁹ In this way, there was no deliberate process of the integration of the colonies as part of a regional, imperial system of rule. Rather, the involvement of the informal imperialists, as in the case in New Zealand with the intervention of missionaries and traders, led to the major transformation of facets of the economy and society of the country.

This fusion of informal and formal motives, partially guided by the Colonial Office, grew in preference over solely formal colonial activity mainly because it represented a much less expensive option for the British

⁹⁷ Ibid., pp. 22-3

⁹⁸ C. Buller, in Elton, p. 275.

⁹⁹ P. J. Cain and A. G Hopkins, *British Imperialism: Innovation and Expansion 1688-1914*, New York, 1993, p. 8.

Government. However, these savings had to be balanced against the reality that informal control could be exercised only if there was sufficient cooperation from the local, usually indigenous, populations in the colony. Cooperation with indigenous populations in colonies had a contemporary philosophical justification in the view that in a country that was undergoing a phase of development, its social and educational standards would have to be gradually revised, rather than a completely new regime suddenly being imposed.¹⁰⁰

The British Government maintained the option of intervening formally should the need arise. Thus informal activity, if conducted under the gaze and with the approval of the British Government, was effectively a carefully-guided precursor for formal imperial process, rather than a separate practice. The Colonial Office 'guided' rather than enforced the process of colonialism, utilising appropriate private interests together with officials to assist with this method.¹⁰¹ This was consistent with the reactive approach that characterised the Colonial Office's dealings with colonies throughout most of the nineteenth century. The consistent feature of the Colonial Office's management of the colonies tended to be the type of administrator they eventually installed in the colonies, and the influence of these administrators:

The empire was to be adapted, not abandoned, to meet this new challenge, above all by putting in place a set of 'like-minded' cooperative elites who would demonstrate that the British view of the world could and should be reproduced elsewhere.¹⁰²

This 'British view of the world' included, among other ideas and values, the notion that in order for economic progress to take place, political stability, individual liberty and individual property rights were necessary¹⁰³ – a view that was entirely compatible with the exploits of the

¹⁰⁰ D. Lyons, pp. 24-6.

¹⁰¹ The various Crown-sanctioned trading companies were examples of this.

¹⁰² P. J. Cain and A. G. Hopkins, p. 98.

¹⁰³ S. Ashton, *The End of Empire*, London, 1997, pp. 6-19.

informal imperialists. Individual liberty was championed by Mill as a profound influence on society,¹⁰⁴ and reflected this emerging view among British of their Empire. However, active, intentional development would only be initiated in a colony when an appropriate convergence of formal and informal imperialism had been reached. Unless this threshold of commitment had been crossed, colonial officials seemed content to allow the processes of immanent development to continue, with comparatively little interference.

Annexation by Administration

Governors

By the beginning of the nineteenth century, Britain was heavily committed to India, both politically and economically.¹⁰⁵ Yet, while Britain's commercial commitment in India was evident, what was emerging from beneath this cloak of colonial enterprise was an acknowledgement that similar levels of involvement would be ill-advised for any of Britain's other colonies.¹⁰⁶ Even if the political will desired a greater extent of intervention elsewhere, financial constraints precluded such endeavours.¹⁰⁷ The financial returns of colonies for Britain rarely even came close to the costs involved in administering those colonies¹⁰⁸ unless there were resources that could be extracted in sufficient quantities to meet these administrative costs. In New Zealand's case, the cost to the British Government of the country joining the Empire was far greater than the colony was able to earn. In 1841, for example, New Zealand's exports were worth £18,000, while the country's annual imports amounted to £134,000.¹⁰⁹ Britain was obliged to adopt a flexible posture in relation to

¹⁰⁴ J. S. Mill, *On Liberty*, p. 126.

¹⁰⁵ J. M. Ward, *Colonial Self-Government: The British Experience, 1759 – 1856*, pp. 83-4; J. S. Furnivall, pp. 25 and 25-9; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 23.

¹⁰⁶ H. E. Egerton, pp. 281-95.

¹⁰⁷ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 23.

¹⁰⁸ J. Hight and D. J. Bamford, *The Constitutional History and Law of New Zealand*, Christchurch, 1914, p. 167.

¹⁰⁹ Op. cit.

its colonies because of the costs involved in sustaining them. The evolution of the role of governors seemed to be the ideal solution to achieving 'total Empire' within an affordable framework. Governors could introduce reforms to the economies of the colonies in order to make them financially viable, and thereby reduce the reliance on the colonising power – Britain.

By the 1840s, British governors tended to possess a much higher degree of professionalism than in preceding decades.¹¹⁰ Although sometimes the popular targets for any problems that arose in colonies¹¹¹ (to the extent that one frustrated Victorian critic labelled Britain's governors as '...the scum of England'¹¹²), they were more likely to be the victims of circumstances beyond their control.

In the late eighteenth and early nineteenth centuries, problems with governors being appointed on the basis of their family connections, and favouritism within the Colonial Office, led to a policy change in 1827, whereafter a more meritocratic system of appointments was introduced.¹¹³ The removal of higher salaries for aristocratically titled governors at this time also contributed to the fairer regime of appointments.¹¹⁴

As a result of the changes to the selection of governors in the early nineteenth century, by the 1830s, governors in the British Empire were '...a richly diverse group of individual personalities'.¹¹⁵ Comparatively few had legal training, with most being chosen from the civil service or, as in Hobson's case, from the military. There was no examination procedure, and nor were there precise prerequisites for assuming the post.

¹¹⁰ J. W. Cell, p. 48.

¹¹¹ G. F. Lewis (ed.), *Letters to Various Friends*, London, 1987

¹¹² Op. cit.

¹¹³ R. Jebb, *Studies in Colonial Nationalism*, London, 1905, p. 122.

¹¹⁴ Op. cit.

¹¹⁵ J. W. Cell, p. 50.

Yet, by the mid-nineteenth century, the colonial service functioned relatively effectively.¹¹⁶

However, there were certainly dissenting opinions on the value of governors. By the beginning of the nineteenth century, the British Empire had witnessed the emergence of a 'governor class' - a group which were generally deprived of the necessary abilities to perform their duties properly, and seldom excelled in their posts. In 1846, the *Times* commented on this problem:

A glance...will show that these responsible situations have all been held so systematically by old military officers as almost to imply a monopoly in the hands of the Horse Guards....Such men are generally advanced in years, whereas the energy of middle age is peculiarly required for their office. They are almost unavoidably of confined and unenlightened views on subjects foreign to their own profession. Their ideas are those of the camp, not of the cabinet....The colonists pay, from their own resources, noble salaries to their governors, and it is but honourable and equitable that they should be served in proportion to their assessment.¹¹⁷

Such men seem hardly qualified or capable to manage the processes of development in their colonies. The limit of their influence as a whole was to introduce British systems of law and economic organisation into the colonies. This required the much slower process of integrating and assimilating the indigenous social, political, and economic structures of the colony into those of the colonising power. Thus, the option to impose development became a difficult objective to achieve, especially in the short term.

The powers of governors in their colonies was usually autocratic,¹¹⁸ but their purpose by the 1840s was not simply to rule indefinitely as colonial despots, but to preside over '...the delicate transition to responsible

¹¹⁶ R. Heussler, in J. W. Cell, p. 51.

¹¹⁷ *The Times*, 16 December 1846.

¹¹⁸ H. E. Egerton, p. 271; D. Thomson, in J. W. Cell, p. 168.

government'.¹¹⁹ Thus, the position of governor was far more than an administrative role: 'What...initiative and inspiration were applied to the improvement of public works or standards of living among the aborigines usually came from him'.¹²⁰ This suggests that there was an expectation, at least in some cases, that governors develop their colonies, rather than simply just oversee them.

However, there were contradictory roles that emerged for those governors who were charged with fostering development in their colonies. For example, governors who were bestowed with the authority to act in the best interests of their colonies could be curtailed from fulfilling this ideal if their actions conflicted with Britain's imperial policy. Furthermore, the greater the degree of political independence that was nurtured in the colony by the governor as part of the process of achieving responsible government for the colony, the less influence Britain would be able to exert on the colony. In practice, these constitutional dilemmas remained unresolved in the 1830s and 1840s, with decisions on the delineations of authority usually decided on a case-by-case basis.¹²¹

There was also an associated tension in the governor system of colonial rule based on the issue of who was better suited to make decisions on the colony: the governor in location in the colony, or senior officials in the Colonial Office in London. George Grey (a later governor of New Zealand) argued that it was the governor in the colony who was best positioned to make judgements on colonial policy:

Can a man who, on a distant and exposed frontier, surrounded by difficulties...be fairly judged...by those who, in the quiet of distant offices in London, know nothing of the anxieties or nature of the difficulties he had to encounter?¹²²

¹¹⁹ J. W. Cell, p. 51.

¹²⁰ Ibid., p. 53.

¹²¹ Ibid., p. 112.

¹²² G. Grey, in J. Rutherford, *Sir George Grey, 1812 – 1898: A Study in Colonial Government*, Wellington, 1961, p. 426.

Significantly, the CMS (and its sister organisation the London Missionary Society) supported the despotism of colonial governors, and reduced Colonial Office interference on the basis that it made it easier for them to do their work.¹²³ For this reason, the CMS opposed the establishment of representative institutions in British colonies for fear of their power being diluted.¹²⁴

As well as providing for relatively inexpensive colonial administration, the power granted to governors and councillors to enact ordinances made possible in most colonies the gradual introduction of British law.¹²⁵ At the same time, this sort of despotic rule was deemed acceptable in this period if there was a greater good that could be achieved by it. Mill observed in 1835 that for good government of a society, the people did not necessarily have to govern themselves. What was more important was that the people in the society had security for good government.¹²⁶

The issue of expenditure was critical. For a governor to rule absolutely the indigenous peoples as well as the settler populations of a colony, an inordinate amount of funding would have been required, and this was not generally available. The British Treasury had no funds to spare,¹²⁷ and so the policy that the Colonial Office developed with respect to the native populations of some British colonies was ‘... to abstain strictly from interference in purely native affairs, and merely to purchase, by presents and pensions, the good-will of the principal native chiefs.’¹²⁸ This has popularly gone by the name of the ‘Sugar and Flour Policy’, because to

¹²³ E. A. Walker, p. 36.

¹²⁴ Op. cit.

¹²⁵ Dispatch of Hobart to Governor Hislop, 22 February 1804, in W. O. Manning, *Commentaries on the Law of Nations*, London, 1875, pp. 354-356.

¹²⁶ J. S. Mill *Democracy and Government*, p. 182.

¹²⁷ T. Williams, ‘James Stephen and New Zealand, 1838 – 1840’, in *Journal of Modern History*, Vol. 13, March 1941, p. 22.

¹²⁸ Indirect rule had also been favoured by the British in parts of the South Pacific, as in the case of the creation of the Great Council of Chiefs in Fiji.

distribute large quantities of sugar and flour was the keystone of the system'.¹²⁹

However, the reach of British Government in colonies could not permanently be limited to just the settler populations, especially when there was so much interaction between settlers and the indigenous peoples. The meeting of these two needs – the extension of British rule and the requirement of additional funding for the colonial government – coincided in New Zealand with the extension of capitalism into the colony. This expansion took place in part because of the commercial opportunities that existed within New Zealand,¹³⁰ and in part as a corollary to the Industrial Revolution in England. The growing prosperity of the English economy in the 1820s and 1830s brought about the conditions under which it was desirable for the British Government to reduce duties on almost all goods and raw materials.¹³¹ This had the effect of increasing '...the freedom of colonial trade',¹³² which in turn encouraged merchants to use colonies as fresh ground for their commercial activities. While foreign policy was largely determined by the Colonial Office, the cost of these policies became an issue for the Treasury. This made colonies a domestic issue, and consequently gave impetus for Britain's foreign policy to condone commercial expansion, and the spread of capitalist activity into the colonies as a way of financing and justifying colonial policy. The commercial imperative was to clash in the 1830s, though, with humanitarian, religious, and philosophical arguments on the nature of colonial expansion, and was to cast a new light on the possible relationship between settlers and indigenous populations.

There was still a gulf in practice, however, between the intent to develop indigenous peoples and the colony in general, and the costs attached to such development. In New Zealand's case during the early 1840s,

¹²⁹ J. E. Gorst, *The Maori King*, Oxford, 1864, p. 27.

¹³⁰ W. Hobson to R. Bourke, 8 August 1837, in *GBPP 1837-8*, Vol. 40, p 4.

¹³¹ D. L. Keir, p. 71.

¹³² *Ibid.* p. 72.

deficiencies in funding combined with incompetent fiscal management made the extension of British rule beyond the settler population a clumsy and only partially effective process. The British administration's desire for development for New Zealand encountered the fundamental problem of failing to translate the intent to develop into the effective performance of this intent.¹³³ This is born out in the way the economy of the colony was managed by the Governor between 1840 and 1842, and the Crown's attempts to impose the British legal system on Pakeha and Maori.

Residents

The purpose of a Resident was not to rule the indigenous peoples of a colony, but rather to work with them in areas of common concern. They '...rarely tried to interfere in native administration...or in the affairs of non-European foreigners'.¹³⁴ Yet, in hindsight, there is an air of inevitability about the roles of Residents. The more interaction and cooperation that took place between the Resident and the indigenous people within a colony, the more likely it was that a governor would later need to be appointed to administer the enlarged British interests in the colony. In parts of the Malay Peninsula, Residents were appointed on the basis that the territories in which they were installed possessed no European-type sovereign authority,¹³⁵ and that whatever sovereignty the indigenous peoples did exercise would not be inordinately affected by the presence of a Resident.¹³⁶ The main emphasis lay on liaison, and on rule or an assumption of sovereign powers.¹³⁷

James Busby's appointment as Resident in New Zealand in May 1833, under the guidance of the Governor of New South Wales, was done partly to streamline the administration of New Zealand through removing the

¹³³ See W. Glade in M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 65; G. Kay, p. 1.

¹³⁴ J. H. Parry, *Trade and Dominion: The European Oversea Empires in the Eighteenth Century*, London, 1971, p. 78.

¹³⁵ D. G. E. Hall, pp. 406-9, 525-6, 540-1, 595-7

¹³⁶ J. H. Parry, p. 78.

¹³⁷ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 26-7.

burden of managing a growing settler population in New Zealand from New South Wales. Busby's appointment opened the door to official British intervention in New Zealand, even though he has been described as '...largely irrelevant as a force for order'.¹³⁸ As the levels of informal involvement grew thereafter, by 1838 the Colonial Office reluctantly decided that a governor ought to be appointed to run New Zealand's affairs.¹³⁹ The chief deficiency of the Resident system, in the context of this thesis, was that they were not equipped with the means to enact the sort of development that governors were empowered to. Specifically, Residents were usually deprived of the authority and power to raise taxes, legislate, raise an army, and enforce British law – even on fellow British subjects living in the colony. To this extent, Residents merely existed as passive observers of the long-standing process of immanent development among the indigenous peoples they liaised with. Even when the indigenous peoples in colonies began to embrace European technology, skills, language, customs, and so forth, at a rapid rate, Residents had no effective power to direct this development.

The Rationales for Involvement

Thus far, the nature of British imperial activity has been considered. What must next be reviewed is the broader issue of the various underlying reasons for colonial involvement in addition to the philosophical bases, and how these reasons interacted with each other throughout the British Empire.

Financial and Economic Motivations

Although patriotism, national interests, the 'civilising mission', and an array of other reasons may have been forwarded as explanations or justifications for Britain's colonial expansion during the nineteenth century, one of the most compelling forces was an economic one, driven

¹³⁸ J. M. R. Owens, p. 42.

¹³⁹ J. Stephen to J. Backhouse, 12 December 1838, in *GBPP 1840*, Vol. 33, p. 3.

by the private sector of Britain's economy. There was a distinct urgency among the merchant and investment sectors in Britain in their demand for markets and the search for profitable investments outside Britain. This urgency was attributable to '...the growing tendency of industrial productivity under the new capitalist technique of machinery and power, to exceed the effective demand of national markets'.¹⁴⁰ The rate of domestic production in Britain from the late eighteenth century tended to outrun that of domestic consumption, forcing producers to seek new markets, sources of labour, and resources internationally. However, although economic factors may have compelled imperial activity, precisely how official British involvement unfurled in the colonies reflected distinct ideological traits prevalent in the British Government at the time.

While the planning behind British colonial enterprises in this period may have been chaotic at times, the methods of colonisation were none-the-less effective. There was generally a strong economic complexion to colonisation. From the sixteenth century, the British Empire began a process of aggressive discovery and territorial acquisition. The basic pattern was to establish in the colonies specialised production of raw materials and primary products that were either unavailable or too expensive in Europe. British manufacturing grew as a result of access to these raw materials. This relationship of specialisation between the economy of Britain and its colonies came to be termed the 'colonial' or 'international' division of labour.¹⁴¹

One of the main characteristics of British colonial economies tended to be their dependence on the colonising country, usually as a source of capital for investment and as a main market for the colony's output. Nineteenth-century British colonies generally had an economic system with a predominant primary sector, a high concentration of income among a few

¹⁴⁰ J. A. Hobson, *Imperialism: A Study*, London, 1938, in R. W. Winks (ed.), p. 11.

¹⁴¹ *Ibid.*, pp. 18-19.

producers, little diversification in their production system, and an external market substantially greater than their internal market.¹⁴²

During the 1830s, Britain's single largest source of export earnings came from cotton manufacturing.¹⁴³ The main markets for British cotton were Europe (44 per cent) and the American continent (27 per cent).¹⁴⁴ The contribution of Britain's colonies to its national income was mixed overall, and not as important as the commercial benefits Britain was deriving from its trade with countries that were not part of the Empire. Colonies such as Australia and New Zealand were, during the 1830s and into the 1840s, '...insignificant to the purposes of British economy'.¹⁴⁵

The absorption of so much capital, people, and government energy by the colonies of the Empire seem to indicate that external trade was the chief source of British wealth. However, this was not the case. Although international trade was certainly a component in Britain's economic success, only around fifteen per cent of Britain's labour force was involved in the production of goods for export,¹⁴⁶ while the remainder derived their income through supplying the domestic market. Moreover, Britain's population during the nineteenth century was growing faster than its export earnings, resulting in the per capita value of foreign trade diminishing.

The establishment of British trade and the orientation of British capital to the colonies was accompanied by an influx of British persons into certain colonies such as Australia, Canada, South Africa and New Zealand, mainly traders, engineers, missionaries, farmers, administrators, Government representatives, and military personnel. However, colonies

¹⁴² D. W. Galenson, *Economic Studies of the Past*, Cambridge, 1998, pp. 22-3.

¹⁴³ B. Fitzpatrick, *The British Empire in Australia: An Economic History 1834 – 1939*, Melbourne, 1941, p. 1.

¹⁴⁴ G. R. Porter, *Progress of the Nation in its Various Social and Economic Relations from the Beginning of the Nineteenth Century*, London, 1856, pp. 356-360.

¹⁴⁵ B. Fitzpatrick, p. 2.

¹⁴⁶ J. A. Hobson, p. 17.

were not necessarily sought out by the British Government specifically to accommodate a 'surplus' in the British population at home. Indeed, during the nineteenth century, of all British citizens who emigrated, less than half went to British colonies.¹⁴⁷

The characteristics of the British economy that had evolved during the industrial revolution were, collectively, one of the major driving forces for British imperial activity. The economic explanation for this hinged on the surplus of production over domestic consumption:

...the constant impulse to push for overseas markets in normal times, and the periodic slumps in national trade in the home markets, are due to a chronic tendency to try to save a larger proportion of the national income than can find a useful expression in new capital.¹⁴⁸

This trend towards over-saving is eventually checked by the inability of such saving to find any profitable use in the provision of more plant and other capital. This capital then orients itself to political power in order to achieve outlets to external markets. However, this does not necessarily mean that capital simply seeks any external markets at all. Foreign independent markets, for example, can be subject to restrictions and protectionism. Therefore, in order for this domestic capital to achieve its maximum potential, it needed to be employed in colonies, where the colonising power could offer merchants and investors assistance and protection through favourable tariffs, quota, and other devices.

A characteristic of Britain's formal relationship with New Zealand between 1840 and 1842 was that no attempt was made by the British Government to monopolise or restrict trade with the colony.¹⁴⁹ A Governor had been appointed to rule New Zealand, but other countries were free to conduct their trade with the colony. The earlier British policy

¹⁴⁷ Ibid. p. 19.

¹⁴⁸ Ibid., p. 12.

¹⁴⁹ No trade restrictions appear in the Treaty of Waitangi, for example. See Appendix Two of this thesis.

of monopolising trade had given way to the arguments of the Free Trade exponents, and by the time Crown rule commenced in New Zealand, the principle of Free Trade was a well-established tenet of British colonial policy. Free Trade was not just an end in itself, but was part of a broader scheme to remove restraints of any sort in the relationships between countries, even if the relationship was between a colony and its imperial power: 'Restrictions on trade...are indeed restraints; and all restraint quâ restraint, is an evil'.¹⁵⁰ As far as the Governor of New Zealand was concerned, in the early 1840s, one of his functions when implementing the processes of intentional development, was to endeavour to transform Maori society towards the goal of civilisation within the limitations of the particular economic forces that were bearing down on the colony – forces which often precluded the expenditure necessary to achieve the prescribed development.

Domestic Considerations

A sense of appreciation of the motives behind the British Government's initiatives in the nineteenth century can be partly derived from the domestic English scene in the early part of the century. The population of England doubled during the first half of the nineteenth century, and within the same time frame, cities such as Liverpool, Birmingham, and Sheffield trebled in size.¹⁵¹ The industrialisation which prompted the population shifts to the cities was fuelled by the Industrial Revolution, which in turn was driven, to a considerable extent, by England's access to a wide range of imports. The demands of building construction, for example, had caused a shortage in English wood. As a consequence, the United States and the Baltic nations became the largest suppliers of wood to England. In the ten years up to 1825, raw cotton imports doubled to 100,000 tons

¹⁵⁰ J. S. Mill, *On Liberty*, p. 227.

¹⁵¹ L. Woodward, p. 2.

per annum.¹⁵² Some of the other significant imports included coffee, tea, flax, hemp, wool, tobacco, alcohol, and later, copper and rubber.

However, despite these economic developments in England, or perhaps partly because of them, political awareness did not grow at the same rate to match this economic expansion. Town and country labourers, who generally had negligible formal education, made up the bulk of the English population. Their political organisation was virtually non-existent, and they had no direct means of 'stating their case'.¹⁵³ The time of party programmes, manifestos, and election promises had yet to come, and from the perspective of the labouring class the distinction between the two main political parties, the Whigs and the Tories, was minimal, if at all. Public opinion, including the opinion of the poor, had no expectation that the Government would act to cure poverty, and the English population remained socially and economically stratified.

The overall impression then, is of a poorly educated, practically disenfranchised, economically dispossessed, and socially alienated sector which existed, in a sizeable number, at the bottom levels of English society. It was to these people that the opportunity of a 'new start' elsewhere in the world held the potential to change their lives for the better. It was also these people who would require some form of development themselves, irrespective of their location, so that their knowledge and reason could also be cultivated.¹⁵⁴ The more these people became developed themselves, the greater the value of their participation would be in the government of the colonies where they settled. Hence, there was an obligation – at least in principle – for colonial governments to develop settler communities as well as the indigenous peoples. However, with sometimes incapable Governors in charge, the focus of any efforts to develop shifted mainly to the indigenous peoples, perhaps partly

¹⁵² Ibid., p. 6.

¹⁵³ E. P. Thompson, *The Making of the English Working Class*, London, 1985, chap. 2.

¹⁵⁴ J. S. Mill, *The Spirit of the Age*, pp.174-5.

because the ‘gains’ were more obvious, and possibly because of a belief by Governors that the settlers did not need that much development themselves.

Emigration and colonisation were considered as a possible cure for the perceived social ills in England.¹⁵⁵ In 1838, a committee was established by the House of Lords which investigated the matter of emigration with a view to possibly either re-directing or strengthening Colonial Office policy.¹⁵⁶ The Committee's recommendations came out strongly in favour of moving people from Britain into the colonies, provided that the selected colonies were capable of supporting the influx in terms of the resources the colony offered, particularly in food and suitable land.¹⁵⁷ The type of colony which would be considered suitable in this context was that which had the potential to develop roughly along the lines that Britain itself was developing – into a modern, industrial, capitalist state.

Certainly, many British colonies lacked both a European population and capital to allow for their own development, and this put pressure on the British Governments of the 1830s to devise particular solutions for the colonies where the British settler population was growing.¹⁵⁸ Inasmuch as there was an obligation on behalf of the British Government to British settlers in the colonies, colonial policy in one sense became a part of British domestic policy. The Whig Government during the 1830s was keen to supply population and capital to the colonies, but was unsure as to how to go about enacting the transfer.¹⁵⁹ At the same time, New South Wales was beginning to demand a representative institution, both Upper and Lower Canada were in revolt, and dissent was being voiced by some

¹⁵⁵ J. R. Roebuck, *The Colonies of England: A Plan for the Government of Some Portion of our Colonial Possessions*, London, 1848, p. 9.

¹⁵⁶ Report of the House of Lords Committee into the Present State of the Islands of New Zealand, 8 August 1838, in *GBPP 1837-40*, Vol. 21.

¹⁵⁷ *Ibid.*, pp. 72-3, 78-9, 151, 165-6, 285-6.

¹⁵⁸ J. A. Roebuck, pp. 7-9.

¹⁵⁹ A. G. L. Shaw, *Great Britain and the Colonies 1815-1865*, London, 1970, pp. 105-6.

of the indigenous groups in the Indian sub-continent.¹⁶⁰ The British Government seemed to be lacking in the capacity to deal with these situations. One of the consequences of this sense of impotence was a reluctance by the British Government to lend its support to private colonising companies, which could later lead to other colonies falling under the responsibility of the British Government. Thereafter, private colonising and land investment companies increasingly took it upon themselves to act independent of Government sanction and conduct their often dubious business activities in a completely free environment.

These companies could not operate in a commercial environment that lacked the basics for capitalist enterprise, such as a monetary system. Thus, in many cases, they made strenuous efforts to advance the economies in the regions where they operated, going to the extent in some cases of introducing their own currency and local regulations which served as laws.¹⁶¹ However, the actions of private colonising companies, if they brought about any development at all, was to cause development or change with no purpose other than profit. The extent of transformation among indigenous populations that these companies were responsible for was limited to the degree to which such transformations would be a financial benefit to the companies. The absence, in most cases, of a comprehensive goal for the colonial society¹⁶² meant that colonising companies were not committed to the sort of development in the colonies that the British Government was tilting towards favouring in certain circumstances.

Foreign Policies

Although the Industrial Revolution had the effect of raising the importance of Britain's international trade to the continued well-being of

¹⁶⁰ Ibid., p. 106.

¹⁶¹ C. H. Philips, *The East India Company 1784-1834*, Manchester, 1961, pp. 200-213.

¹⁶² Even the New Zealand Company, which had an initial goal based on a theory of systematic colonisation, soon abandoned this goal in favour of maximising its profits.

the country's economy, Britain's foreign policy during the 1830s was still overshadowed by its relations with its European neighbours. Palmerston, who was appointed Foreign Secretary towards the end of 1830, stated in 1834 that '...Paris is the pivot of my foreign policy'.¹⁶³

Palmerston was not known to be an astute or shrewd interpreter of events, and the personnel he selected to lead the Colonial Office throughout the 1830s tended to mirror his own deficiencies.¹⁶⁴ However, there remained an undercurrent in Palmerston's foreign policy which sought to promote British mercantile expansion. In this way, foreign policy was linked to domestic economic policy, although the relationship tended to be an unequal one, in which the priority was firmly set on domestic growth.¹⁶⁵ There were concerns about the effects of such a policy on the indigenous populations of the Empire's colonies,¹⁶⁶ but this was mitigated by a latent feeling among some officials that if colonialism was to be carried out, it would best be done by the British. There was a belief that if the British did not colonise, the effects of colonisation if carried out by other powers would be much worse, not only to the indigenous populations of the colonies, but also to Britain's commercial interests:

...if we [the British] abandoned it [colonisation] we must be content to leave the development of the world to other nations, who will everywhere cut into our trade, and even impair our means of securing the food and raw materials we require to support our population. Imperialism is thus seen to be not a choice but a necessity.¹⁶⁷

This perception of the necessity of colonisation was fallacious on the grounds that Britain was self-sufficient in food, was not dependent on

¹⁶³ Palmerston, in E. Halevy, p. 67.

¹⁶⁴ see J. A. R. Marriott, *Queen Victoria and Her Ministers*, London, 1933.

¹⁶⁵ B. Fitzpatrick, *The British Empire in Australia*, Melbourne, 1949, p. 16.

¹⁶⁶ Minutes of Evidence of the House of Lords Committee on the Present State of the Islands of New Zealand, 8 August 1838, in *GBPP 1837-40*, Vol. 31, pp. 180, 182-3, 315.

¹⁶⁷ J. A. Hobson, p. 24.

trade within its colonies for its economic survival,¹⁶⁸ and often tended to be economically worse off as a result of its acquisition of colonies.¹⁶⁹ None-the-less, this sort of argument was sufficiently compelling and superficially logical to gain support in the higher echelons of the Colonial Office and the British Government.

Palmerston was, despite some inadequacies, committed to the principle of Free Trade among the colonies of the Empire. He was prepared to impose Free Trade on reluctant colonial rulers, to evict recalcitrant ones, and to advance 'legitimate trade' by removing the African slave industry.¹⁷⁰

Palmerston made an important contribution to the evolution of British colonial policy and practice during the 1830s. He fostered a mixture of '...economic liberty and gentlemanly paternalism...',¹⁷¹ in which Free Trade would be promoted among the colonies and Britain, with Britain protecting this Free Trade from abuses by countries outside the Empire. Palmerston also infused his version of Free Trade with his belief that the British model of economic development, as demonstrated during the Industrial Revolution, could be exported overseas.¹⁷² Thus, '...favourable opportunities for trade...international political stability...', and the opening up of new markets,¹⁷³ were factors converging throughout the British Empire in the nineteenth century in a way that would accelerate the transition of many of these colonies into sophisticated capitalist states.

As a product of this approach, British colonial expansion accelerated, albeit in leads and lags, during much of the nineteenth century, driven in

¹⁶⁸ P. Temin, *Two Views of the British Industrial Revolution*, Massachusetts, 1996, pp. 1-4.

¹⁶⁹ R. Cameron, *A Concise Economic History of the World from Paleolithic Times to the Present*, Oxford, 1993, pp. 165-7.

¹⁷⁰ T. F. Buxton, *The African Slave Trade and its Remedy*, London, 1840, in P. J. Cain and A. G Hopkins, p. 100.

¹⁷¹ P. J. Cain and A. G Hopkins, p. 100.

¹⁷² op. cit.

¹⁷³ D. C. McClelland, 'The Achievement Motive in Economic Growth', in . D. Ness (ed.), *The Sociology of Economic Development: A Reader*, New York, 1970, p. 178.

part by Palmerston's philosophy that '...it is the business of government to open and secure the roads for the merchant'.¹⁷⁴

The Will to Colonise

Although it is possible to dissect and analyse some of the economic and foreign policy motivations behind Britain's colonial expansion in the nineteenth century, the fact remains that other dimensions of British imperialism exist which appear inexplicable from a purely logical perspective. It is almost as though Britain acquired colonies, in some instances, for no other reason than it had the capacity to do so, irrespective of the consequences. One attempt to explain this phenomenon was made by Rene Maunier, who attributed an almost metaphysical element to the will to colonise:

Amongst writers, it is those who exalt energy, men like Stendhal and Nietzsche, who have been best able to note and render the distinctive characteristics of this phenomenon, and who have told us how – for good or ill – the nations become possessed by this passion for command. They show us imperialism in its narrowest meaning; as an instinct which itself supplies its own aim and its own driving power.¹⁷⁵

There appear to be several prerequisites for a nation to possess before this will could be fully realised. Apart for the physical capacity to colonise, a would-be imperial power required a sense of racial or ethnic superiority, an embedded belief in the religious and/or cultural necessity of expansion, and the profession that through colonial acquisition, welfare and civilisation are spread. These ingredients, when combined, produce a sense of unwavering destiny on the part of the imperial power. However, the British perception of their own colonising efforts differed from the amoral arguments of philosophers like Nietzsche. One nineteenth-century British writer, Benjamin Kidd, cast a positive light for his audience on the

¹⁷⁴ Palmerston, in C. K. Webster, *The Foreign Policy of Palmerston*, Vol. 2, London, 1951, pp. 750-1.

¹⁷⁵ R. Maunier, *The Imperial Race*, in R. W. Winks, p. 69.

entire effort of British colonial expansion, and in particular, its positive effects on the indigenous populations of the colonies. Kidd suggested that Britain had been very strongly influenced:

...by the altruistic spirit underlying our civilisation...its administration of the Indian peninsula has never been marked by those features which distinguished Spanish rule in the American continent. English rule has tended more and more to involve the conscientious discharge of the duties of our position towards the native races. We have respected their rights, their ideas, their religions, and even their independence to the utmost extent compatible with the efficient administration of the government of the country.¹⁷⁶

These views encapsulate the sentiments of intentional development, in which the exercise of trusteeship power in a colony by the British was done in an effort to achieve certain prescribed ends. The enforced changes of the habits and customs of the indigenous peoples through the exercise of trusteeship power were justifiable because the ends of 'civilisation', a stationary state, and a utilitarian society would be achieved. Yet, even if in practice, these ideals remained only as ideals, the '...conscientious discharge of the duties...[of the British] position towards the native races...'¹⁷⁷ could be deemed as sufficient to justify the doctrine of intentional development.

British Approaches to Colonial Treaties

The attitude amongst some British officials towards the process of treaty-making that the British Government had undertaken during the first half of the nineteenth century was shaped to a large extent by British experiences in colonies in Africa. Generally, African countries were offered treaties during the nineteenth century mainly as a gesture of expedience on behalf

¹⁷⁶ B. Kidd, *Social Evolution*, London, 1894, p. 13.

¹⁷⁷ Op. cit.

of the British.¹⁷⁸ Such treaties gave subsequent British actions in these colonies the veneer of legitimacy, but were ultimately documents with no further purpose other than signalling British annexation. Indigenous rights were seldom considered, and if they were, were dismissed as unimportant: 'Treaties were produced by the cartload in all the approved forms of legal verbiage - impossible of translation by ill-educated interpreters. It mattered not that tribal chiefs had no power to dispose of communal rights....'¹⁷⁹ These treaties differed from the Treaty of Waitangi in that they possessed no intent to develop the indigenous peoples in the colonies where they were applied. In most cases, the immanent development of these peoples was largely unaffected by the provisions of the treaties they signed.

In New Zealand, Governor FitzRoy (1843-5, Hobson's successor) viewed the Treaty of Waitangi in a less cynical way than British officials saw treaties in other colonies, although he acknowledged that there were a variety of views regarding the sincerity of the document and its intentions, and that there was a distinct difference in the interpretation of the Treaty between the British and Maori:

The treaty has now been viewed in many lights. Some persons still affect to deride it; some say it was a deception; and some would unhesitatingly set it aside; while others esteem it highly as a well considered and judicious work, of the utmost importance to both the coloured and the white man in New Zealand. That the natives did not view all its provisions in exactly the same light as our authorities is undoubted: but whatever minor objections may be raised, the fact is now unquestionable that the loyalty, the fidelity, and co-operation of any natives in New Zealand has hitherto depended mainly on their reliance of the honour of Great Britain in adhering scrupulously to the treaty of Waitangi - the Magna Charta [sic] of New Zealand.¹⁸⁰

¹⁷⁸ M. P. K. Sorrenson, 'Sovereignty and Indigenous Rights', p. 18.

¹⁷⁹ F. D. Lugard, *The Dual Mandate in Tropical Africa*, London, 1926, p. 15.

¹⁸⁰ R. Fitzroy, *Remarks on New Zealand in February 1846*, London, 1846, pp. 9-10.

One of the means of better establishing the intent of the Treaty of Waitangi is to consider the motives and practice of British treaty-making in the preceding decades.

Precedent for the Treaty of Waitangi

The position of the Treaty of Waitangi in the context of British colonial activity up until 1840 requires a consideration of previous treaties concluded between Britain and some of its colonies, the purpose and motives behind these treaties, and the extent to which Hobson – who was responsible for the Waitangi treaty – was familiar with them. Each treaty tended to be designed to meet the circumstances of the colony where it was to be applied.¹⁸¹

However, despite these differences in intent, and the fact that many treaties were a reaction to local situations, there were elements which almost all British treaties shared. Treaties were intended as a means of articulating international relations, and to this end, were a crude form of international legislation.¹⁸² The importance of international law as a device which provides a framework for the interpretation and enforcement of treaties is more pertinent now, since the ratification of the Vienna Convention on Treaties,¹⁸³ but the essence of an intent to create relations between two nations was still present in the nineteenth century.¹⁸⁴

One of the effects of treaties between colonies and the colonising powers in the nineteenth century was that they contributed to the sense of statehood for some colonies.¹⁸⁵ Treaties could also be used as an instrument whereby one nation could subjugate another. Both of these

¹⁸¹ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 76.

¹⁸² D. J. Harris, p. 584; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 76.

¹⁸³ The Vienna Convention on Treaties (1969) formalised many of the aspects of the application of treaties under international law.

¹⁸⁴ J. Bentham, *Principles of International Law*, London, c. 1786, in J. Bowring (ed.), *The Works of Jeremy Bentham*, Vol. 2, p. 538; D. Lyons, p. 26.

¹⁸⁵ M. P. K. Sorrenson, 'Treaties in British Colonial Policy', p. 16.

functions was a key element of the Treaty of Waitangi. Prevailing attitudes towards non-European peoples, whom Mill described as being racially inferior,¹⁸⁶ put the responsibility on the European power engaged in colonising the country of these 'inferior' people, to exercise a trusteeship duty over the colony in order to allow for improvement to take place.¹⁸⁷ Mill provided a justification for this level of intervention by arguing that '...barbarians have no rights as a nation, except a right as such treatment may...fit them for becoming one'.¹⁸⁸ The fact that each treaty was a response to a particular set of circumstances should not, however, conceal the presence in New Zealand's case of a specific underlying doctrine of intentional development which informed the provisions of the agreement. The anticipated practice of development, which the Treaty heralded – principally through the establishment of British trusteeship – was the result of the triumph of the principle of intentional development over its detractors among officials and other interested groups in Britain during the mid-1830s.

In New Zealand, Hobson, as the Crown's representative, was able to draft, conclude, and provided there was no official opposition, effectively ratify his own treaty. This was a weighty responsibility, but one which allowed the views of the Colonial Office to filter through into the final agreement, inasmuch as the Governor took guidance for the content of the treaty directly from the Colonial Office. Thus, a direct link existed between the doctrine of development crafted by the Colonial Office, and the ensuing practice of development by the colonial administration.

Defining the extent of sovereignty over its colonial territories appears to have been one of the main forces which compelled the British to conclude treaties either directly with colonies or with other powers who may have

¹⁸⁶ J. S. Mill, in S. Corbridge, p. 730.

¹⁸⁷ J. S. Mill, *The East India Company's Charter*, pp. 40-45.

¹⁸⁸ J. S. Mill, *A Few Words on Non-Intervention*, London, 1859, in J. M. Robson (ed.), *The Collected Works of John Stuart Mill*, Vol. 21, Toronto, 1984, p. 119.

had a claim to the same territory. The Treaty of Utrecht (1713)¹⁸⁹ between Britain and Spain was an example of an agreement between two colonial powers over a colony. The Treaty formalised Britain's possession of Gibraltar,¹⁹⁰ and allowed Britain to control Gibraltar without a serious challenge from Spain for over two hundred years. The King of Spain was required to give up '...the full and entire property of the town and castle of Gibraltar, together with the port, fort, and fortifications...absolutely...for ever, without any exception or impediment whatsoever...'.¹⁹¹

An example of a treaty made directly between Britain and one of its colonies is the British-Sherbo agreement of 1825.¹⁹² In this agreement, the British demanded sovereignty,¹⁹³ but in return offered 'benefits' to the indigenous peoples. These included granting them '...the rights and privileges of British Subjects', and '...the full, free, and undisturbed possession and enjoyment of the lands they [the indigenous chiefs of Sherbo] now hold and occupy'.¹⁹⁴

An almost identical conferral of rights under a treaty was made by the British Crown in the following year in the Cession by Soombia Soosoos and Tura of Certain Territories to Great Britain.¹⁹⁵ In this treaty, the British promised the indigenous peoples in the territories '...full, entire, free and unlimited sovereignty, right, title, and possession in and over all the seas, rivers...'.¹⁹⁶

¹⁸⁹ *The Treaty of Utrecht*, 13 July 1713, at <http://www.frontier.gi/laws/urtecht.html>

¹⁹⁰ *Ibid.*, Article X

¹⁹¹ *Op. cit.*

¹⁹² 'Cession to Britain of Sherbo, Ya Comba, and Sherbo, Tasso and Plantain Islands, 1825', in E. Hertslet, *The Map of Africa by Treaty*, Third Edition, Vol. 1, London, 1967, p. 31.

¹⁹³ *Ibid.*, p. 32.

¹⁹⁴ *Op. cit.*

¹⁹⁵ 'Cession by Soombia Soosoos and Tura of Certain Territories to Great Britain, 1826', in E. Hertslet, p. 34.

¹⁹⁶ *Op. cit.*; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, pp. 79-80.

Yet, the British acquisition of colonies was not always accompanied by treaties, or if it was, these treaties did not necessarily herald a revolution in the domestic political structures of the territories concerned. In New South Wales, for example, formal British rule commenced and was consolidated by the 1840s with no treaty with the Aborigines. One possible reason for this was that Britain encountered virtually no resistance from the Aborigines as it extended its rule in the region.¹⁹⁷ This almost complete lack of obstruction to British rule in New South Wales (and eventually the whole of Australia) made an exchange of concessions -- which British colonial treaties tended to contain -- unnecessary in this case. Instead, the British assumption of sovereignty was a *de facto* one, and was evidently acceptable to the British without the requirement of the consent of the indigenous people. Moreover, the Colonial Office never officially acknowledged Aboriginal sovereignty in Australia, in the way that Maori sovereignty was explicitly acknowledged by the Colonial Office -- admittedly with qualifications -- in New Zealand.¹⁹⁸ Instead, Britain effectively treated Australia as '*territorium nullius*'.¹⁹⁹ This designation could be made by the British if they deemed that the structure or organisation of the indigenous society '*...did not conform to positivist criteria of a body politic*'.²⁰⁰

In Hawaii, Britain had secured a treaty ceding sovereignty in 1794.²⁰¹ However, probably because of Hawaii's strategic unimportance and its negligible British settler population, the British Government took few steps to enforce its rule within Hawaii unless circumstances arose which might threaten its nominal claim of sovereignty over the territory.²⁰²

¹⁹⁷ A. Moorehead, *The Fatal Impact: The Invasion of the South Pacific 1767 – 1840*, Sydney, 1987, pp. 124 and 126.

¹⁹⁸ Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 37-40.

¹⁹⁹ F. Hackshaw, 'Nineteenth Century Notions of Aboriginal Title and their Influence on the Interpretation of the Treaty of Waitangi', in I. H. Kawharu (ed.), *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi*, Auckland, 1989, p. 97.

²⁰⁰ *Ibid.*, p. 111.

²⁰¹ R. S. Kuykendall, *The Hawaiian Kingdom, Volume 1, 1778 – 1854*, Honolulu, 1938, pp. 41-2.

²⁰² *Ibid.*, pp. 80-1.

Some treaties involved no cession of sovereignty at all. For example, the 1826 Treaty of Bangkok, between the British and the Siamese, was essentially a commercial agreement in which the Siamese agreed not to interfere with British trade in the region.²⁰³

Other treaties were only slightly more invasive. The Moresby Treaty of 1822 provided for the appointment of a British agent at Zanzibar to ‘...watch the [slave] traffic with a view to curtailing it’.²⁰⁴ This marked a very slight degree of British influence in the region.

In certain treaties prior to 1840, a similar language began to be used by representatives of the Crown when drafting these documents. The following table lists selected phrases from some British colonial treaties made before the Treaty of Waitangi that are similar to phrases used in the Treaty of Waitangi:

²⁰³ F. Swettenham, p. 316.

²⁰⁴ J. C. Anene, ‘The Omani Empire and its Impact on East African Societies, in J. C. Anene and G. N. Brown (eds.), *Africa in the Nineteenth and Twentieth Centuries*, Ibadan, 1972, pp. 453-4.

Figure 1: Similarities in Text Between the Treaty of Waitangi and Previous British Treaties²⁰⁵

Extracts from the Treaty of Waitangi ²⁰⁶	Extracts from contemporary treaties
‘...full exclusive and undisturbed possession of their lands and Estates Forests Fisheries and other properties...’	<p>‘...the full, entire, free and unlimited sovereignty, right, title, and possession in and over all the seas, rivers...’ <i>The cession by Soombia Soosoos and Tura of certain territories to the British Crown, 1826.</i>²⁰⁷</p> <p>‘...the full, free, and undisturbed possession and enjoyment of the lands they now hold and occupy’. <i>The British Sherbo Agreement, 1825.</i>²⁰⁸</p> <p>‘...the said property to be held and enjoyed absolutely with all manner of right for ever, without any exception or impediment whatsoever...’ <i>The Treaty of Utrecht, 1713.</i>²⁰⁹</p>
‘...the rights and privileges of British Subjects’.	‘...the rights and privileges of British Subjects’. <i>The British Sherbo Agreement, 1825.</i> ²¹⁰
‘...the exclusive right of pre-emption over such lands...’	‘...the exclusive right of pre-emption...’ <i>An act passed in Virginia in 1779.</i> ²¹¹

Although textual similarities with previous treaties are evident in the Treaty of Waitangi, it would be wrong to assume that this amounted to

²⁰⁵ P. Moon, *The Treaty of Waitangi in its International Historical Context*, Auckland, 1994, pp. 116-7.

²⁰⁶ The full text of the Treaty of Waitangi appears in Appendix Two of this thesis.

²⁰⁷ ‘Cession by Soombia Soosoos and Tura of Certain Territories to Great Britain, 1826’, in E. Hertslet, p. 34.

²⁰⁸ ‘Cession to Britain of Sherbo, Ya Comba, and Sherbo, Tasso and Plantain Islands, 1825’, in E. Hertslet, p. 31.

²⁰⁹ *The Treaty of Utrecht*, 13 July 1713, at <http://www.frontier.gi/laws/urtecht.html>

²¹⁰ ‘Cession to Britain of Sherbo, Ya Comba, and Sherbo, Tasso and Plantain Islands, 1825’, in E. Hertslet, p. 31.

²¹¹ M. P. K. Sorrenson, ‘Treaties in British Colonial Policy: Precedents for Waitangi’, p. 23.

similar intentions underlying all these agreements. Instead, each treaty tended to be tailored to fit the requirements of the particular colony in question.

The Influence of Trading Companies and Economic Considerations

In some cases, the British Government devised treaties to assist the progress of trading companies.²¹² Indeed, prior to 1840, these were the most common form of British colonial treaty.²¹³ However, Britain's commercial treaties with its colonies generally had no element of intentional development attached to them. Provided that there was no major obstruction to Britain's commercial goals for these colonies, the immanent development of these colonies could generally continue largely unhindered by outside interference. The 1826 Treaty of Bangkok was an example of this.²¹⁴

Trading companies were privately-owned and controlled enterprises which carried out and extended capitalist activities in territories that were often little more than nominal colonies. This often led to the establishment of these quasi-colonies as protectorates. In some instances annexation followed, in which the colonies in question became part of the British Empire.²¹⁵ In many cases though, the trading companies existed primarily to exploit the physical resources of colonies,²¹⁶ but the increase in formal British administration in the areas initially occupied by the trading companies usually reduced the monopolistic and uneven excesses of this mercantilist capitalism in favour of a propensity to modernise the economies of the colonies, and along with this process, transform the political and cultural landscape of the colonies into a form more suited to advanced modes of capitalism.

²¹² H. E. Egerton, chap. 10.

²¹³ *Ibid.*, pp. 115-6.

²¹⁴ F. Swettenham, p. 316.

²¹⁵ J. A. Doyle, *The English in America*, London, 1882, p. 80.

²¹⁶ H. Tinker, *Men Who Overturned Empires: Fighters, Dreamers, and Schemers*, London, 1987, p. 2.

One of the reasons for the emergence of British trading companies was that by the seventeenth century, individual merchants were finding it too expensive to cover the diplomatic and military costs associated with the protection of their trade routes.²¹⁷ Initially, the tasks associated with securing the protection of British trading vessels was assumed by trading companies themselves, but this was later taken over by the British Government.²¹⁸ This in turn unavoidably led to a more interventionist British foreign policy. In the eighteenth and nineteenth centuries, Royal Charters were granted to some trading companies by the British Government, resulting in the distinction between the commercial activities of these companies, and the policies of British imperialism becoming more unclear.²¹⁹

An example of the uncertain delineation in power between the British Government, trading companies, and indigenous rulers involved the passage of the India Act in 1784, in which British monopoly trading rights were confirmed, even though neither the British Government nor the East India Company acquired full British sovereignty over India at this stage.²²⁰ However, in practice, the India Act did increase the power of the British administration in India and further enfeebled indigenous claims to full sovereign authority over the Indian subcontinent.²²¹

New Zealand's case differed from these patterns of intervention in that, while intervention had taken place in stages, by August 1839 the Colonial Office had committed itself to a positivist model of intentional development for the colony²²² without the influence of any trading companies. This decision extended the degree of British involvement in New Zealand well beyond the commercial or even law and order

²¹⁷ T. O. Lloyd, *The British Empire, 1558 – 1983*, Oxford, 1984, pp. 12-13.

²¹⁸ Op. cit.

²¹⁹ Royal Charters were granted, for example, to the East India Company, and the Royal Africa Company.

²²⁰ E. A. Walker, p. 31.

²²¹ Op. cit.

²²² Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 37-45.

requirements that could be identified as needing addressing at the time by the British. The doctrine of intentional development was the highest level of colonial commitment the British could make. It involved implementing an ideology of development that would bring improvement to the colony, either in addition to or irrespective of the material progress the colony experienced as the processes of informal colonialism continued.

The Commercial Position of Colonies

Unlike some of the British trading companies, social philosophers of the period saw little economic advantage in most colonies, and recommended that Britain loosen its links with its existing colonies so that they would thereafter have a better prospect of developing and improving.²²³ However, working against the ideal of emancipated colonies was the fact of the existing nature of the British Empire, in which its colonies would not suddenly be shed in the foreseeable future. A resolution was therefore devised to deal with the practicalities of the situation: eventually, colonies with large indigenous populations would have to be transformed if they were to enjoy the benefits of utilitarianism.²²⁴ This was a responsibility that was part of the obligation of exercising a trusteeship role in colonies. Mill believed that the economic and social transformation of countries was not just desirable, but necessary.²²⁵ In both cases, a treaty between the imperial power and the colony concerned would serve to formally declare the intention of the imperial power to exert its authority and exercise its trusteeship role over the colony. In addition, a treaty would also define and confirm the political role of the indigenous people in this new relationship. In New Zealand's case, the immanent process of Maori development would be extinguished. In its place, the colonial administration would assume direct and active responsibility for managing the development and welfare of the entire country and its peoples.

²²³ L. Woodward, *The Age of Reform, 1815 – 1872*, Oxford, 1961, p. 368.

²²⁴ J. Bentham UCLMC, 1818, Box 164, p. 39.

²²⁵ J. S. Mill, *The Spirit of the Age*, pp. 171-2.

Because the level of intervention in colonies – over and above the direct interests of commerce – was usually bereft of any intent to actively develop the colony towards prescribed goals, this raises an important distinction between the type of treaty that introduced a limited form of British law into a colony to protect commercial or strategic interests, and the type of treaty (of which the Waitangi treaty was an example) which was the product of a deliberate policy that aimed to execute a specific form of development in the colony. The superficial appearance of these two types may have been similar, but their purposes were fundamentally different.

Multi-Lingual Treaties

A final observation about most British colonial treaties made prior to 1840 is that they tended to be solely in English.²²⁶ There are various explanations for this, with reference to New Zealand's experience where a version of the Treaty of Waitangi was produced in Maori. Firstly, in New Zealand, the British had acknowledged some form of sovereign rights being exercised by Maori.²²⁷ Therefore, to assist Maori in comprehending what exactly they would be ceding to the British Crown, a treaty in their own language would be beneficial. Furthermore, the perception by some Europeans of the Maori as a 'warlike' people²²⁸ may also have heightened the sense among the author of the Treaty that the fuller the Maori understanding of the terms of the Treaty was, the better the prospects for peace in the colony would be after its signing. The fact of a growing permanent settler population in the colony²²⁹ – living often side-by-side with Maori – would also have made Maori comprehension of the Treaty's provisions more desirable.

²²⁶ Even those treaties that were translated into indigenous languages were hastily and poorly done. See F. D. Lugard, pp. 15-16.

²²⁷ Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 37-45.

²²⁸ W. Swainson, *New Zealand and its Colonisation*, p. 9.

²²⁹ This anticipated growth in the settler population was referred to in the Preamble of the Treaty of Waitangi, see Appendix Two of this thesis.

In addition, there was also at this time an emerging ‘humanitarian’ sentiment among sectors of the British Government to dealing with indigenous peoples in British colonies.²³⁰ What was hoped for at the time, in the parlance of a contemporary philosophical perspective, was the benign ascendancy of ‘...the English to the natives’.²³¹ This would be joined by a process of British civilising the indigenous peoples as a corequisite for further British intervention in its colonies.²³²

Possibly the main reason, however, for the text of the Treaty of Waitangi being translated into Maori was the purpose it was expected to fulfil. The Treaty was not about defining New Zealand’s borders, or competition with other colonial powers. Neither was it a spontaneous act of expedience conceived of by local officials. Rather, it was the manifestation of half a decade of evolution in the Colonial Office of a specific doctrine of development for New Zealand – a doctrine that included Maori and therefore demanded full and free Maori consent.

While the wording of British treaties certainly deserves evaluation, it cannot be used as the sole criterion of determining their purpose. There was seldom a direct and obvious link between the text of a treaty, and the policies and circumstances that led to its formation. Therefore, any consideration of the Treaty of Waitangi needs to be made in the context of the policies that were devised beforehand, and that eventually produced the Treaty.

²³⁰ Report of the House of Commons Select Committee on Aborigines in British Settlements, 26 June 1837, in *GBPP 1837-8*, Vol. 40, pp. 3-26; W. Hobson to E. Hobson, 25 August 1837, in G. Scholefield, *Captain William Hobson: First Governor of New Zealand*, Oxford, 1934, p. 69.

²³¹ J. Bentham, UCLMC, c. 1775, Box. 169, p. 97.

²³² Op. cit.

Conclusion

Perhaps the most significant general characteristic of British colonial policy in the first half of the nineteenth century was that it vacillated throughout this period, and never acquired a single, coherent, defined and enduring strategic purpose. Because of this, there was a need in both the policy formation and implementation stages of Colonial Office policy for the ideas of the social philosophers of the period to be considered, and if suitable, adopted. The pressures that necessitated the British to implement a doctrine of intentional development in New Zealand – pressures such as humanitarian concerns, the extension of commerce, the general repugnance towards Maori customs and habits, the urge to civilise, the need to impose law and order in the colony, increasing ‘white’ settlement, the will to colonise, and the belief in the possibility of improvement – required an accompanying philosophy of development that could be integrated into colonial policy.²³³

By the end of the 1830s, the ideas of development that had been formulated in Britain was evolving into what would soon emerge as a doctrine of development for New Zealand. This doctrine, although subject to flexibility when implemented, was founded on the premise that it was necessary for the inhabitants of the colony – both indigenous and settler – for the British Government to exercise trusteeship powers as the means of bringing about and directing progress and improvement.

There is a discernible difference, however, between British colonial policy in the first half of the nineteenth century, when the influence of the development philosophers under consideration was more pronounced, and the second half of the century, when patriotic and more overtly commercial motives became the driving force behind Britain’s imperial activity. In this first period of the century, there are obvious links between the ideas of trusteeship and intentional development in particular, and

²³³ This trend was highlighted in J. A. Roebuck, pp. 152-3.

some of the broad policy positions assumed by the Colonial Office. This brought about certain inconsistencies at times, though, such as the often conflicting ways of dealing with indigenous populations. In the case of New Zealand, for example, the sentiments of 'civilising' Maori were philosophically at odds with the efforts at 'protecting' them from the adverse effects of contact with Europeans. Overall, though, the transition that had taken place in British colonial policy in the decades leading up to 1840 was to have fundamental implications for British involvement in New Zealand. Ideas about development, particularly intentional development under trusteeship rule, had gathered sufficient momentum in the Colonial Office by the end of the 1830s that it became part of state policy. This change acknowledged the fact that colonies were not simply economic assets – they were also spheres of political interest and in some cases locations for British settlement. Moreover, the Colonial Office was beginning to acknowledge that colonial intervention came with an obligation to indigenous peoples in the colonies. The character of this obligation manifested itself in New Zealand in the exercise of a doctrine of development, with goals that were broadly consistent with prevailing philosophies about development at the time, but which also took into account the views of various interest groups such as missionaries and land traders.

A significant weapon in the armoury of British colonial policy was the treaty. The types of treaties varied from those used to define trading rights, to those which were merely expedient declarations of sovereignty. However, by the late 1830s, greater recognition of indigenous rights, coupled with an emerging doctrine of development for New Zealand, allowed the Treaty of Waitangi to fulfil a more comprehensive and far-reaching purpose than previous British colonial treaties. In this respect, the Treaty of Waitangi was an anomaly in British treaties up until that time, but it still retained many of the characteristics of its predecessors, and still depended on a particular relationship existing between the coloniser and the indigenous signatories.

The following chapter details how the British reluctance to become involved in New Zealand in the early and mid 1830s gave way by the late 1830s to a specific intent to intervene and develop the colony. Colonial policy on New Zealand very quickly acquired a sense of purpose that it was previously lacking. It was particularly the specific set of circumstances that had arisen in New Zealand from the early 1830s that encouraged the British Government to apply a doctrine of intentional development in the colony. It was during this decade that the specifics of the intended development for New Zealand were defined and articulated by the British.

4. OFFICIAL BRITISH INVOLVEMENT IN NEW ZEALAND

For most of the first four decades of the nineteenth century, Britain refused to extend its formal rule to New Zealand. Indeed, the fear of such a commitment was clearly voiced at the time. Even the appointment of a British Resident to New Zealand in 1833 indicated nothing more than a vague desire to facilitate better relations between settlers and Maori. The decision to appoint a Resident, in New Zealand's case, reflected only the faintest sense of obligation by the Colonial Office to those British subjects that had settled in the colony. Whatever development occurred in the colony at this time was incidental to any official British activities. Maori development – in areas such as the Bay of Islands, where the major European populations were based – was beginning to experience the preconditions for economic take-off.¹ However, as has been pointed out in the preceding chapter, this was still an immanent process of development. There were certainly no British state actions which served to '...actively contain...' disorder or prescribe a path of development.²

The Path to Intervention, 1769 - 1839

Attitudes among British officials towards official British involvement in New Zealand were at best ambivalent in the early years of the nineteenth century. One writer saw New Zealand's movement towards inclusion in the British Empire as little more than a nuisance: 'The birth of New Zealand as a British Colony was strange and troublesome. Mrs. Mother-Country, as represented by the Colonial Office, did not seem glad that a colony was born into the world'.³ Sir James Stephen, the most senior British Colonial Office official in the late 1830s, conceded that it was an

¹ W. W. Rostow, 'The Take-Off into Self-Sustained Growth', pp. 25-7.

² M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 61.

³ W. Gisborne, *New Zealand Rulers and Statesmen, 1840-1885*, London, 1886, p. 4.

unfortunate chain of events that lead to New Zealand's annexation, but that the encroachment of Europeans into New Zealand could not be reversed, and reluctantly suggested that further intervention was inevitable.⁴ If such intervention were to occur, it would be guided by the principle of British trusteeship over the colony.

In 1769, Captain Cook declared New Zealand a British colony by right of discovery, but for decades thereafter, successive British Governments failed to exhibit even the slightest degree of interest in the country.⁵ As late as 1817, New Zealand was referred to in the British Parliament as being '...not within His Majesty's Dominions'.⁶ Yet, despite this lack of official interest, British citizens did begin to drift into the country from around the 1790s.⁷ The earliest settlers were usually deserting sailors, ex-convicts, traders in flax and wood, sailors, whalers, and increasingly from the early nineteenth century, settlers looking to farm in New Zealand. With a growing permanent British population in the country, possibly numbering around 500 by 1830,⁸ a need developed for the administration of British citizens in New Zealand. The British Government appointed a Resident in 1833, and with the slight semblance of stability this brought, even more immigration followed. The Colonial Office was, by the late 1830s, seeking a more secure form of administering New Zealand than was afforded by the position of Resident.⁹ The domestic economy of the colony was slowly evolving away from the traditional form it had possessed for centuries, in which subsistence agriculture was carried out by kinship-based tribal groupings as the main form of economic activity.¹⁰

⁴ J. Stephen to J. Backhouse, 12 December 1838, in *GBPP 1840*, Vol. 33, p. 3.

⁵ G. S. Graham, p. 106.

⁶ R. A. Huttenback, *The British Imperial Experience*, New York, 1966, p. 50.

⁷ The first permanent European settlement in New Zealand was in Dusky Sound. It was founded by sealers in 1792.

⁸ W. B. Sutch, *The Maori Economy: A Survey to the Time of the Coming of the European*, Wellington, 1964, p. 14.

⁹ Glenelg to G. Gipps, 1 December 1838, in *GBPP 1840*, Vol. 33, p. 19.

¹⁰ See N. J. Smelser, pp. 121 and 127.

The selection of James Busby as New Zealand's first Resident had been made by the Colonial Office in 1832. Busby was a young colonial administrator in the Government of New South Wales in Sydney at the time of his appointment and arrived to take up his role in New Zealand in 1833. However, his demonstrable lack of power and authority over both Europeans and Maori in New Zealand soon became a matter of concern to British officials.¹¹ The eruption of war between rival hapu (sub tribes) in the Bay of Islands in 1837 prompted Busby to request direct military intervention from the Governor of New South Wales, Sir Richard Bourke. Up until this time, Bourke had politely rejected Busby's calls for support to give him the 'teeth' he needed to effectively undertake his job. However, the conflict between Northland Maori in 1837 finally prompted Bourke into action.

A Suggestion for Intentional Development

In 1837, Bourke dispatched H.M.S. *Rattlesnake* to New Zealand, under the command of Captain William Hobson, with two purposes in mind. The first was to provide assistance to Busby – preferably in the form of mediation with Maori, although direct military intervention was not ruled out – and the second was to get Hobson to report on the options for an increased formal British presence in New Zealand.¹² For the first task, the conflict eventually ceased without the need for involvement by Hobson or the *Rattlesnake*, although the presence of the *Rattlesnake* was a sign of the seriousness with which the British administration, in New South Wales at least, was viewing New Zealand. As for Hobson's report, it contained a rationale for intervention with which Bourke was sufficiently satisfied to recommend to the Colonial Office that it be implemented.¹³ It is significant that the initial impetus for pursuing a policy of intentional

¹¹ J. Busby to Colonial Secretary of New South Wales, 16 June 1837, in *GBPP 1840*, Vol. 40, pp. 6-12; J. Stephen to J. Backhouse, 12 December 1838, in *GBPP 1840*, Vol. 33, p. 3.

¹² P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 19.

¹³ E. Ramsden, *Busby of Waitangi, H. M.'s Resident at New Zealand 1833-1840*, Wellington, 1942, pp. 169-70.

development in New Zealand came from an official in the region rather than in London. The probable reason for this was that Bourke saw a need for a more active British presence in New Zealand, and was concerned about the disorder into which the Residency seemed to be descending. Without Bourke's plea in favour of Hobson's report, the Colonial Office most likely would not have been aware of the need for a firmer position on New Zealand. However, although Bourke endorsed Hobson's report, it was still the prerogative of the Colonial Office to determine the next course of action on New Zealand.

Hobson's report contained ideas based on the factory system operated by the Hudson Bay and East India Companies.¹⁴ These factories would be established in New Zealand in the form of timber and flax extraction and processing plants, which would initially be set up in the Bay of Islands, Hokianga, and Cloudy Bay, and then in other locations as the number of British settlers arriving in New Zealand to work in these factories increased.¹⁵

Among the advantages of such a scheme, according to Hobson, were that British immigration could be increased, and the British presence in New Zealand better regulated, without causing resentment among Maori or any other power.¹⁶ In addition, all sections of land purchased for the factories would be placed within the influence of British jurisdiction as dependencies of New South Wales. The heads of factories would become Magistrates, and the chief factory would also function as a political agent and consul, through which all communications with the British Government would take place.¹⁷

¹⁴ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, pp. 28-9.

¹⁵ Report from W. Hobson to R. Bourke, 8 August 1837, *GBPP 1837-8*, Vol. 40, pp. 3-5.

¹⁶ *Op. cit.*

¹⁷ *Op. cit.*

Under Hobson's proposed scheme, all British subjects would be required to register themselves and their landed property at the factories; prisons would be constructed within the factories and legally proclaimed within the colony. Finally, Hobson envisaged that a treaty would be concluded with the New Zealand chiefs for the recognition of the factories and the protection of British subjects and property¹⁸ - something that conformed with Bentham's preparedness to apply different standards of utilitarianism to differing communities to suit the parochial interests of one group.¹⁹ Hobson's scheme relied on different types of land tenure for settlers than those used by Maori.²⁰ It also provided for a different justice system to apply to settlers from the one Maori operated.²¹ To meet the expenses which the establishment of this system of factories would incur, Hobson suggested that funds could be obtained from a small fee on the registration of the purchase of land from Maori, and from customs duties. The issue of cost was vital. The requirement to have colonies being as economically self-supporting as possible was a theme strongly promulgated by Bentham. Hobson's proposed scheme would effectively limit the extent of British involvement in New Zealand to the point where the involvement would not incur additional costs to Britain.²²

The benefits that Hobson believed would flow from the factory system included the, '...introducing amongst the natives a system of civil Government which may hereafter be adopted and enlarged upon',²³ the emphasis on Free Trade, the establishment of centralised forms of authority, and the introduction of new types of social structures - imported directly from Britain.²⁴ Such a scheme would shortly lead to the

¹⁸ Op. cit.

¹⁹ D. Lyons, *In the Interest of the Governed: A Study of Bentham's Philosophy of Utility and Law*, Oxford, 1973, p. 26.

²⁰ Report from W. Hobson to R. Bourke, 8 August 1837, *GBPP 1837-8*, Vol. 40, pp. 3-5.

²¹ Op. cit.

²² Op. cit.

²³ Op. cit.

²⁴ Op. cit.

fragmentation of Maori land holdings,²⁵ and re-orient at least some Maori labour from its traditional to quasi-industrial forms. This was the extent to which Hobson envisaged Maori would be involved in the factory system. Over those parts of the country that Hobson conceived would come under British rule, the 'savage', in Mill's words, would have to submit to the government of the colonial power.²⁶ This type of apparently despotic approach was necessary because it was believed that native populations were generally incapable of achieving any improvement or progress without external (European) intervention.²⁷ The general thrust of Hobson's proposals was economic in basis, and displayed an assertive will to develop the perceived economic potential of the economy, rather than a broader attempt to develop the society of the colony as well. Certainly, the idea of fragmented 'mini-states', presided over by magistrates, and based around a single industry, was a scheme which would greatly hinder, if not make impossible, the execution of a doctrine of intentional development over the whole colony. If carried out, Hobson's scheme would promote intentional development in the factory settlements, while leaving the Maori communities to continue with their immanent development. The two strands of development would literally exist side-by-side. This principle of dual paths of development within one colony – based mainly on ethnic divisions – was to be a recurrent one in Hobson's management of the colony after his appointment as Governor in 1840.

The principle behind Hobson's plans for New Zealand rested with the need to offer the protection of British law to Europeans living in the colony, and to establish small, extraction-based industries, such as timber felling and milling, as a way of improving the colony economically. This plan was not, however, intended to divide up New Zealand into two systems of economic and social organisation. Rather than creating a dual

²⁵ see B. F. Hoselitz, *Sociological Aspects of Economic Growth*, Chicago, 1962, p. 115.

²⁶ J. S. Mill, *Civilisation*, p. 119.

²⁷ *Ibid.*, p. 121.

economy, Hobson believed that the establishment of capitalist enterprises would draw the dwindling Maori population into the new economic structure he was recommending be developed in the colony.²⁸ However, Hobson's scheme contained no provision for a specific goal of long-term Maori development. Bentham's goal of utilitarian societies ideologically superseded Hobson's recommendation in as far as Bentham saw countries being unable to progress – economically and socially – unless they were first 'civilised'.²⁹ This was the position of the Colonial Office by mid-1839,³⁰ and would require major modifications to Hobson's scheme to accommodate this ideological stance. By a vague process of assimilation into the economic and then social structures of the colonising power, Hobson's proposed scheme would only partially act as the sort of civilising force that was a prerequisite for progress and improvement in 'uncivilised countries'.³¹

Realising that there were a number of interests that had to be satisfied by his report, Hobson had been careful to lend his support to the Church of England - the Church of the establishment in Britain and at the time at official levels a cautious proponent of an expanded Empire. Hobson carefully broached the issue of the Church of England, and its missionary arm, the CMS, by setting out to diminish the importance or value of the work of other missionary groups operating in New Zealand.³²

The Church Missionary Society have purchased and cultivated large tracts of land, and each individual member has property of his own. In fact, they form the nucleus of a large colony, and as they support the general character of parsons and parsons' wives by a full share of fruitfulness, there is little fear of their numbers diminishing. The one hundred and fourth child was born whilst I was at the Bay of Islands, all the issue of eighteen couple. Nothing so much excites the astonishment

²⁸ Op. cit.

²⁹ J. Bentham, UCLMC, 1818, Box, 127, p. 189

³⁰ Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 37-45.

³¹ J. Bentham, UCLMC, 1818, Box, 164, p. 39.

³² P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 33.

of the New Zealanders. Their women seldom bear more than two or three during their whole life.³³

Hobson displayed a shrewd sense of judgement and anticipation. The influence of the Church of England in London, and the increased emphasis the Church placed on the protection of natives, had to be taken into account, especially as the Church was about to mount one final challenge to what it saw as the confused pattern of British involvement in New Zealand.³⁴

There were also reasons other than the issue of development which influenced the report. It is probable that Hobson sensed an opportunity for furthering his own career, and accordingly developed a proposal which would help in achieving this ambition by meeting the expectations of officials in London. The suggested factory system was nothing novel. It was a tested method which avoided costly military intervention while also securing British sovereignty. Although popular among some Colonial Office officials, the suggestion of a factory system operating in New Zealand caused alarm in the mind of Dandeson Coates, the outspoken secretary of the CMS. Coates feared that this type of involvement would be ‘...an Infringement upon the national Rights of the Natives’, although precisely how this infringement would manifest itself was not specified.³⁵ Coates’ objection highlighted a different view as to how the British ought to deal with Maori. Coates seemed to have favoured an approach which emphasised protecting Maori from the ‘...infringement...’ of the adverse effects of ‘civilisation’.³⁶ British Government policy, however, was clearly tilting towards the view that indigenous peoples in colonies would

³³ Letter from W. Hobson to E. Hobson, 25 August 1837, in G. H. Scholefield, pp. 65-6.

³⁴ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 34.

³⁵ D. Coates, in A. H. McLintock, *Crown Colony Government in New Zealand*, Wellington, 1958, p. 26.

³⁶ D. Coates, *Documents Exhibiting the Views of the Committee of the Church Missionary Society on the New Zealand Question, and Explanatory of the Present State of that Country*, London, 1839.

have to be brought into a 'civilised' state before the colony could progress towards the utilitarian ideal.³⁷

The test of Colonial Office attitudes towards the issue of the type of development that would be applied to New Zealand would occur when officials in London considered Hobson's report. If there was indifference to the specific type of development that Hobson proposed, then this would be a good indication that the Colonial Office had no ideological position of its own on the form of colonial development for New Zealand, apart from the requirement that any intervention be based on fiscally responsible objectives. However, before the Colonial Office finally deliberated on Hobson's report, events in New Zealand, and the possibility of a doctrine of intentional development being applied to the colony, tilted their thinking further away from the idea of a piecemeal development in the colony, in favour of a doctrine which specifically articulated the intention to develop the entire territory and peoples of the colony.

Busby's Incapacity to Direct Development

Bourke's request to Hobson to report on options for the embryonic New Zealand colony indicated growing dissatisfaction with Busby's attempts to administer through negotiation and consent with the local populations.³⁸ The 1837 conflict among Northland Maori extinguished what languishing hopes may have remained that Busby's 1835 Declaration of Independence which he planned would achieve his utopian vision of a Maori Government legislating for the '...preservation of peace and good order...'.³⁹ The Declaration of Independence had been devised by Busby, on his own initiative and without any instructions or permission from his superiors, to create New Zealand as an independent state ruled by a

³⁷ J. Bentham, UCLMC, 1831, Box 149, p. 360.

³⁸ R. Bourke to Glenelg, 9 September 1837, in *GBPP 1837-8*, Vol. 40, p. 2.

³⁹ *Facsimiles of the Declaration of Independence and the Treaty of Waitangi*, Wellington, 1976.

collective of Maori chiefs. However, only 34 chiefs – all from the Nga Puhi tribe of Northland – initially signed the Declaration, and with no means of enforcement and no official sanction,⁴⁰ it soon became redundant, and was not given wide recognition as a binding agreement outside some small areas in Northland. The significance of the Declaration in this context is that it was a device that aimed to give the ‘savages’ full sovereign authority over the colony. Such a scheme fell outside what was acceptable as far as the Colonial Office was concerned. Colonial Office policy by this stage reflected much more the practice of trusteeship over indigenous peoples by the colonial power.

Moreover, Busby’s plan to replace the existing immanent processes of development in the colony with an active intent to direct the type of development that would take place in the future lacked two vital ingredients: a comprehensive philosophy which detailed the possible goals of this development; and the physical capacity to act in a trusteeship role. Busby had no means of compelling Maori to follow his scheme. In practice, all he could realistically do was to hope that Maori would adopt his ideas on the basis that they would see benefits in doing so.

Busby’s own competing recommendations to the Colonial Office issued around the same time as Hobson’s, found less favour than Hobson’s report.⁴¹ It was Hobson’s report which had been commissioned by a Governor, and which was consequently given greater recognition by British officials. Its recommendations broadly coincided with the prevailing need for the British colonies to be as self-funding as possible, and to be governed in a predominantly despotic fashion, with the indigenous population being guided – even coerced – by the introduced law of the coloniser, so that their characteristics would be suitably altered

⁴⁰ The Declaration was not mentioned in Hobson’s 1837 report, nor was it given any recognition in the 1839 instructions from the Colonial Office to the incoming Governor.

⁴¹ A. H. McLintock, *Crown Colony Government in New Zealand*, Wellington, 1958, pp. 26-27.

to allow for the utilitarian goals of the society to be achieved. One of the main deficiencies with Hobson's report was that its goals lacked any ideological foundation. Economic success was an end for Hobson, whereas in the Colonial Office the view was emerging that intervention in New Zealand would require a specific intent to develop the indigenous people in the colony, and improve the society as a whole, rather than just its economic dimension.

The Decline of the Residency

Other circumstances were also conspiring against Busby by this stage. Many CMS missionaries in New Zealand were becoming concerned about the apparent impending anarchy in the colony.⁴² Episodes of fierce inter-tribal warfare in Matamata and Rotorua during 1836, and in Northland during 1837, demonstrated the political impotence of Busby, and dispelled the illusion of the Confederation of Chiefs acting in concord under British guidance. Some missionaries began to question whether it would ever be possible for Maori to rule or even participate in the government of New Zealand and began to demand a more formal British presence in New Zealand.⁴³ Such an outcome would not only act, according to the views of the missionaries, as a further 'civilising' force on the native population, but would also serve to protect Maori from some of the less desirable aspects of European settlement.⁴⁴

As far as the principle of trusteeship is concerned in this context, the missionary approach to Maori was slightly paradoxical in that it required some form of trusteeship to enable Maori to become 'civilised', while at

⁴² Missionary views regarding the Declaration in J. Busby to Colonial Secretary of New South Wales, 16 June 1837, in *GBPP 1840*, Vol. 23, pp. 6-12.

⁴³ D. Coates, *Documents Exhibiting the Views of the Committee of the Church Missionary Society on the New Zealand Question, and Explanatory of the Present State of that Country*, London, 1839, p. 44.

⁴⁴ H. Williams, in L. M. Rogers (ed.), *The Early Journals of Henry Williams*, Christchurch, 1961, p. 409

the same time, there was an emphasis on preventing Maori coming into contact with, and falling victim to, some of the adverse effects of this very same civilisation.

This particular missionary view seems to have been based in part on the belief that the colony was unable to prosper as long as its European population lived without regulation, and while Maori remained ill-adjusted to the requirements that a modern economy was imposing on them. The missionary demands culminated in an 1837 petition to the Crown.⁴⁵ The petition was drawn up by CMS missionaries with the support of the Wesleyans – the two main missionary groups engaged in activity in New Zealand at this time. It was signed not only by missionaries, but by lay people concerned with the instability which seemed to be prevailing and even intensifying in Busby's Residency.⁴⁶ The missionary movement in New Zealand between 1833 and 1845 represented a serious political force. Missionaries often served as the mouthpiece for those Maori who wished to communicate with the Crown, they ran almost all the colony's schools in this period, and served as unofficial representatives of the Crown until the number of public servants had been built up to a sufficient level.⁴⁷ The doctrine of intentional development contained within it a requirement that progress be achieved by the application of order in a society. The obvious absence of order in New Zealand, mainly among the settler population, would have therefore implied a diminished capacity to achieve progress. The growing view among British politicians and officials appeared to be that 'Progress not only coexisted with order, but each was necessary for the other'.⁴⁸

⁴⁵ A. Ward, pp. 27-8.

⁴⁶ Op. cit.

⁴⁷ It was mainly missionaries, for example, who took copies of the Treaty of Waitangi around the country to acquire Maori signatures, and it was two missionaries, Thomas Kendall and John Butler, who were appointed the first Justices of the Peace in New Zealand in the 1820s.

⁴⁸ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, pp. 27-8, 40.

Although the situation in New Zealand was far from crisis point, the impression conveyed to the Colonial Office was bleak, and produced mounting concern.⁴⁹ However, immediate reaction from the Colonial Office was not forthcoming, and neither was it entirely necessary. There were other, more pressing concerns within the Empire, and the delays, often of months, in communicating decisions meant that a 'crisis' could well have passed by the time a decision could be implemented. It was partly for this reason that a more long-term, strategic approach to the New Zealand issue was beginning to be preferred by the Colonial Office.⁵⁰

As Bourke had indicated to Glenelg, Busby's suggestions on New Zealand's future were not as close to the expectations of the Colonial Office as he believed Hobson's report was, and from this point on the future of Busby as an official representative of the Crown in New Zealand seems to have been sealed. However, while Busby was out of office with the installation of Hobson as Lieutenant Governor in January 1840, the links Busby had established among both Maori and Europeans in New Zealand were something which Hobson was to initially depend on quite heavily.⁵¹

Despite the failure of Busby's 1835 Declaration of Independence to achieve any form of lasting self-government for the colony, he had partially managed to make up for his official impotence by attempting to foster good relations among many of the settlers and Maori with whom he was in contact.⁵² From the viewpoint of an outsider, Busby's circle of cohorts in this pseudo state must have seemed a bit eccentric: there were the obliging missionaries who were passionately driven by motives

⁴⁹ Report of the House of Lords Select Committee on the Present State of the Islands of New Zealand, 8 August 1838, in *GBPP 1837-40*, Vol. 21, p. iii; Normanby to W. Hobson, 14 and 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 37-45.

⁵⁰ Op. cit

⁵¹ F. Mathew, in *The Journals of Felton Mathew*, J. Rutherford (ed.), Dunedin, 1940, p. 24; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 50.

⁵² A. H. McLintock, *Crown Colony Government in New Zealand*, Wellington, 1958, p. 26.

ranging from the conversion of ‘heathens’ to a desire for political power, flagrant profiteering through land purchases, and in some cases arms-dealing,⁵³ there were a handful of settlers who had not succumbed to the temptations that lawless communities offer, and who were prepared to lend their support to the Resident; and there was an ‘unofficial’ Resident,⁵⁴ Thomas McDonnell, who was appointed to assist Busby in his work, but who soon lost favour with many Maori and settlers alike through his attempts to restrict the sale of alcohol in Northland, and who was mistakenly perceived by Busby as a threat rather than an assistant.⁵⁵

Busby himself had been anxious about the possible risk the French posed to New Zealand, although his concern had waned considerably from the dangerous obsession it had been in 1834 and 1835.⁵⁶ The French ‘threat’, which amounted to nothing more than a deranged Frenchman, Baron De Thierry, proclaiming sovereignty, in absentia, over part of Hokianga, was further ‘proof’ for Busby and others in the colony of the intentions of France. In 1831, the missionary William Yate had organised a petition to William IV, signed by thirteen major Northland Maori chiefs, which requested British protection against possible foreign intervention,⁵⁷ and assistance with the establishment of what Yate and other missionaries desired: a law-governed community in New Zealand. Although ostensibly expressing the desires of the chiefs who lent their signatures to the document, it is more likely that it was a manifestation strictly of missionary sentiment, in which a greater British presence equated with improved public order and community morality.⁵⁸

⁵³ Thomas Kendall, for example, had become involved in arms sales.

⁵⁴ J. O. Ross, ‘Busby and the Declaration of Independence’, in *New Zealand Journal of History*, Vol. 14, 1980, pp. 86-8.

⁵⁵ K. Sinclair, *A History of New Zealand*, p. 54; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 50.

⁵⁶ J. O. Ross, pp. 85-7

⁵⁷ P. Adams, pp. 75-7.

⁵⁸ Petition of Yate, et. al. to King William, 16 November 1831, in *GBPP 1840*, Vol. 33, p. 7; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, pp. 50-1.

Busby's attempt, through the Declaration of Independence, to establish a grand confederation of chiefs which would govern the country autonomously, and his promise to grant this confederation 'all sovereign power and authority', went well beyond the mandate of a Resident in Busby's circumstances, and failed to accommodate the political requirements of the country's growing European population. Whilst Busby was not necessarily detached from the reality of New Zealand's domestic political shortcomings, he was evidently out of touch with the direction in which British policy on New Zealand was heading. He believed – contrary to British practice in most of its colonies – that there was an absolute necessity to include the indigenous people in any future government that might be formed in the colony.⁵⁹

...any affront to rule the people by exercise of a power distinct from that which might be expressed through their natural leaders, would make it necessary to overawe them by an army capable of crushing all resistance that the whole country might be able to offer.⁶⁰

This went against a tide of emerging Colonial Office policy at the time, in which Maori would be despotically directed by the colonial power to a prescribed model of development.

The product of Busby's stream of thought was an idealistic document with few mechanisms attached to ensure its success. Without any support from the Colonial Office, the Declaration of Independence, for all its high ideals, was never likely to conquer the complexities of government in this stage of the country's history⁶¹ or meet the doctrines of intentional development through the device of a trusteeship administration which was about to become the favoured model for British involvement in New Zealand.

⁵⁹ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 51.

⁶⁰ J. Busby, in A. Ward, p. 26.

⁶¹ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 51.

Through the Declaration, Busby was endeavouring to add a new layer of government to the traditional Maori institutions of rule, and, in the process, alter the kinship basis of tribal authority by introducing a pan-tribal structure.⁶² Had it succeeded, the fruits of the Declaration would have been an inversion of British trusteeship. Maori would have assumed a trusteeship role over the settler community – a situation that would have been untenable for the Colonial Office because it would have necessarily precluded any prospect of Britain actively pursuing its doctrine of intentional development for the colony. Such would have been the extent of preclusion that British law would not even be able to be applied to its own subjects in the colony.⁶³

The Declaration as a Forerunner to the Treaty of Waitangi

In spite of Busby's many failures, there were some positive repercussions from his period as Resident which were to work in Hobson's favour. Most of these stemmed, ironically, from the Declaration of Independence. The Declaration established a precedent in New Zealand for a written agreement between the two distinct cultures, representing two very diverse legal systems, and it also facilitated liaison between Maori and British on what can perhaps best be described as an official level. Indeed, even the failure of the Declaration of Independence exposed the need for a more comprehensive document which would clarify the position of the British in the future government of the country, and which would seek to gain the mandate of as much of Maoridom as was practical through a mutual process of ratification. The issue of a wider mandate was particularly important because if only selective groups of Maori became party to such an agreement, as had been the case with the Declaration of Independence, then there was the potential for division within the colony, which would hamper Hobson's intention to assert British sovereignty over the entire

⁶² See S. N. Eisenstadt, *Modernisation: Protest and Change*, New Jersey, 1966, p. 109.

⁶³ See Declaration of Independence, 1835, in Appendix One of this thesis.

country. In the three years following the conclusion of the Declaration of Independence, inter-tribal warfare in Northland exposed the hollowness of the claims to unity that the Declaration promised in the form of a confederation of Maori tribes.⁶⁴

Busby became disillusioned about the immediate prospects for the Declaration, and having carefully assessed the possible future of the colony, he wrote down his thoughts in a letter to the Colonial Secretary of New South Wales in June 1837, indicating the need for some form of military presence in the colony to provide the sort of stability that the Declaration had failed to achieve:

What is wanted is a paramount authority supported by a force adequate to secure the efficiency of its measures. Without the establishment of such an authority by some civilised state, I cannot, after a full consideration of every circumstance connected with the actual condition of this people, see the least prospect of any permanent peace being established amongst them whilst there remains a stronger man to murder his weaker neighbour.⁶⁵

Sadly for Busby, however, the Declaration of Independence became his only tangible and lasting achievement prior to the arrival of Hobson, and it grew to become a personal beacon as his power and influence dimmed in the late 1830s. Even by 1839, when it was evident that a Lieutenant Governor was to be appointed to New Zealand, thereby making the position of Resident redundant,⁶⁶ Busby persisted in clinging to the wreckage of the Declaration of Independence, and was still doggedly

⁶⁴ See Appendix One in this thesis; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, pp. 51-2.

⁶⁵ J. Busby to Colonial Secretary of New South Wales, 16 June 1837, in J. R. Elder, (ed.), *The Letters and Journals of Samuel Marsden, 1765 - 1838*, Otago, 1932, pp. 511-2.

⁶⁶ Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 37-45.

gathering signatures for the document four years after the first chiefs had put their names to it. Yet by 1839, a total of only 52 chiefs had signed it.⁶⁷

Busby had also discovered that missionary support could be a mixed blessing when it came to exercising political control. During the inter-tribal fighting of 1836-7, some missionaries had directly challenged the Declaration of Independence, questioning whether Maori would ever be able to rule, or even participate in the government of New Zealand.⁶⁸ The head of the CMS, Dandeson Coates, proposed a greater degree of formal British involvement in the colony.⁶⁹

Busby had allowed his lofty idealism to prevail over the practical requirements of his posting, and had acted outside the scope of Colonial Office policies. He could be a furious advocate of his ill-conceived ideas, and, as in the case of De Thierry and the supposed French threat, displayed a serious lack of judgement. As Busby's administration lurched inevitably further into confusion and ineffectiveness, the impending appointment of a Lieutenant Governor, with a fresh direction from the Colonial Office, was a vital next step if the country was to be successfully integrated into the British Empire.⁷⁰

Wakefield's Challenge to the British Government

There were other events that brought to a head the need by the Colonial Office to make some form of decision on the future of New Zealand's

⁶⁷ C. Orange, *The Treaty of Waitangi*, Wellington, 1987, p. 21; this is compared to over 500 chiefs who signed the Treaty of Waitangi; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, pp. 53-4.

⁶⁸ J. Busby to Colonial Secretary of New South Wales, 16 June 1837, in *GBPP 1840*, Vol. 33, pp. 12-18.

⁶⁹ D. Coates, *Documents Exhibiting the Views of the Committee on the Church Missionary Society on the New Zealand Question, and Explanatory of the Present State of the Country*, p. 44; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 54.

⁷⁰ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 54.

status within the Empire. Chief among these were the plans of action being concocted by the New Zealand Company (previously operating under the name of the New Zealand Association).⁷¹ The New Zealand Company was a privately-owned land trading company acting with no official British Government sanction. It was founded on the practice of purchasing land directly from Maori, and the on-selling of that land to potential settlers for a substantial profit as part of a broader scheme of planned colonisation. The system of transplanting the British class structure to the colony in its pre-Industrial revolution form had been a central component in the early period of the Company's activities.⁷² Edward Gibbon Wakefield, the founder and chief ideologue of the New Zealand Company, spent years devising and fine-tuning his concept of systematic colonisation, based on an array of pseudo-scientific and mathematical concepts. But despite his most earnest intentions, Wakefield was unable to remain loyal to his principles that first guided him and soon succumbed to speculative profit-making from land purchases.⁷³ It was the craving for profits that epitomised the Company's operations in New Zealand.

In England, Wakefield's vision of colonisation had blazed brightly in the eyes of the investing public, but as his plans were implemented on the other side of the globe, this vision sank below the horizon. The alleged virtues of his scheme were doubtful, and eventually became the source of much indignation, both from Maori and European.⁷⁴

In relation to New Zealand, Wakefield acted in general disregard of the intentions of Busby, and even of those of the Colonial Office. One contemporary description concluded that Wakefield's '...love of enterprise and adventure seems all along to have been his ruling passion....and the

⁷¹ Ibid., p. 30.

⁷² K. Sinclair, *A History of New Zealand*, p. 66.

⁷³ op. cit.

⁷⁴ H. Williams, in H. Carleton, pp. 316-7; W. Hobson to Russell, 25 May 1840, in *GBPP 1841*, Vol. 17, p. 16; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 31.

accounts which he heard [of particular colonies]...fired his ambition and excited him to attempt to win the prize'.⁷⁵ In May 1837, the then New Zealand Association sought legislative approval from the British Parliament to conclude some sort of agreement with the Maori for the purposes of mass-colonisation of New Zealand.⁷⁶ The New Zealand Company failed to obtain a Royal Charter to colonise New Zealand which it had so keenly sought, and took the audacious decision to proceed with their plans despite this setback.⁷⁷

Wakefield's plans for New Zealand exposed a gulf within the Colonial Office between those who were cautious or even apprehensive about committing Britain to further involvement in colonies,⁷⁸ and those who sought additional intervention as a preferred option. For the interventionists, the enormous tracts of land that the New Zealand Company claimed to have purchased represented a risk in that it potentially jeopardised the capacity for the British Government to later exercise full trusteeship over the colony if much of the area of the colony was under the de facto jurisdiction of the New Zealand Company. Lord Glenelg, the Secretary of State for Colonies, and a former vice-president of the CMS, displayed a reluctance for increased British involvement in New Zealand, despite the invasive activities of the New Zealand Company:⁷⁹

...the jealousy of foreign Powers might be excited by the extension of British Colonies, and that we had Colonies enough. They were very expensive to govern and manage, and not of sufficient value to make it worth while to increase their number.⁸⁰

⁷⁵ *Liverpool Mercury*, 2 June 1826, microfilm 5 July 1821 to 12 September 1826, location 57, newsplan category 4 and 5.

⁷⁶ P. Adams, pp. 94-7.

⁷⁷ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 31.

⁷⁸ H. E. Egerton, p. 292.

⁷⁹ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 31.

⁸⁰ Glenelg, in H. E. Egerton, p. 292.

Glenelg saw the nature of British intervention in New Zealand, in general terms, as being unfavourable because of the avaricious intentions of most of the Europeans who wished to be involved in the colony. Even with this stated reluctance to facilitate Britain to be committed to further colonial expansion, Glenelg was unable to alter the motives of private settlers, missionaries, and land trading companies which were driving British intervention in New Zealand:

They are the same motives as have, in all ages, compelled the strong to encroach on the weak, and the powerful and unprincipled to unwrest by force or fraud, from the comparatively feeble and defenceless, wealth or property or dominion, richer pastures, more numerous herds, and a wider range of territory.⁸¹

This analysis by Glenelg, of the need to somehow ‘protect’ the colonies from European civilisation, was a view that was losing ground in the Colonial Office. The moral issues connected with the development of colonies had been tackled by Bentham, and he had given a philosophical justification to fact that, in the case of many colonies, the benefits of utilitarianism could be extended through intervention.⁸² Furthermore, active intentional development was soon to be adopted by the Colonial Office as an ideological alternative to Glenelg’s position of restraint and reluctance when it came to colonial involvement, at least in New Zealand’s case. The challenges to potential British rule posed by the New Zealand Company only heightened the belief that in order for any improvement to take place in the colony, the appropriate conditions needed to be created, and the New Zealand Company was hardly the body to achieve this.

⁸¹ Glenelg to Napier, 28 November 1837, in W. P. Morrell, *British Colonial Policy in the Age of Peel and Russell*, Oxford, 1930, p. 24.

⁸² J. Bentham, *An Introduction to the Principles of Morals and Legislation*, pp. 34-5.

Mounting Official Opposition to Wakefield

Ideologically, Edward Gibbon Wakefield, the head of the New Zealand Company, had taken the lead in promoting the settlement of hundreds (and later thousands) of British citizens in New Zealand. Wakefield had also espoused the theory, in numerous publications,⁸³ of a systematic colonisation of New Zealand. Furthermore, he believed that only certain groups of people should be allowed to settle in the new colony. These groups would replicate the sort of class system that Wakefield believed had existed in England prior to the onset of the industrial revolution. Far from conceiving an egalitarian society for New Zealand, Wakefield expressed the importance, for example, for agricultural labourers in New Zealand to be landless, as they had been in England for centuries. Wakefield's reactionary desire to return to a glorious, albeit fictitious, past, was transparent: 'In picturing the future colonial community, he looked back to a legendary past, to the squire surrounded by his contented, cap-tipping yokels, in the good old days before industrialism and new ideas had upset rural harmony'.⁸⁴ Such a utopian image was certainly attractive to potential investors, whom Wakefield was seeking to provide the financial support for his schemes. This plan required the displacement of traditional Maori social structures anywhere where they had the potential to collide with the imported British structure Wakefield believed would take root in the country.

Wakefield's theories were at odds with the approach to societies that Bentham had forwarded. Far from recreating the old systems of Europe in the colonies, Bentham was forward-looking. His prescription was for a society in which the 'poisoned weapons'⁸⁵ of the established order were removed, and in which governments would no longer conceal from people

⁸³ E. G. Wakefield, *A Statement of the Objects of the New Zealand Association*, London, 1837; *A Letter from Sydney, the Principal Town of Australasia*, London, 1829; *A View of the Art of Colonisation*, London, 1849.

⁸⁴ K. Sinclair, *A History of New Zealand*, p. 61; P. Moon, *Hobson: Governor of New Zealand, 1840–1842*, p. 42.

⁸⁵ J. Bentham, *Bentham's Book of Fallacies*, p. 486.

their real interests and make them submissive to tyranny and oppressive rule by the few.⁸⁶

The major distinction between Wakefield's ambitions and the British Government's plan for intentional development exercised through state trusteeship was that Wakefield never prescribed a clear role for state-directed Maori development in his vision for New Zealand society. Therefore, just as with Busby's lack of authority over Maori, Wakefield's dismissal of Maori in his schemes for the colonisation of New Zealand had the effect of allowing the continuation of the processes of immanent development in Maori society.

How far was Hobson influenced by Wakefield's vision prior to 1840? First, although it is only possible to speculate on Hobson's degree of familiarity with the ideas of Wakefield, there is circumstantial evidence that Hobson was acquainted with at least the essence of Wakefield's views. When Wakefield visited Sydney in 1839, his stated intention to purchase large tracts of land in New Zealand was one of the factors contributing to the comparative sense of urgency with which the Colonial Office considered the cession of New Zealand's sovereignty, and Hobson was in Sydney mixing in official circles at the exact same time Wakefield's message would have rippled through the settlement.⁸⁷

More importantly though, Wakefield's theories were undoubtedly seductive to many people as an avenue of potential investment, and possibly to some officials within the Colonial Office as a means of overcoming the costs and responsibilities of colonising a country at the expense of the Crown. Wakefield had made submissions to the Colonial Office on his plans for the colonisation of New Zealand, and even though

⁸⁶ Op. cit.

⁸⁷ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 42.

these had found little favour there,⁸⁸ his ideas of settling in New Zealand began to spread among the public, although his plan to recreate a particular class structure in the colony gradually slipped from view as the profit motive loomed ever larger in his schemes.⁸⁹

One option open to the Colonial Office, which was deceptively inviting, was for the British Government to formally approve the efforts of the New Zealand Company through issuing a Royal Charter endorsing its activities. This would have achieved British colonisation of New Zealand, in a comparatively orderly manner, without incurring any expense for the British Government. But Stephen's strongly evangelical Protestantism proved to be a bulwark against the activities of the New Zealand Association.⁹⁰ One of Stephen's objections to the New Zealand Association was the strong Catholic influence in its organisation.⁹¹ Denominationally, this was objectionable to Stephen, and politically, he perceived Catholicism with the religion of Britain's enemies, particularly France. Moreover, the CMS missionaries already present in New Zealand were generally cooperative with the British Government, and the intervention of a seemingly Catholic organisation in the colony could possibly jeopardise the Protestant missionary successes in the colony:

You can see from looking over the list of the proposed directors [of the New Zealand Association], that the leading members are Roman Catholics. If this business is committed to them, New Zealand will infallibly become a Roman Catholic country. I am convinced that this would give the most severe offence to all the religious bodies that have established Missions there. I cannot withhold expressing my opinion that the objection would be perfectly just and well-founded. As long as we have the choice of establishing

⁸⁸ P. Knaplund, *James Stephen and the British Colonial System, 1813 – 1847*, New York, 1953, p. 20; P. Moon, *FitzRoy: Governor in Crisis, 1843 – 1845*, Auckland, 2000, p. 63; J. Stephen, in J. C. Beaglehole, 'Captain Hobson and the New Zealand Company: A Study in Colonial Administration', in *Smith College Studies in History*, Vol. 13, Nos. 1-3, October 1927 - April 1928, Massachusetts, 1928, p. 25.

⁸⁹ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 42.

⁹⁰ *Ibid.*, pp. 42-3.

⁹¹ P. Knaplund, p. 20; P. Moon, *FitzRoy: Governor in Crisis, 1843 – 1845*, Auckland, 2000, p. 63.

Popery or Protestantism in any part of the world I cannot understand how anyone, not a Roman Catholic, would hesitate what that choice should be.⁹²

Stephen's firm opposition to Wakefield's entire operation sat comfortably alongside the sorts of objections to this form of planned colonisation that were emerging as part of official British policy. In particular, the Company's lack of what the Colonial Office deemed as appropriate ends deprived Wakefield's schemes of the chance of receiving official endorsement, and therefore put the onus back on the Colonial Office to devise an alternative. Neither did the New Zealand Company schemes for land dealing and privately organised settlement concur with contemporary principles of utility insofar as the settlement scheme deliberately aimed to replicate the non-utilitarian British class structure which Bentham and others had fought to be modified.⁹³

In May 1839, Henry Labouchere, Stephen's assistant in the Colonial Office, wrote to a senior New Zealand Company official, laying out the position of the British Government and cloaking objections to the New Zealand Company on constitutional rather than denominational grounds. Labouchere's rationale was the New Zealand Company could emerge in the colony as a *de facto* government, separate from and possibly in conflict with the official British administration:

Lord Normanby now, for the first time, learns that a body of Her Majesty's subjects are about to proceed to New Zealand to purchase large tracts of land there, and to establish a system of Government independent of the authority of the British Crown. It is impossible that his Lordship should do any act which could be construed into a direct or indirect sanction of such a proceeding.⁹⁴

⁹² J. Stephen, in J. C. Beaglehole, 'Captain Hobson and the New Zealand Company: A Study in Colonial Administration', p. 25.

⁹³ J. Bentham, UCLMC, 1770s, Box 149, p. 320.

⁹⁴ H. Labouchere to W. Hutt, 1 May 1839, in *GBPP 1840*, Vol. 33, pp. 7-8.

Normanby and his subordinates had now strewn in front of the New Zealand Company a series of obstacles, designed at least to forestall the uncontrolled actions of the New Zealand Company. However, in an age of pseudo sciences and the growing faith in brands of social Darwinism, Wakefield's planned and apparently 'scientific' formula for colonisation appeared to make good sense, at least to some sectors of the British investing public. The key phrase in Labouchere's letter to the Company was '...independent of the authority of the British Crown'.⁹⁵ Finally, the official had given a strong indication of the sort of development that the British Government was formulating for New Zealand. It would be intentional rather than immanent in form, and the exercise of (trusteeship) power would be carried out by the state. This was one of the earliest distinct foretastes from the Colonial Office of Britain's doctrine of intentional development for New Zealand.⁹⁶

Missionary Influence and the Progression Towards a Doctrine of Development

The CMS had repeatedly stated its opposition to large-scale settlement in New Zealand as the best means of 'protecting' Maori from the dangers of European civilisation. Coates argued that the British, in their '...advanced State of Civilisation...'⁹⁷, should be aware of the numerous adverse consequences of British colonisation, and directly rejected the proposal of a treaty between Maori and the Crown because he believed Maori would be taken advantage of in the process:

I hold it utterly impossible that a Set of Barbarians, like the Natives of New Zealand, can by any explanation, however honestly given, be made to comprehend the ultimate

⁹⁵ Op. cit.

⁹⁶ Op. cit. P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 44.

⁹⁷ Evidence of D. Coates before the House of Commons Committee on New Zealand, 14 May 1838, in W. D. McIntyre and W. J. Gardiner (eds.), *Speeches and Documents on New Zealand History*, Oxford, 1971, p. 5.

Consequences of the Transgression, and that therefore such an arrangement is essentially inequitable, and such as the British Government could not with Propriety make themselves party to....⁹⁸

This sort of rhetoric later resonated in Mill's writings. Mill's view reflected the shifts that were taking place in the Colonial Office, in which the removal of the influence of '...savages and barbarians...' on a civilisation was a requirement for the ongoing advance of that civilisation.⁹⁹ Therefore, there was no room for allowing the country to continue in its barbarian state as long as there was a growing British population living there. Similarly, Bentham argued that non-civilised, 'savage' communities were a barrier to achieving the utilitarian ideal, and therefore, such a community would have to actively be brought into a 'civilised' state, rather than being left to languish, alone, in their barbarity.¹⁰⁰ The ideological stance of the CMS on the need for the intentional development of Maori coincided with the position that the Colonial Office was signalling it was moving towards with respect to dealing with Maori in the colony.¹⁰¹

Yet, despite the doubts expressed by Glenelg towards any sort of intervention in New Zealand, the threat of Wakefield's potential plundering of the colony's land, combined with the panicked expressions of the missionaries and some settlers within New Zealand of imminent anarchy, forced the Colonial Office of a need to act decisively in favour of annexation¹⁰² – a decision in which Hobson was fortuitously positioned to take advantage of. In a letter to his wife in 1837, Hobson displayed the extent to which he personally favoured intervention in language which

⁹⁸ op. cit.

⁹⁹ J. S. Mill, *Civilisation*, p. 119.

¹⁰⁰ J. Bentham, UCLMC, 1818, Box, 164, p. 39.

¹⁰¹ H. Labouchere to W. Hutt, 1 May 1839, in *GBPP 1840*, Vol. 33, pp. 7-8.

¹⁰² It should be added, though, that the New Zealand Company eventually decided to pursue an independent line in relation to its activities only after the Colonial Office finally declined the New Zealand Company's initial proposal which was not to purchase land directly from the natives, but only through an official representing the state.

barely concealed his enthusiasm for the annexation of New Zealand,¹⁰³ arguing that great material benefits could be derived from the colony. The prospect of the impending demise of the country's Maori population only gave further encouragement to Hobson:

New Zealand is situated with respect to our possessions in New Holland in a position that affords it the power of, in the hands of a civilised people, exerting great influence, either beneficial or prejudicial, to these colonies. As the aboriginal race was rapidly diminishing in numbers, the day is not far distant when that country will be wholly occupied by white people.¹⁰⁴

By 1837, there had emerged three slightly contrasting British perspectives on plans to develop New Zealand. Hobson had proposed a scheme in which immanent and intentional development would coexist in the colony until such time as Maori were absorbed into the plans for development that he envisaged for the settler population. The second perspective was that of the Colonial Office, under the philosophical persuasion of contemporary ideas about development, which increasingly identified only Maori as the priority group requiring development. The Colonial Office was on the verge of formulating a specific doctrine of development for New Zealand with this intent to develop Maori at the forefront of its policies. The third perspective was a contradictory one offered by the CMS. On the one hand, the CMS demanded that Maori be 'protected' from the adverse effects of colonisation, but on the other had, they were by that stage already actively engaged in converting Maori from their existing state of 'barbarism', and endeavouring to adjust many Maori hapu to European ways of living.

However, despite these seemingly irreconcilable positions, the common seam running through all of them was an intent for the British to exercise

¹⁰³ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 32.

¹⁰⁴ Letter from W. Hobson to E. Hobson, 25 August 1837, in G. H. Scholefield, *Captain William Hobson: First Governor of New Zealand*, Oxford, 1934, p. 65.

trusteeship responsibilities over Maori, with the aim of achieving improvement of the race. The two remaining issues that were still outstanding were how to formally annex the colony, and what precisely would be the extent and character of the trusteeship exercised by the British following annexation.

Annexation

For Britain, the momentum of Empire-building flowed and ebbed during the nineteenth century. Partly as a consequence of this, various justifications were forwarded for intervention in prospective colonies in order to appease the critics of British colonialism. The British Foreign Secretary Lord Palmerston's letter to Hobson in August 1839 argued that the need for order, based on the enforcement of British law, and to protect British subjects, was sufficient in itself to justify more formal levels of intervention in New Zealand.¹⁰⁵ This issue of the perceived need to uphold order became the predominant justification of British intervention in New Zealand in the year prior to 1840. The need for the rule of an effective government – one which would be responsive to the people in a society – had long been argued by Bentham.¹⁰⁶ As New Zealand existed in a vacuum of European laws, a form of government would be required to assist the colony move towards a stationary state.¹⁰⁷

To accelerate the process of formal British involvement in New Zealand, and the ensuing intentional development, Palmerston agreed to the appointment of Hobson as Consul to the colony. Hobson would thereafter assume the role of Lieutenant-Governor only over those territories, the sovereignty of which he managed to acquire in the name of the Crown. The issue of the colony's possible economic resources, which Hobson had

¹⁰⁵ Palmerston, to W. Hobson, 13 August 1839, in T. Buick, *The Treaty of Waitangi, or, How New Zealand Became a British Colony*, Wellington, 1936, p. 1.

¹⁰⁶ J. Bentham, *Of Laws in General*, pp. 288-9.

¹⁰⁷ J. S. Mill, *Democracy and Government*, p. 182.

emphasised to the Colonial Office in his 1837 report,¹⁰⁸ was not even mentioned in passing in Palmerston's decision to formally commit Britain to New Zealand. The commercial benefits of New Zealand, such as Hobson had described them, were deemed less important by 1839 as the ideological motives for intervention gained ascendancy in the Colonial Office. Trusteeship power, in order to create the conditions in which development might occur, was emerging as the principal tenet of Britain's plans for the annexation of New Zealand.

In March 1839, James Stephen stated his Department's revised position on New Zealand.¹⁰⁹ Stephen's minute acknowledged the inevitability of intervention and the need to protect Maori from the adverse consequences of colonisation. As a concession to the demands of the CMS, Stephen also argue for the importance of eventually providing settlers with some form of self-government – the sort of recommendation which Bentham had supported as a means of bypassing the excessive bureaucracy which characterised the long term direct rule of colonies by the Colonial Office.¹¹⁰ Significantly, though, there was no suggestion made for complete annexation, although this need not necessarily have been specified. Stephen simply recommended a system which would achieve the same result, and added as a hasty afterthought that he was not personally responsible for such decisions being ultimately made by his political masters.¹¹¹ Stephen suggested the establishment of a governmental structure in New Zealand which would enable the effective rule of the settler community in the colony, and which would also serve as a precaution against inter-ethnic conflict:

....Governor, Council, and Assembly. Notwithstanding all that is said of the dangers of the system of Colonial Polity, all my information compels me to think that it is the best possible

¹⁰⁸ W. Hobson to R. Bourke, 8 August 1837, in *GBPP 1837-8*, Vol. 40, pp. 3-5.

¹⁰⁹ J. Stephen to H. Labouchere, 15 March 1839, in W. D. McIntyre and W. J. Gardiner (eds.), pp. 8-10; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 37

¹¹⁰ L. Woodward, pp. 368-9.

¹¹¹ J. Stephen to H. Labouchere, 15 March 1839, in W. D. McIntyre and W. J. Gardiner (eds.), pp. 8-10.

scheme for any Colonial Society of the Anglo Saxon Race who was exempt from the disaster of Caste. It is only because in New Zealand that calamity would prevail between the European Colonist and the Aboriginal that I should hesitate in at once convening an assembly, if I had any voice in such a decision.¹¹²

This sort of colonial despotism was endorsed in development philosophies of the period on the basis that to achieve improvements in colonies during a transitional phase – in areas such as education, the economy, and society in general -- despotic rule by an incorruptible imperial cadre was required.¹¹³

Stephen's minute also dismissed the concept of a confederation of Maori chiefs presiding over the country and being involved in passing legislation. This was a transparent rejection of Busby's Declaration of Independence which provided exactly for such a system. It suggested that in the eyes of the Colonial Office, Busby had drifted away from the developing British Government policy on New Zealand, and was now an irrelevant individual in Britain's plans for New Zealand.¹¹⁴ If New Zealand was to become a full member of the Empire, it would be under the guidance of British officials, and not the representatives of tribes in the country. The focus of British policy was sharpening even further now. The intent to develop the state almost necessarily excluded Maori from a role in the planned administration for New Zealand. The message in Stephen's minute in relation to Maori was clear: Maori society had demonstrated during centuries of immanent development that it lacked the capacity to formulate the conditions for development, and so had to be guided, as Cowan and Shenton have described, '...from societies in which such conditions were already extant'.¹¹⁵

¹¹² Op. cit.

¹¹³ J. S. Mill, *Democracy and Government*, pp. 182-3; *Principles of Political Economy*, pp. 752-7.

¹¹⁴ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 38.

¹¹⁵ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 41.

There were other indications around this time that British Government policy was moving towards a doctrine of intentional development for New Zealand. Normanby's letter to the British Attorney General, and a similar letter to the British Solicitor General, written as early as May 1839, show that a gradual move in policy was taking place - significantly with specific mention of a planned cession of sovereignty.¹¹⁶

Circumstances have recently occurred which impose on Her Majesty's Government the necessity of establishing some system for governing the numerous body of British subjects who have taken up their abode in the New Zealand Islands....It is proposed to obtain from the chiefs of New Zealand the cession in sovereignty to the British Crown of the territories which have been, or which may be, acquired by Her Majesty's subjects by proprietary titles, derived from the grants of different chiefs.¹¹⁷

This is the first direct reference to an intention by the British Government to conclude some sort of agreement with the Maori in order to secure British sovereignty of New Zealand.¹¹⁸ The consent of those about to be ruled by the British was a theme which Mill expanded on, insisting that wherever governments were established, their limits would have to be prescribed by popular consent.¹¹⁹ The importance of consent from the people to be governed was seen as the only way that a government could assist its people move towards a utilitarian state.¹²⁰ However, neither of these theorists implied that a democratic form of government was necessary, or even desirable, to obtain this consent. Mill, in particular, favoured non-democratic forms of rule as being more effective in bringing about the envisaged development.¹²¹ The priority was not the specific form of government, but whether the government would be able to

¹¹⁶ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 38.

¹¹⁷ Normanby to Attorney General, 30 May 1839, in R. McNab (ed.), *Historical Records of New Zealand*, Vol. 1, Wellington, 1908, pp. 739-40.

¹¹⁸ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 38.

¹¹⁹ J. S. Mill, *Autobiography*, pp. 206-7.

¹²⁰ J. Bentham, *An Introduction to the Principles of Morals and Legislation*, pp. 34-5.

¹²¹ J. S. Mill, *Democracy and Government*, pp. 181-3.

construct a positive alternative to the perceived state of disorder in the colony, relying on an active intent to develop.

However, when Britain would finally annex New Zealand was unspecified in early 1839. The relative lack of urgency in Normanby's letter to the Attorney-General in May that year was a mixture of a residual reluctance to become involved, matched perhaps by an unspoken acknowledgement of the inevitability of the processes of formal involvement by the British in New Zealand's affairs.¹²²

Even if the will to become involved in New Zealand at a more formal level was not overtly strong in early 1839, the inevitability that increased settlement would sooner or later occur imposed an obligation on the British Government to protect its citizens living in the colony. As the settler population in New Zealand grew, so too did the burden of providing some sort of administrative support for the British government of the colony. Indeed, the protection of British subjects abroad had become an entrenched principle within the Colonial Office,¹²³ and also possibly in part because of the pretext it offered for involvement in colonies and potential colonies.¹²⁴

British subjects of all classes, engaged in innocent pursuits, are entitled abroad as well as at home, to the protection of their Gov[ernmen]t. Where they have been treated with injustice, they have a right to expect that redress should be demanded in strong but dignified language, followed if necessary by corresponding measures.¹²⁵

Added to this mixture of motivations prompting further official involvement was a '...conscious cultivation of [British] imperialism in

¹²² P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 38.

¹²³ Bentham had argued that all British subjects should be free to associate under the protection of British law, see J. Bentham, *Leading Principles of the Constitutional Code*, p. 271.

¹²⁴ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 39.

¹²⁵ Grandville to Russell, 12 January 1852, P.R.O. 30/29/18 Part I, in K. Bourke, p. 310-12.

practice and ideology'.¹²⁶ Even if, as had been the case with Glenelg, there was an intention to reign in British imperial activity in practice, circumstances generally, and the emergence of a more assertive Colonial Office policy with respect to colonies in particular, carved out an interventionist path which British Governments seemed obliged to follow.¹²⁷ The doctrine of intentional development was not merely an option for New Zealand, it had now taken root as the basis of British policy on the colony.

From an Idea of Development to a Doctrine of Intentional Development

Underneath the fading facade of the official policy of non-intervention, or minimum intervention,¹²⁸ had been a continual series of reactions to events and circumstances in the colonies of the Empire which produced decisions that unavoidably gave the impression of a more forceful policy than was actually the case.¹²⁹ In most instances, the Colonial Office devised solutions for problems in its colonies, in regions such as the Pacific, in a very ad hoc manner. There was very little in the way of a strategic policy direction for these colonies in the 1820s and 1830s.¹³⁰

Such an approach to policy-making left plenty of scope for individual officials in the colonies themselves to become instrumental in moulding Colonial Office policy. This is not to say, though, that there was absolutely no ideological basis for Colonial Office decisions. The principle of intentional development was indisputably developing as a guiding theme in the formation of an overall policy on New Zealand, and

¹²⁶ E. J. Feuchtwanger, *Democracy and Empire: Britain 1865 - 1914*, London, 1985, pp. 129-30.

¹²⁷ P. Moon, *Hobson: Governor of New Zealand, 1840 - 1842*, p. 39.

¹²⁸ J. M. Ward, *British Policy in the South Pacific*, Sydney, 1948, pp. 48-9.

¹²⁹ P. Moon, *Hobson: Governor of New Zealand, 1840 - 1842*, p. 39.

¹³⁰ W. P. Morrell, *Britain in the Pacific Islands*, Oxford, 1960, p. vii.

would shortly manifest itself in the Treaty of Waitangi. In practice however, the Colonial Office still managed to produce policy for its colonies that was, up until the late 1830s, ‘...weak, vacillating and blundering’.¹³¹

It was officials like Stephen who initiated a more certain and deliberate policy towards New Zealand. As early as 1838, Stephen began to consolidate this policy, using a more pragmatic rationale for intervention than his political superiors may have been prepared to admit to.¹³² Stephen’s rationale in arguing for increased formal British intervention lay with the perceived economic benefits that the colony offered to Britain,¹³³ the requirement for the rule of law over British settlers already living in the colony, and the failure of Busby in his role as Resident:

The Islands of New Zealand have long been resorted to by British subjects, both as possessing peculiar advantages for refitting whaling ships in the South Seas, and on account of the supplies which they afford of timber, flax, and other articles of value. They have also, from their proximity to the penal settlements of New South Wales and Van Diemen’s Land, furnished an asylum to fugitive convicts, who, associated with men left in these islands at different times...have formed a society much requiring the check of some competent authority....But the existing arrangement [of having a Resident in New Zealand] having failed to answer the purposes contemplated in its adoption, Lord Normanby is of the opinion that these purposes will be more effectually attained by the appointment of a British Consul to reside at New Zealand.¹³⁴

These suggestions, all of which were embraced in the emerging Colonial Office doctrine of intentional development, were echoed, almost word-for-

¹³¹ M. Boyd, ‘Cardinal Principles of British Policy in New Zealand’, in Boyd, M., *The Treaty of Waitangi: Its Origins and Significance*, Paper presented to seminar held at Victoria University of Wellington, 19-20 February 1972, p. 4; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, pp. 39-40.

¹³² P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 40.

¹³³ J. Stephen to W. Backhouse, 12 December 1838, in *GBPP 1840*, Vol. 33, pp. 3-4.

¹³⁴ Op. cit.

word, in an enclosure from Palmerston to Hobson in August 1839,¹³⁵ revealing the extent to which the political heads of the Colonial Office relied on their senior officials when it came to the most fundamental policy matters. Stephen had made a cursory reference to the resources New Zealand was said to possess, but these appear to have been included merely to support his argument on the need for greater intervention by the British Government for other reasons. No specific schemes for the extraction or exploitation of these resources was ever forwarded by Stephen, and neither was there anything in Stephen's proposals¹³⁶ that suggested that New Zealand would somehow be drawn into the Empire as a state which would be used primarily as a source of resources for Britain. Moreover, the more aggressively capitalist and exploitative nature of British colonial activity in the later nineteenth century had yet to arrive. In the early nineteenth century, such concerns over the material benefits to be derived from colonies did not feature as largely in the justifications for intervention as they were to a few decades later.

By June 1839, Stephen was able to write that all the plans to install a Consul in New Zealand had been put in place:¹³⁷

Certain parts of the Islands of New Zealand should be added to the Colony of New South Wales, as a dependency of that Government, and Captain Hobson R. N., who has been selected to proceed as British Consul, will also be appointed to the office of Lieutenant-Governor. It is further proposed to instruct ...Gipps to recommend...the enactment of all necessary laws for raising in New Zealand a revenue adequate to the maintenance of the Lieutenant-Governor, and of such other officers as may be indispensable for his assistance in the administration of the affairs of the settlement.¹³⁸

Hobson's own views were changing too during this time, apparently in concert with the shifting attitudes within the Colonial Office. He wrote to

¹³⁵ Palmerston to W. Hobson, 13 August 1839, in R. McNab, p. 748.

¹³⁶ J. Stephen to W. Backhouse, 12 December 1838, in *GBPP 1840*, Vol. 33, pp. 3-4.

¹³⁷ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 40.

¹³⁸ J. Stephen to A. Spearman, 13 June 1839, in *GBPP 1840*, Vol. 33, pp. 32-3.

his wife in August 1837 arguing that further British intervention was necessary to protect what he perceived to be an already considerable British investment of capital and labour in the colony. Moreover, he believed that there was a need to exclude other powers from New Zealand, and an obligation for the British Government to protect the settler population for lawlessness.¹³⁹ These views, coupled with Hobson's prediction of the demise of the Maori, led him to conclude that it would be preferable for the British to more comprehensively assert their position in the colony before any other power took the opportunity.¹⁴⁰ The view that the British national character made Britain a superior imperial power insofar as achieving progress and improvements in the colonies were concerned,¹⁴¹ reflected the thinking which had justified Britain's intent to exercise trusteeship rule over New Zealand. Hobson's belief that the Maori race would eventually disappear was presented, in his dispatch to Bourke, as though it was almost a beneficial factor, in that it would remove a potential source of conflict as the British economic and social model was imported into the colony.¹⁴² However, Stephen made no mention of the demise of Maori. The stance of the Colonial Office was that to modernise Maori, rather than ignore their development because of a fatalistic future, should provide one of the foundations for Britain's policy on New Zealand.

Hobson later advised the Colonial Office that British Sovereignty should be extended over the entire country rather than just the pockets of land his earlier factory proposal had entailed¹⁴³ – a reversal of his former proposal for limited sovereignty. In addition, he signalled the broad policy for British immigration which should ensue. This involved '...transplanting to its [New Zealand's] shores the nucleus of a moral and industrious

¹³⁹ W. Hobson to R. Bourke, 8 August 1837, in *GBPP 1840*, Vol. 33, pp. 9-11.

¹⁴⁰ Op. cit.; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 41.

¹⁴¹ J. S. Mill, *Memorandum of the Improvements in the Administration of India During the Last Thirty Years*, London, 1858, in J. M. Robson (ed.), *The Collected works of John Stuart Mill*, Vol. 30, Toronto, 1990, p. 152.

¹⁴² W. Hobson to R. Bourke, 8 August 1837, in *GBPP 1840*, Vol. 33, pp. 9-11.

¹⁴³ Op. cit.

population'.¹⁴⁴ Bentham had previously proposed a similar course of action as a means of overcoming the dangers of a savage state, in which the non-civilised people could prevent the achievement of utilitarianism.¹⁴⁵ The numerical balance between the colonisers and those being colonised was therefore a consideration in Hobson's plans. The presence of a sizeable number of white settlers in a colony made that colony ripe for the type of development into economic and political self-sufficiency of the sort Bentham had favoured in giving his example of the former colony of America.¹⁴⁶ The success of Hobson's proposed scheme rested with various external forces of change being present, especially a source of investment capital, and a major social reorganisation brought about by large-scale British immigration¹⁴⁷ serving as the dynamic for an improvement in the colony's economy.¹⁴⁸ In contrast, the Colonial Office position did not even mention the 'requirement' of an increased rate of immigration. The intent to develop did not have to be predicated on any justification other than the envisaged benefits that a transition to an improved state would bring.

Changes to the New Zealand Economy

While Hobson was promoting his views on the possible future of New Zealand, changes were already taking place in the colony's economy. For some of the Maori population, particularly those living in the northern part of the North Island, adjustments were occurring which were assimilating Maori into the European system.¹⁴⁹ One of the main transitions, apart from language, was the introduction of money as a standardised means of exchange, which was replacing the comparatively clumsy bartering

¹⁴⁴ Op. cit.; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 41.

¹⁴⁵ J. Bentham UCLMC, 1818, Box 164, p. 39.

¹⁴⁶ J. Bentham, *Introduction to the Principles of Morals and Legislation*, p. 435.

¹⁴⁷ J. Bentham UCLMC, 1818, Box 164, p. 39.

¹⁴⁸ see W. W. Rostow, 'The Take-Off Into Self-Sustained Growth', p. 27.

¹⁴⁹ W. Yate, *An Account of New Zealand and of the Church Missionary Society's Mission in the Northern Island*, London, 1835, pp. 31-2.

systems that had existed between Maori and Europeans from the time of the earliest European contact. Money was a device which some Maori viewed as giving them the opportunity to obtain all the possessions that the European arrivals had, and was a much more convenient tool in trade than the system of barter:

Barter, of every description, is now gradually giving way to the introduction of British coin and dollars. The natives are aware that they can, for money, procure almost any thing they want; and, are, consequently, beginning to appreciate its value. They have also another powerful reason for preferring money to blankets, clothing, powder, muskets, axes and other hardware articles. If they possessed any property, and it was known to anyone else, they would be bound in honour to distribute it amongst their friends....But gold and dollars...can easily be concealed, or be carried undiscovered about their persons....¹⁵⁰

This gradual introduction of money into Maori society was in harmony with the expectations Hobson had for the development of the colony's economy.¹⁵¹ Mill's later suggestion that the introduction of capitalism into colonies would enable, to some extent, the sum of the actions of the self-interested individuals who made up the colony's society to lead to the general happiness of that society¹⁵² was broadly consistent with Hobson's proposals. Money was one of the fundamental factors that was required to enable capitalist economic activity to take place in New Zealand. The widespread adoption of money by Maori as well as its use by Europeans in the colony would certainly assist with the planned economic development Hobson envisaged for New Zealand. Money emerged also as a currency of power, in that its possessors could purchase not only land and other physical items, but labour as well. In Maori communities, this could have the effect of reducing the power of the chiefs, whose authority was not based on the capacity to pay for labour or other goods.

¹⁵⁰ Op. cit.

¹⁵¹ W. Hobson to R. Bourke, 8 August 1837, in *GBPP 1840*, Vol. 33, pp. 9-11.

¹⁵² J. S. Mill, *Principles of Political Economy*, pp. 587-594.

The effect of the introduction of money into the Maori economy was that it enabled Maori to participate in the emerging European economic environment in the colony, and was one means of satisfying the basic needs of food, clothing, and shelter following the decline of communal provision of these basic requirements in many Maori communities in this period. The focus of the economic aspect of the British Government's doctrine of development for New Zealand was to allow Free Trade to prevail, and thereby enable the colony to move towards greater economic independence. As one British politician, John Roebuck, wrote in 1849 after making observations on the development of colonies in the Empire:

The conditions upon which success thus depended, were the existence, first of self-government...and next of free trade. Where there were complete self-government, and an entirely unrestricted trade, their success, even with an adverse soil and climate, was most rapid and extensive.¹⁵³

Furthermore, Roebuck noted that where there were restrictive trade practices in the colonies, there was only '...a partial and , and slowly-advancing improvement'.¹⁵⁴

Appointing the Governor

Hobson was nominated by the Colonial Office as the person who would be most appropriate to appoint as Consul to New Zealand, partially on the basis of the report he produced in 1837 on the potential of New Zealand to become a British colony. The practicalities of the mission Hobson was assigned were neatly encapsulated by his Attorney General, William Swainson: Maori sovereignty was acknowledged by the Crown, but British law had yet to be imposed, and a treaty between Maori and the Crown was needed:

¹⁵³ J. A. Roebuck, *The Colonies of England: A Plan for the Government of Some Portion of our Colonial Possessions*, London, 1849, p. 17.

¹⁵⁴ Op. cit.

On his arrival in the country in the character of British consul, New Zealand was an independent State; its native inhabitants were a wild and lawless race; its European occupants were unrestrained by any law, and amenable to no tribunal, and had been alternately the authors and victims of every species of crime and outrage. Before a British Colony could be founded in New Zealand, everything was yet to be done. The Sovereignty over the country had to be obtained by Treaty from the natives; territory for the occupation of our countrymen had to be acquired; and the machinery of Civil Government was to be organised and set in motion. Nor was the establishment of British authority in New Zealand an easy or popular task.¹⁵⁵

This extract from Swainson is important in that it strongly indicates that an active intent to develop in New Zealand had either permeated or was already fully present even among the lower levels of British officials. Intentional development, at least in New Zealand's case, embraced the entirety of the official colonial machine by the end of 1839.

Normanby's Instructions to Hobson

Normanby's instructions to Hobson regarding the immediate future of New Zealand were not too dissimilar in essence to some of the ideas contained in Hobson's recommendations made to the Colonial Secretary in 1837.¹⁵⁶ The instructions Hobson received from Normanby were actually prepared by James Stephen for use by Normanby's predecessor, Glenelg, in 1838, when Glenelg was considering the possibility of sending a Consular Agent to New Zealand.¹⁵⁷ The instructions were redrafted by Stephen for Normanby and then amended by Henry Labouchere, Normanby's Parliamentary Under Secretary. It is likely that Normanby's involvement in the instructions given to Hobson was limited merely to approving them.¹⁵⁸ Stephen recounted how the memorandum containing

¹⁵⁵ W. Swainson, *New Zealand and its Colonisation*, pp. 80-1.

¹⁵⁶ Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 37-45.

¹⁵⁷ W. Gairdner to Glenelg, 24 August 1838, in T. Williams, 'James Stephen and New Zealand, 1838-40', in *Journal of Modern History*, Vol. 13, March 1941, p. 22.

¹⁵⁸ *Ibid.* p. 24.

the instructions was ‘...thrown together in a great hurry at the eve of his [Glenelg’s] retirement from office that it might serve as a record of the conclusions to which he had been brought by very protracted enquiries and deliberation’.¹⁵⁹

The instructions commence by asserting the future importance of New Zealand because of its resources, geographical position, and its desirability for colonisation. This is qualified, however, by concerns expressed about the possible effects of colonisation on the Maori. This point was reinforced by reference in the instructions to the 1837 findings of the House of Commons Committee on Aborigines.¹⁶⁰ It is more than likely that these statements were included to pacify any potential opponents of annexation, such as some elements in the CMS, as much as being justifications of Britain’s doctrine of intentional development for New Zealand.

In relation to future developments regarding the formation of a treaty of cession, it is important to note that the instructions refer specifically to Maori sovereignty, stating that while New Zealand would be a useful acquisition for the Empire, any moves towards annexation, and the accompanying benefits to the economy, would have a correspondingly injurious effect on Maori. British annexation would:¹⁶¹

...be a most inadequate compensation for the injury which must be inflicted on this kingdom itself by embarking in a measure essentially unjust, and but too certainly fraught with calamity to a numerous and inoffensive people whose title to the soil and to the sovereignty of New Zealand is indisputable and has been solemnly recognised by the British Government.¹⁶²

¹⁵⁹ J. Stephen, 21 January 1839, in W. D. McIntyre and W. J. Gardiner (eds.), pp. 10-17; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 47.

¹⁶⁰ Report of the House of Commons Committee on Aborigines in British Settlements, June 1837, *GBPP 1837-8*, Vol. 40, pp. 3-26; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 47.

¹⁶¹ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 48.

¹⁶² Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 37-40.

The references to any harm befalling Maori may well have been included to quell CMS apprehension about further British involvement in New Zealand, rather than from any concern that there would be actual harm inflicted on Maori as a result of this intervention. After all, if the Colonial Office was genuinely concerned about the adverse effects of its planned annexation, it would not have issued specific instructions to accelerate and formalise this intervention.

Normanby remained careful, though, to qualify this superficial reluctance to interfere, by observing that there was an inevitability over what was about to happen.¹⁶³ He argued that the inevitability of intervention had come about because of the need to regulate the European population already in the colony:

The necessity for the interposition of the Government has, however, become too evident to admit of any further inaction. The reports which have reached this office within the last few months establish the facts that about the commencement of the year 1838 a body of not less than 2,000 British subjects had become permanent inhabitants of New Zealand; that amongst them were many persons of bad or doubtful character...and that these people, unrestrained by any law, and amenable to no tribunals, were alternately the authors and victims of every species of crime and outrage.¹⁶⁴

This lawlessness was one of the main factors propelling British intervention in New Zealand. The urge to impose order was a fundamental component of intentional development.¹⁶⁵ Accompanying the planned imposition of British law and order would be new institutions supporting these planned changes. In the process, the traditional Maori institutions which administered justice at an iwi and hapu level were to be replaced – thus having an immediately adverse effect on traditional Maori judicial and socio-political structures. Still, though, the need for some form of law-governed community in New Zealand seems to have been the

¹⁶³ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 48.

¹⁶⁴ Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 37-40.

¹⁶⁵ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 27.

overriding consideration for Colonial Office officials. They appear to have reached a consensus on the function of colonial governments as devices not simply for administering the colonies, but also in transforming them from their lawless states.¹⁶⁶ By definition therefore, the colonial government in New Zealand would be one presiding over a ‘transitory state’.¹⁶⁷ The price to Maori for their inclusion in this system would be that any elements of their customs and traditions which impeded the colony’s development along the lines prescribed by the Colonial Office would have to be removed by the colony’s government.¹⁶⁸ This approach to the subjugation or even removal of indigenous legal systems was a major feature of intentional development. Only the systems of the trusteeship state could prevail if that state was to have any prospect of actively directing development in the colony.

Allied to official concerns over lawlessness in New Zealand was the perceived need to civilise Maori. This requirement featured most prominently among missionary groups – particularly the CMS – who lobbied hard in the select committees for their ‘humanitarian’ and ‘civilising’ motives to be accepted as part of British policy on New Zealand.¹⁶⁹ The result was that missionary policy re-emerged as a portion of Britain’s official doctrine of development for New Zealand.

The issue of sovereignty was particularly important in any consideration of the formal British impact on the colony. While the mention of Maori sovereignty in Normanby’s instructions can be seen as a thematic precursor to the mention of sovereignty in the Treaty of Waitangi, a gulf

¹⁶⁶ Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 37-45.

¹⁶⁷ J. S. Mill, in M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 36.

¹⁶⁸ J. S. Mill. *Principles of Political Economy*, p. 115.

¹⁶⁹ Report of the House of Commons Committee on Aborigines in British Settlements, June 1837, *GBPP 1837-8*, Vol. 40, pp. 3-26; D. Coates, *Documents Exhibiting the Views of the Committee of the Church Missionary Society on the New Zealand Question, and Explanatory of the Present State of that Country*.

existed between the practice of British intervention and the rhetoric of the Colonial Office.¹⁷⁰

Even by the time Hobson received Normanby's instructions, the British Government had revealed a general disregard for Maori sovereignty through failing to prevent the activities of the New Zealand Association in its quest for land, and by neglecting to restrain at a much earlier point in time the influx of British settlers into New Zealand. Indeed, this indifference towards Maori sovereignty is cautiously hinted at in the following paragraph of the instructions, which apologetically argues that 'The necessity for the interposition of the [British] Government has, however, become too evident to admit of any further inaction'.¹⁷¹

The need for a more assertive policy, and the imposition of a positive programme aiming to improve the colony, was justified on the basis of the reports and other accounts of lawlessness and impending anarchy which reached the Colonial Office in the preceding months. Moreover, the anticipation of increased British settlement, and the accompanying requirement for adequate laws and some form of administration was cited as yet another reason for further official involvement.¹⁷² The greater the order, the more equipped the state would be to actively guide the processes of development in the colony.

Of course, any large-scale immigration would have impinged on Maori sovereignty, so the instructions continue by defining the particular type of sovereignty it is believed the Maori possessed. Therefore, Normanby suggested that the level of sovereignty Maori exercised was insufficient to prevent the imposition of British sovereignty:

I have already stated that we acknowledge New Zealand as a sovereign and independent state so far at least as it is possible

¹⁷⁰ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 48.

¹⁷¹ Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, p. 37.; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 48.

¹⁷² See Preamble to Treaty of Waitangi, Appendix Two of this thesis.

to make that acknowledgement in favour of a people composed of numerous dispersed and petty tribes, who possess few political relations to each other, and are incompetent to act or even deliberate in concert.¹⁷³

Yet, the sovereign right of Maori to conclude a Treaty was confirmed by Normanby, provided that there was full consent by Maori to the provisions of the agreement:

But the admission of their rights, though inevitably qualified by this consideration, is binding on the faith of the British Crown. The Queen...disclaims for herself...every pretension to seize the Islands of New Zealand...unless the free intelligent consent of the natives...shall first be obtained....the benefits of British protection and laws administered by British judges would far more compensate for the sacrifice by the natives of a national independence which they are no longer able to maintain....¹⁷⁴

This highly qualified type of sovereignty has its resonance in Mill's writings on the national characteristics of certain peoples, some of which may be insufficiently developed according to Mill's criteria, and therefore may require some 'higher' nation, in the case of colonies, to guide their progress and improvement.¹⁷⁵ Certainly, there is the implicit message contained in this portion of the instructions that whatever sovereignty Maori possessed, it was of an unsophisticated, 'uncivilised' nature. In this case, the process of extending civilisation to Maori as part of a doctrine of intentional development would involve removing rather than enhancing Maori sovereignty. The reason for this was that the existence of Maori sovereignty would serve as an impediment to the imposition of British-devised development on Maori.

¹⁷³ Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, p. 37.

¹⁷⁴ Op. cit.

¹⁷⁵ J. S. Mill, *Memorandum on the Improvements in the Administration of India During the Last Thirty Years*, p. 152.

Because there was a sizeable and permanent population of British citizens living in New Zealand by 1839,¹⁷⁶ this sector of society in particular required responsible government of the sort which the British Government believed only it could provide. One of the building blocks for this view of the need for government to provide responsible and firm leadership for societies, in order for their improvement to be possible, was placed on the political landscape by Bentham. He argued that a responsible government possessing certain coercive powers was necessary for the future prosperity and happiness of a society.¹⁷⁷

A dismissive view of the Maori rights of sovereignty in New Zealand was later articulated by Sir George Gipps, the Governor of New South Wales, who argued that because Maori did not have the same instruments of sovereign rule that existed in European countries, their sovereign rights were accordingly diminished:

...the uncivilised inhabitants of any country have but a qualified dominion over it, or the right of occupying only; and that until they establish amongst themselves a settled form of government and subjugate the ground to their own use by the cultivation of it, they cannot grant to individuals not of their own tribe any portion of it, for the simple reason, that they have not themselves any individual property in it.¹⁷⁸

Inherent in this perspective of Maori sovereignty was the suggestion that British notions of sovereignty were more 'sophisticated' or 'advanced', and that as a result, British sovereignty would somehow automatically supersede Maori sovereign rights. After all, it was Britain's national character which made it a force for '...raising and civilising the oppressed races'.¹⁷⁹ The greatly diminished perception of the sort of sovereignty it was believed Maori possessed and exercised had the effect of 'clearing the

¹⁷⁶ Possibly around 1,500, although there are no precise figures available.

¹⁷⁷ J. Bentham, *Leading Principles of a Constitutional Code*, p. 269.

¹⁷⁸ G. Gipps, in Report from the Select Committee of the House of Commons on New Zealand, 29 July 1844, in *GBPP 1844*, Vol. 13, pp. 5-6.

¹⁷⁹ J. S. Mill, *Memorandum on the Improvements in the Administration of India During the Last Thirty Years*, p. 153.

path' for the introduction of full British sovereignty into the colony. Only once this imposition had taken place could the trusteeship functions of the British commence, and the prescribed processes of development get under way.

In summary, the doctrine of development devised for New Zealand included the fostering of Free Trade; the imposition of British order in the colony initially through the device of a treaty; the civilising of Maori; the overriding of Maori sovereignty by that exercised by the Crown; and the supplanting of the Maori system of justice with the introduced British one.

Conclusion

Throughout the 1830s, there was a distinct firming up of British policy on New Zealand. The so-called 'humanitarian' objections of groups such as the CMS to further official involvement in the colony subsided against the weight of new arguments favouring intervention and the intentional development of the indigenous peoples in the colonies. Although the CMS was initially cautious over any form of British intervention in New Zealand, its desire to civilise and modernise Maori conformed to the Colonial Office's doctrine of intentional development, which by mid-1839 the British Government was committed to applying to New Zealand. To a considerable extent, the CMS, through its submissions to select committees and its links with senior Colonial Office officials, acted as a lobby group pushing for the sort of intervention in New Zealand the Colonial Office had devised.

Also, after 1837, the decision was reached in the Colonial Office that Maori would be incorporated into the colonial society, rather than be completely excluded from it. This went a long way towards negating the protectionist arguments of the CMS, and tilted British policy more towards the approach of transforming Maori so that they could be

assimilated into settler society, and thereafter share in the benefits of any development that took place. The immanent development that Maori continued to experience during the period of the residency, and which was unaltered by the activities of the New Zealand Company, was consciously abandoned by the British Government in favour of a doctrine of intentional development. This would involve the colonial administration appointed to New Zealand deliberately imposing a model of development on the colony with the aim of bringing about improvement to the whole society. Thus, attempts by the New Zealand Company to purchase and then settle large parts of the country were rejected by the Colonial Office in part because they threatened Britain's capacity to exercise full trusteeship powers in the colony. If Britain was to annex New Zealand, it would be the British Government alone which would exercise rule in the colony. The fact that, in practice, the Company lacked any end purpose in its activities, apart from profit, only strengthened the resolve of the Colonial Office that an administration be appointed to New Zealand which would consciously guide the development and improvement of the colony.

The general emphasis that the Colonial Office placed on the need for more formal intervention in New Zealand also reflected the growing presence of a white population in the colony. This set up special configurations of policy requirements. The Colonial Office could not simply ignore the absence of a national government in the colony, the presence of a substantial indigenous population often living side-by-side with settlers, and the perceived requirement for Europeans in New Zealand to exist a law-governed society. Hobson's 1837 recommendation that only sections of New Zealand be ceded to the Crown was rejected by the Colonial Office in favour of full annexation. Hobson had based his ideas of partial annexation by limiting his consideration to the economic benefits that might be derived from New Zealand. However, this approach was bereft of any accompanying philosophy of development, which unlike Hobson's

plans, would displace the immanent development of the colony with policies of intentional development.

In connection to the issue of how Maori would be positioned in this soon-to-be-annexed colony, and more specifically, how would the British Government go about initiating their trusteeship powers over Maori, a formal device was required to transfer these governmental powers, such as they were, from Maori to the Crown. This device was to emerge in the form of a treaty which would arbitrarily shift sovereign power to the British as a prerequisite to the British carrying out their doctrine of intentional development in the colony.

By August 1839 the Colonial Office had completely abandoned the position it held at the beginning of the decade of ambivalence towards New Zealand. The concerns voiced by missionaries and the New Zealand Company over the impending official British involvement in New Zealand were surmounted by Colonial Office officials, and this indicated the end of the policy of non-intervention. In its place, a doctrine of intentional development for New Zealand had been formulated, based on prevailing ideas about development and improvement at the time.

However, even though this policy had been formulated, and the objections to further intervention had been overcome, the entire British plan for the development of New Zealand was predicated on Britain obtaining sovereignty over the colony. This would be the first stage in the process of exercising trusteeship rule over the colony. Thus Normanby instructed Hobson to arrange a treaty of cession with Maori,¹⁸⁰ whereafter Britain could implement its plans for the development of the colony.

The following chapter explores the various issues associated with the formation of the Treaty of Waitangi, its meanings, and how it emerged as

¹⁸⁰ Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 37-45.

a document that played a pivotal role in Britain's intent to develop the colony, impose British order, and create the conditions that would bring about a specific form of improvement to the colony.

5. THE TREATY OF WAITANGI AND INTENTIONAL DEVELOPMENT

From the perspective of the British Crown, the Treaty of Waitangi was the device which served to cede Maori sovereignty to Great Britain, to affirm to the rest of the world Britain's claim to New Zealand and its right to rule the colony, and to exercise trusteeship power over all its inhabitants. Although poorly worded and hastily written,¹ the Treaty became the single most important symbol of British intentions for New Zealand, and represented a major step towards turning the country into what the British anticipated would be a more prosperous and ordered state.

Within New Zealand, the conclusion of the Treaty of Waitangi was the manifestation of the shift in British policy referred to in the preceding two chapters. In terms of the nature of the anticipated development for the colony, the Treaty symbolised the turning point from the immanent development that organically occurred in the colony without any planning, to the development deliberately willed by the new colonial administration. The doctrine of intentional development of the colony, formulated by the Colonial Office, was about to be realised in New Zealand.

The purpose of this chapter is to examine the role of the Treaty of Waitangi as the central component in Britain's formal entry into New Zealand, and its function as a device which enabled Britain to exercise trusteeship over the colony and enact policies which would facilitate subsequent progress and improvement. Earlier in this thesis, certain nineteenth-century development philosophies were discussed in order to offer possible paradigms for the analysis of the nature of British intervention in New Zealand between 1840 and 1842. In the light of this earlier discussion, this chapter considers how the Treaty emerged as the

¹ R. M. Ross, 'The Treaty on the Ground', in *The Treaty of Waitangi: Its Origins and Significance*, Paper presented to seminar held at Victoria University of Wellington, 19-20 February 1972, pp. 1-6.

fundamental instrument that shaped the character and direction of subsequent development in New Zealand, and that reflected the ideology of development the Colonial Office had constructed with reference to New Zealand.

Treaty Scholarship

The History of the Treaty: A Comparative Perspective

In 1788, the Constitution of the United States of America, which had been drafted the previous year, came into effect as one of the founding documents of the United States.² In every decade since its inception, the Constitution has been the subject of deliberation, analysis, debate, and reflection by academics, jurists, politicians, community and special-interest groups, and lay people.³ As American society has evolved, so too has the perception, understanding, interpretation, and application of the Constitution.⁴ Moreover, the United States Supreme Court, which has been continually active since the inception of the Constitution, has been specifically charged, among other things, with determining the meaning and application of the document. The Constitution has therefore existed as a constant thread running through the political and social consciousness of the United States.

The Treaty of Waitangi, however, has followed a substantially different path of recognition as a national founding document.⁵ By 1845, the Crown had openly breached various provisions of the Treaty,⁶ and from

2 Op. cit.

3 The Library of Congress catalogue contains over ten thousand texts on the Constitution that were written in the first two centuries of the Constitution's existence, *Library of Congress Online Catalogue*, <http://lcweb.loc.gov/cgi-bin/>; the University of California Library contains 3670 texts on the Constitution covering the entire period of the document's existence, *University of California Library Catalogue*, <http://lcweb.loc.gov/cgi-bin/zgate>

4 E. S. Corwin, *The Constitution And What It Means Today*, 14th edn., Princeton, 1978; W. D. Burnham, pp. 587-594.

5 J. Williams, 'Not Ceded but Redistributed', in W. Renwick (ed.), *Sovereignty and Indigenous Rights: The Treaty of Waitangi in its International Contexts*, Wellington, 1991, p. 193.

6 As an example, a proclamation which removed the Crown's right of preemption under Article the Second of the Treaty was introduced by Governor FitzRoy on 10 November 1844, W. R. Jourdain, *Land Legislation and Settlement in New Zealand*, Wellington, 1925, p. 10.

the following year, the status of the Treaty as an active and binding agreement between the parties to it began to dramatically subside. With the exception of some Maori groups which persisted in their calls for the provisions of the Treaty to be enforced, (and grievances redressed),⁷ the Crown did not in practice see itself as being bound by the agreement any longer.

The 1852 New Zealand Constitution Act contained no provision for the implementation in law of the Treaty's provisions.⁸ In 1877, Chief Justice James Prendergast determined that the Treaty was a 'simple nullity'.⁹ Such had been the extent of the decline of the Treaty in most of the country's consciousness that in K. J. Scott's 1962 volume, *The New Zealand Constitution*,¹⁰ the Treaty of Waitangi does not appear in any of the discussion of New Zealand's constitutional history.¹¹ Thus, by the end of the 1960s, the perception of the Treaty as a binding agreement that was still active, had virtually ceased.

A resurgence in the consideration of the Treaty as an active constitutional document occurred from around the mid-1970s, and closely accompanied the inception of the Waitangi Tribunal.¹² Following the extension, in 1985, of the Tribunal's jurisdiction to investigate and recommend on claims for grievances going back to 1840,¹³ even more academic effort was expended in debating and determining what the status of the Treaty ought to be. However, so much of the analysis that was undertaken from this point onwards was done in an environment which sought to establish

7 For example, the Kohimarama Conference of 1860, C. Orange, *The Treaty of Waitangi*, Wellington, 1987, pp 148-9; also, the Kotahitanga Movement of the late nineteenth and early twentieth century, see J. Kelsey, *A Question of Honour: Labour and the Treaty, 1984-1989*, Wellington, 1990, p. 16.

8 K. Sinclair, *A History of New Zealand*, Auckland, 1988, pp. 89-90.

9 Prendergast, CJ, 1877, cited in P. G. McHugh, 'Constitutional Theory and Maori Claims', in I. H. Kawharu (ed.), *Waitangi: Maori and Pakeha Perspectives of the Treaty*, Auckland, 1989, p. 32.

10 K. J. Scott, *The New Zealand Constitution*, Oxford, 1962.

11 *Ibid.*, chap. 1.

12 The Waitangi Tribunal was established in 1975 by the Treaty of Waitangi Act 1975 as a permanent commission of inquiry.

13 Treaty of Waitangi (Amendment Act) 1985.

the meaning of the Treaty in the context of resolving grievances arising from its breaches. Thus did a fairly litigious complexion begin to colour the general understanding of the content and role of the Treaty. Its meaning became heavily influenced by the need to resolve literally hundreds of grievances Maori were presenting to the Crown.¹⁴

The Present State of Discourse on the Treaty

To compound this slightly distorted perception of the Treaty, the scope of much of the analysis of the Treaty has tended to extend back only as far as 1840, when the agreement was signed, and not earlier. The period preceding the signing, and the forces that contributed to the text and intent of the Treaty have been dealt with usually only in the most general way. What reference has been made to the background has tended to be vague or skeletal.

Jane Kelsey, for example, surveyed the Declaration of Independence (1835) in her 1990 book *A Question of Honour: Labour and the Treaty, 1984-1989*,¹⁵ yet astonishingly, she completely ignored any consideration of the motives, ideologies, or policies that gave rise to the Treaty, even though the Treaty is the central topic of her book.¹⁶ Keith Sinclair, in his work *A History of New Zealand*¹⁷ did give a general chronology of events leading up to the Treaty,¹⁸ but his narrative was practically devoid of any mention of the philosophies that initially prompted the Treaty. Instead, he deferred to the popular and conveniently vague notion of humanitarian sentiments¹⁹ that somehow led to the Treaty being initiated. James Belich assumed a fairly extreme position on the Treaty by avoiding its conceptual origins altogether, and dismissing it altogether as nothing more than ‘...an

¹⁴ By 2000, there were in excess of 870 claims registered with the Tribunal, Waitangi Tribunal, *25 Years of Service 1975 – 2000*, Wellington, 2001, p. 2.

¹⁵ J. Kelsey, *A Question of Honour: Labour and the Treaty, 1984-1989*, Wellington, 1990.

¹⁶ *Ibid.*, pp. 5-19.

¹⁷ K. Sinclair, *A History of New Zealand*, Auckland, 1988.

¹⁸ *Ibid.*, pp. 50-69.

¹⁹ *Ibid.*, p. 64.

artificial watershed'²⁰ of virtually no immediate consequence in the gradual progression of the European colonisation of New Zealand.²¹

Lindsay Cox alluded to the need for order in the colony as a reason for the Treaty to have been formed,²² but failed to identify this theme in the evolution of British policy on New Zealand prior to 1840. Instead, Cox mainly emphasised the Maori understanding of the agreement,²³ at the expense of any explanation of how the Treaty came about, and what ideas informed its content.

Claudia Orange, in her major work *The Treaty of Waitangi*,²⁴ offered a thorough review of the events in Britain leading up to the Treaty's formation. While Orange's assessment of events was undoubtedly detailed, like Sinclair,²⁵ she seemed content to ascribe the conceptual origins of the Treaty to the excessively generalised notion of humanitarianism.²⁶ No adequate explanation was given as to precisely what these humanitarian sentiments were, where they originated from, what was their philosophical foundation, and how they worked their way into British policy on New Zealand.

In his 1973 book, *A Show of Justice*,²⁷ Alan Ward gave one of the most insightful accounts of the background to the Treaty, incorporating many of the nuances of Britain's developing policy on New Zealand in the 1830s which were absent from many subsequent works in the area. Yet, again, even Ward avoided tackling the specific philosophical basis of the

20 J. Belich, *Making Peoples*, Auckland, 1996, p. 116.

21 *Ibid.*, pp. 115-6.

22 L. Cox, *Kotahitanga: The Search for Maori Political Unity*, Auckland, 1993, pp. 2-3.

23 *Ibid.*, chap. 2.

24 C. Orange, *The Treaty of Waitangi*, Wellington, 1987.

25 K. Sinclair, pp. 50-69.

26 C. Orange, pp. 2, 25-6, 30-1, 32.

27 A. Ward, *A Show of Justice: Racial Amalgamation in Nineteenth Century New Zealand*, Auckland, 1973.

Treaty, and found refuge in the vague terminology of humanitarianism and humanitarian ideals as being the basis of the Treaty.²⁸

Such approaches have bypassed completely the environment of reform and development in the first four decades of the nineteenth century which, it is argued in this thesis, profoundly influenced British policy on New Zealand and the character, content and intent of the Treaty. No other work to date has addressed the Treaty of Waitangi from a development studies perspective and demonstrated the connections between the development philosophies of the period and the doctrine of development that informed British policy on and practice in New Zealand in the early 1840s.

The consequence of this development studies approach also affects the historical perspective of the Treaty, its functions, the expectations of its creators, and the anticipation for development that it contained. Prior to this thesis, the discourse on the Treaty has been largely confined to examining the rights and duties of the parties to the agreement, and to positioning the Treaty as a benchmark against which grievances arising from its breaches can be identified and evaluated. By contrast, this thesis opens up a new field of analysis, casting the Treaty as a document which reflected and was part of a specific doctrine of intentional development into the colony from 1840.

Creating the Text of the Treaty

No evidence has survived which allows a direct link to be made, based on contemporary documents, showing that the authors of the Treaty of Waitangi had any knowledge at all of the wording of previous British treaties. However, the strong convergence of similarities between the text of the Treaty of Waitangi and that of preceding treaties makes it almost certain that the writers of the Waitangi treaty were aware, to a considerable extent, of the wording and the content of previous treaties.

²⁸ Ibid., pp. 13 and 23.

These similarities also indicate that the emergent philosophies of development that influenced Colonial Office policy on New Zealand may have applied to some degree in other British colonies as well. However, of equal importance to the text of the Treaty are the motivations behind it. In Africa, for example, there seems to have been little sincerity behind the British intentions for many of their treaties:

In some cases, it is said, the assent had been obtained by the gift of a pair of boots or a few bottles of gin....Elsewhere, by a show of force, or by vague promises, which were unrecorded, or later ignored. Each [European] nation pursued the course it preferred, or which its representative found most convenient.²⁹

The circumstances in New Zealand, coupled with the Colonial Office's new doctrine for the colony which emerged in the late 1830s, made the British approach to a treaty for New Zealand substantially different from the cynical way in which Britain initiated some of its other colonial treaties.

On arriving in New Zealand in January 1840, Hobson immediately focussed his energies on developing a treaty which would secure his title as Lieutenant-Governor, and fulfil the directives he had received from the Colonial Office. The Treaty of Waitangi drew together Hobson's interpretation of the instructions from his superiors, his own knowledge of treaties which he had accumulated in a largely ad hoc fashion, the considerable influence of Busby in editing Hobson's notes,³⁰ the particular set of circumstances Hobson believed prevailed in New Zealand at the time it was drafted, and the influence of prevailing ideas about intentional development that had become the back-bone of Colonial Office policies on New Zealand. These elements were combined to form the document

²⁹ F. D. Lugard, pp. 15-16.

³⁰ Busby added to Hobson's initial notes for the Treaty when Hobson was struck down with an attack of paralysis; R. M. Ross, 'Te Tiriti o Waitangi: Texts and Translations', in *New Zealand Journal of History*, 1972, Vol. 6, pp. 129-167.

which was prepared by Hobson and Busby within a few days of Hobson's arrival in New Zealand.³¹

One of the underlying purposes of the Treaty was the British commitment to exercising a trusteeship function in New Zealand. The British Crown, in administering British law in New Zealand, would act as a supreme sovereign power in the colony, along the lines Bentham had envisaged for the British colonies.³² The implicit assumption in Bentham's imperative theory of law, as it applied to colonies, was that indigenous peoples would no longer be subject to their own laws, but to those of the colonising power.³³ This explains from a broad philosophical base why, through the Treaty of Waitangi, the rule of British law was extended to cover all peoples in the colony and not just in the selected areas where there were significant European populations. The means by which this was achieved, and the specific intent underlying the Treaty, had a direct bearing on the type of intentional development that was later executed in the colony.

Preparation and the Appointment of a Governor

The instructions given to Hobson by Lord Normanby on behalf of the Colonial Office for the formation of a treaty were sufficiently general³⁴ to allow Hobson to exercise considerable latitude when drafting the document. A further 'fleshing out' of Hobson's notes for the Treaty was undertaken by Busby due to Hobson's illness at the time. Finally, this treaty, which was rapidly pieced together by Hobson and Busby, was inexpertly translated into Maori,³⁵ by the CMS missionary Henry

31 W. Hobson to W. Baker, 29 January 1840, Manuscript, Auckland War Memorial Museum Library.

32 J. Bentham, *Of Laws in General*, Vol. 1, p. 1.

33 *Ibid.* pp. 1-8.

34 Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 37-45.

35 H. Williams, in H. Carleton, pp. 3 12-3.

Williams. This inept translation resulted in misunderstanding and debate over the Treaty's actual and even intended meaning.³⁶

The New Zealand Company was infuriated when Normanby's instructions to Hobson were published. The right of the Crown to be effectively the sole purchaser and trustee of Maori land struck at the heart of the Company, whose entire operations relied on unobstructed access to cheap Maori land. Normanby's instructions indicate the extent to which the Colonial Office had rejected the plans that the New Zealand Company had previously submitted to them regarding organised settlement in the new colony.³⁷ For Maori, this shift in the purchaser of their lands – from a private land company to the Crown – did not alleviate the problem of land alienation that was affecting most Maori communities which were in contact with Europeans. Neither did it prevent unethical purchases of Maori land, with the Crown soon committing the same sorts of transgressions against Maori land that private groups previously had.³⁸ However, the difference between the two bodies hinged on the fact that the Crown's right of preemptive purchase of Maori land³⁹ was done with the specific intent to 'protect' Maori from land profiteering.

It has been suggested that Normanby's instructions to Hobson were largely an apology for British intervention, and some sort of loose compromise between the various pressure groups exerting their influence on the Colonial Office.⁴⁰ However, this is a harsh light in which to view Normanby's directions. Instead, the instructions Hobson received were a fairly practical assessment of the situation in New Zealand, as perceived from the vantage point of the Colonial Office, and were an attempt to infuse into the inevitability of the colonisation in New Zealand a plan for

36 W. Hobson to G. Gipps, 5 February 1840, in *GBPP 1841*, Vol. 17, p. 559-561; J. Henare, Affidavit dated 1 May 1987, in *New Zealand Maori Council v. Attorney General*, New Zealand Law Reports [NZLR], 641, 1987.

37 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 87.

38 S. M. D. Martin, *New Zealand in a Series of Letters*, London, 1845, p. 142; *The Bay of Islands Observer*, 10 March 1842.

39 Article the Second, Treaty of Waitangi, see Appendix Two of this thesis.

40 C. Orange, *The Treaty of Waitangi*, Wellington, 1987, p. 30.

the development of the colonial society.⁴¹ The instructions were couched in the ideology of trusteeship and the potential for improvement, rather than excusing, let alone apologising for British involvement. After all, bringing the benefits of British civilisation to the colony whilst protecting Maori interests hardly warranted apologetic behaviour.

Hobson's background had not prepared him for administration on this scale however, and he was keen to make sure he had interpreted Normanby's instructions absolutely correctly. In August 1839, Hobson wrote to the Under Secretary of State for the Colonial Office at length, seeking clarification on a number of matters which had arisen following his initial reading of Normanby's instructions.⁴² Hobson had numbered the paragraphs in pencil to make it easier to refer to the problematic parts of the lengthy instructions. Some of his comments and queries are interesting because they disclose his peculiar understanding of the country he was entering. For example, Hobson noted that the instructions did not distinguish between the North and South Islands. Yet, according to Hobson, the '...respective advancement towards civilisation [of the two islands], are essentially different'.⁴³ This was a misconception by Hobson that was to later be influential in the basis for his Proclamations of Sovereignty. Hobson's comment over the fourth paragraph of Normanby's instructions is also revealing – this time about his approach to the posting of Lieutenant Governor. Rather than relish the challenge to exert his authority over the administration of the colony, Hobson willingly accepted the extent to which his authority would be bypassed by his superiors in New South Wales:⁴⁴

...my attention is directed to the acquisition of lands by British subjects; and in the following clause the whole power of interference is confided to Commissioners who are to be appointed in New South Wales, and who are to report their

41 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 87.

42 W. Hobson to Under Secretary of State for the Colonial Office, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 42-3.

43 *Ibid.*, p. 42.

44 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 88.

proceedings to Sir George Gipps. I do not disapprove of this regulation, but, on the contrary, am glad to be relieved from all interference in matters of dispute which would have a tendency to place me at issue with so large a number of persons over whom I am appointed to preside....⁴⁵

Hobson inexplicably seemed to be shunning extra responsibility and the power which accompanied it, even though there were times when Hobson strove to maintain British rule over New Zealand, competing with the French, the New Zealand Company, Maori, the settlers, and his superiors in the process. It is significant that Hobson wavered on the issue of the boundaries of his personal authority in relation to the authority of his immediate superiors in Sydney, because it displayed the sort of reluctance towards the responsibility of trusteeship rule which could jeopardise the British plans for the development and improvement of the colony. The best of official intentions for progress in New Zealand would ultimately only be of value if they were competently and confidently implemented by the Governor in the colony.

Assembling the Text

On the same day as Hobson arrived in the Bay of Islands (29 January 1840), he and Busby met to arrange a meeting of local chiefs which, it was envisaged, would lead to the conclusion of some sort of agreement recognising British sovereignty. The meeting was planned to take place at Busby's home at Waitangi some time during the next week. This was the ideal location because it was familiar to many of the Northland chiefs in particular, and it was immediately identifiable as a symbol of the official British presence in New Zealand.⁴⁶

On his initial meeting with Hobson on board HMS *Herald* on 29 January 1840, Busby was accompanied by the missionary Charles Baker (an assistant to the senior CMS missionary in the colony, Henry Williams),

⁴⁵ W. Hobson to Under Secretary of State for the Colonial Office, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 42-3.

⁴⁶ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 88.

and William Colenso, the printer for the CMS in New Zealand. Hobson and Busby discussed in private in Hobson's cabin the procedure necessary for securing British sovereignty over the country. Busby graciously cooperated with Hobson even though the Resident's career was now over. It was agreed that a letter would be sent out to the Maori chiefs in the area, to advise them of a meeting to be held the next week, informing them of the intentions of the British Government to conclude an agreement with them. Another circular letter was planned to be sent to all the British citizens residing in the area requesting they attend a meeting at the Mission church at Kororareka where the jurisdiction of Hobson and the extension of British sovereignty over British subjects living in New Zealand would be outlined.⁴⁷ The process of extending formal British rule over New Zealand was remarkable for the speed at which it was occurring. Hobson was planning to have the first set of signatures of Maori chiefs on the Treaty within roughly a week of arriving in the country.

If there was one quarter of support which Hobson could be fairly sure of in these early days of his rule, it was that of the Protestant missionaries. On 10 January 1840, the Anglican Archbishop of Australia sent a letter to Henry Williams, outlining the preferred stance he would wish the CMS missionaries to adopt in relation to Hobson:⁴⁸

Upon the fullest consideration, my judgement inclines me very strongly to recommend to you, and through you to all the other members of the Mission, that your influence should be exercised among the chiefs attached to you to induce them to make the desired surrender of sovereignty to Her Majesty.⁴⁹

Missionary activity was yet again echoing the policy intentions of the Colonial Office. This was especially noticeable in the desire of both groups to 'civilise' Maori, and to bring them closer to the cultural norms

⁴⁷ *Ibid.*, p. 89.

⁴⁸ Archbishop of Australia to H. Williams, in H. Carleton, p. 308; *Ibid.*, p. 90.

⁴⁹ Archbishop of Australia to H. Williams, in H. Carleton, p. 308.

of the colonising power.⁵⁰ In the context of Britain's doctrine of intentional development for New Zealand, the CMS identified itself as being willing to act as agents to assist with achieving the goals the Colonial Office had set down for the colony. The motivation for CMS compliance with British Government policy was that both groups shared the will to transform Maori to enable them to become more 'civilised'. The Colonial Office favoured this approach because it would bring about improvement and progress to the society, while the CMS saw civilising Maori as a prerequisite to converting them to Christianity.

During the first day of discussions, Hobson was willing to be guided to a great extent by Busby. Although Hobson was officially charged with governing the country, the nuances of the relationship between the British representative and the Maori in particular were better understood by Busby, and Hobson wisely took heed of his predecessor's experience. In a letter⁵¹ written to Baker after he had left the *Herald*, Hobson requested him to arrange the invitations for the meeting of the chiefs, to take place '...with the least possible delay'.⁵² It appears, according to this letter, that it was Busby who drafted the invitation, which was subsequently translated into Maori.⁵³

The emphasis Hobson put on the urgency of the invitations to both the Maori and to the British settlers for the respective meetings met with the desired effect. The CMS printer and missionary, William Colenso, worked throughout the night, and by the next morning, the following invitation (in Maori) was sent out to chiefs in the region:⁵⁴

Of the thirtieth day of January, 1840.

50 H. Carleton, *The Life of Henry Williams*, Vol. 2, Auckland, 1877; G. Clarke, Jnr., *Notes on Early Life in New Zealand*, Hobart, 1903 – Clark described throughout his book the overarching principle of 'civilising' Maori as a goal that dominated his professional life.

51 Letter from W. Hobson to W. Baker, 29 January 1840, Auckland Institute and Museum Library.

52 op. cit.

53 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 89.

54 Ibid., p. 88-9.

My Dear Friend,

Here again is mine to you. It is that a ship of war has now arrived with a Chief on board, who is from the Queen of England, to be a Governor for us. Now, he desires that there shall be assembled together all the Chiefs of the Confederation of New Zealand on Wednesday of next holy week, so that they may see him. I therefore say unto you, friend, that you come here to Waitangi, to my home here, to this gathering. For you yourself are a chief of that confederation.

That is all, mine ends.

From me, your dear friend,
Busby.⁵⁵

This letter was drafted in Maori by Busby, and was subsequently revised by Colenso, whose Maori was deemed to be more fluent.

Significantly, it is Busby's name which appears at the end of the letter. Perhaps Hobson felt that Busby carried more influence among Maori, or possibly Hobson was uncertain as to how his authority would be received, and did not want to risk any potential weakness in the Maori perception of him being exposed. The most likely probability, though, is that Hobson may have used Busby's reputation to secure the attendance of the chiefs at the meeting, whereupon it would be made clear to all present that the mantle of rule had passed from Busby to Hobson.⁵⁶ Hobson seems to have understood that accompanying the planned annexation of New Zealand was the corresponding need for Maori to recognise him and the system he represented, as being part of the new regime that was to govern everyone in the colony. If Maori failed to recognise the authority of the Governor, then it would be extremely unlikely that they would be receptive to his subsequent efforts to impose a model of development on them.

While Busby accepted Hobson's assumption of power in New Zealand, he still seems to have had difficulty relinquishing his vision for the Declaration of Independence. The letter he drafted to the chiefs distinctly

⁵⁵ Letter from J. Busby to Chiefs, 30 January 1840, in T. Buick, p. 11.

⁵⁶ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 90.

referred to the Confederation of Chiefs,⁵⁷ which precluded the majority of chiefs in the country. It appears that Busby was still trying to promote the remnants of the Declaration of Independence and the confederation it had formed, using Hobson's intended treaty as a vehicle for rejuvenating the concept of the United Tribes of New Zealand. However, if this was Busby's plan, it was not to succeed. The invitations assumed a life of their own, and quickly gathered a momentum that overtook the limited scope for which Busby seems to have intended them. Chiefs from outside the Confederation began to arrive at Waitangi, eager to see the British representative, sent 'from the Queen of England' to be the new leader,⁵⁸ and as it turned out, based on the text of the Treaty, the person to whom they would entrust their existing authority. It would be wrong to read too much into the Maori enthusiasm to attend the meeting of the Crown's representative to the colony, but it does show that even if Maori were not receptive to the idea of a foreign ruler attempting to assert his authority in the country, neither were they necessarily completely averse to the idea either.

The Proclamation of 30 January 1840

Hobson's immediate priority, once he set foot on New Zealand soil, was to read out the proclamation asserting nominal British sovereignty to the assembled population. This was effectively a prelude to the formal assertion of sovereignty which would be made by treaty the following week. The proclamation established the reason for Hobson's posting to New Zealand, and indicated some of his general intentions.⁵⁹ These included: the establishment of a settled form of civil government over British subjects living in New Zealand; extending the jurisdiction of the New South Wales administration over any areas in New Zealand which Hobson might acquire the sovereignty of in the name of the Crown; the

⁵⁷ The same phrase appears in Article the First of the Treaty of Waitangi. See Appendix Two of this thesis.

⁵⁸ P. Moon, *Hobson: Governor of New Zealand, 1840–1842*, pp. 90-1.

⁵⁹ Proclamation by William Hobson, Kororareka, 30 January 1840, in *GBPP 1840*, Vol. 33, pp. 8-9.

appointment of Hobson as Lieutenant Governor over any territory which may be acquired in sovereignty; and a request by Hobson that the British subjects living in New Zealand aid and assist him in the execution of his position.⁶⁰ The exact position of Maori in this transitory state was not fully clear from Hobson's proclamation. However, what was evident was that Hobson's proclamation set the tone for formal British involvement in the colony. Britain's intention to establish itself as a trustee power responsible for determining the process of improvement and progress for the colony, began to be manifested within New Zealand from this point. The reading of this proclamation was the first act that linked the intentional development for New Zealand envisaged by the Colonial Office in the preceding two years with the actions of the Crown's representative in the colony.

Also read out at the assembly were the proclamations written by Governor Gipps in New South Wales earlier in the month, which were to accompany Hobson's proclamation. One of the passages of Gipps' proclamations caused concern among some of those present. In essence, the matter related to the acknowledgement of titles to land.⁶¹ The particular segment nullified land purchases not approved by the Crown:

...all purchases of land in any part of New Zealand, which may be made from any of the chiefs or native tribes thereof...will be considered as absolutely null and void, and will not be confirmed or in any way recognised by Her Majesty.⁶²

Only purchases that were derived from, or were confirmed by a grant from the Crown, would be permissible, although retroactive grants could be and were made. This threatened to undermine the ability of settlers to acquire land at the prices and through the means that had applied up to that time.⁶³ This change in rules governing land tenure in the colony was the first attempt by the colonial administration to arrest an element of disorder (unregulated land dealings) that would hinder the Crown's intent

60 Op. cit.; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 91.

61 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 91.

62 Proclamation by G. Gipps, 15 January 1840, in *GBPP 1840*, Vol. 33, pp. 2-3.

63 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 91.

to develop the colony. The concept of individual property rights was a confused and unresolved issue prior to the presence of formal colonial rule in the country.⁶⁴ In this sort of environment, Mill suggested that the initial adoption by colonies of European ideas of property rights would help these societies grow and improve.⁶⁵ Further changes in land tenure could then be made as part of an entire renovation of the social fabric⁶⁶ of the country. The link between ensuring that the European interpretation of land rights prevailed, and the subsequent development of the colony, was confirmed through Gipps' proclamations.

In addition, the establishment of a more formal system of government brought with it the likelihood of taxation, tariffs, customs duties, and a more rigorous enforcement of British law (and implicitly a corresponding elimination of Maori law), which to this point had been practically absent in the colony. The extension of British administration to colonies, in itself, was at least as problematic as it was advantageous because of the bureaucracy which tended to accompany British colonisation.⁶⁷ There was a risk that the systems of economic inequity that existed in Britain could be replicated in the colonies,⁶⁸ in which the colonial bureaucracies would unwittingly assist in this process. However, the exercise of an assertive trusteeship, coupled with an acknowledgment by Hobson of the potential for development in the colony,⁶⁹ mitigated these possible problems which might otherwise accompany more ill-conceived British colonial intervention. The plans and intentions of the British Government to guide the nature of development in New Zealand required an administration which was capable of working towards the goal of an improved society, rather than one which merely 'went through the motions' of colonial rule for reasons other than colonial development.

64 An issue highlighted by Mill in relation to transitory states, see J. S. Mill, *Chapters on Socialism*, pp. 355-6.

65 Op. cit.

66 Ibid., p. 358.

67 J. Bentham, UCLMC c.1789, Box 25, p. 120.

68 J. S. Mill, *Civilisation*, pp. 120, 129-30.

69 Report from W. Hobson to R. Bourke, 8 August 1837, *GBPP 1837-8*, Vol. 40, pp. 3-5.

Influences on Hobson

The sentiment, if not the direct content of the Treaty of Waitangi was influenced in part by the 1837 Report of the House of Commons Committee of Aborigines in British Settlements.⁷⁰ The Committee's findings embraced a new humanitarian imperative,⁷¹ and a general approach to colonies informed to some extent by Bentham's views. The Committee advised against treaties unless they made adequate accommodation for the improvement of indigenous peoples.⁷² This was to be initially achieved through the negotiation of treaties between Crown representatives and the regional leaders of tribes, and through the careful wording of the document to avoid it becoming a future source of conflict:

As a general rule, however, it is inexpedient that treaties should be frequently entered into between the local Governments and the tribes in their vicinity. Compacts between parties negotiating on terms of such entire disparity are rather the preparatives and the apology for disputes than securities for peace: as often as the resentment or the cupidity of the more powerful body may be excited, a ready pretext for complaint will be found in the ambiguity of the language in which their agreements must be drawn up, and in the superior sagacity which the European will exercise in framing, in interpreting, and in evading them.⁷³

Such a stance was fine for the senior Churchmen and petty politicians in London, but it was far from politically expedient in the colony. Therefore, in practice, lip-service was sometimes given to these sentiments⁷⁴ while an underlying doctrine of development would inform the detail of the policy on New Zealand. The premise of the racial inferiority of indigenous peoples⁷⁵ gave the latitude for officials to assert British rule over 'non-civilised' peoples without the obligation to consider

⁷⁰ Report of the House of Commons Committee on Aborigines in British Settlements, June 1837, *GBPP 1837-8*, Vol. 40.

⁷¹ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, pp. 84-5.

⁷² Report of the House of Commons Committee on Aborigines in British Settlements, June 1837, *GBPP 1837-8*, Vol. 40, p. 22.

⁷³ *Ibid.*, p. 16

⁷⁴ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 85.

⁷⁵ J. S. Mill, *Civilisation*, p. 119; J. Bentham, in M. P. Mack, pp. 206-7.

the existing welfare of the indigenous people in their 'non-civilised' state. Their welfare could only be addressed by the British once their submission to the rule of the colonising power had been achieved. This is revealed in the instructions Hobson received from Normanby on the nature and possible content of any treaty he would conclude with the Maori. In the first part of the instructions, Hobson was required to negotiate with Maori '...for the recognition of Her Majesty's sovereign authority over the whole or any part of those islands which they [Maori signatories to the Treaty] may be willing to place under Her Majesty's dominion'.⁷⁶ With this statement, Maori sovereign rights, however they existed or were imagined to exist by the British Government, were to be assumed by the Crown. From the British perspective, the right of Maori to exercise their sovereignty was an inferior right to that exercised by the Crown.

Normanby was aware that there could be difficulties for Hobson in overcoming the predictable suspicion of Maori towards the Treaty, but recommended to Hobson that he deal with Maori with '...mildness, justice and perfect sincerity in your intercourse with them'.⁷⁷ Normanby was insistent that when it came to explaining to Maori the reasons why they ought to sign the Treaty, Hobson should '...frankly and unreservedly explain to the natives or their chiefs, the reasons which should urge them to acquiesce in the proposals you will make to them'.⁷⁸ If the Crown was to assume a trusteeship role over Maori, then Maori consent to such an arrangement would bypass the potential dangers of arbitrarily imposing the justice system of one nation on to another.⁷⁹ Moreover, the Maori consent to the Treaty was consistent with the plan to impose a particular model of development on Maori society. Maori complicity in the ensuing policy of development for the colony would be enhanced if they formally gave their approval for the exercise of British authority over them.

⁷⁶ Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, p. 37.

⁷⁷ *Op. cit.*

⁷⁸ *Op. cit.*

⁷⁹ J. Mill, pp. 4-5

The argument which Normanby believed would clinch Maori consent to the proposed Treaty was the suggestion that the British settlers in New Zealand needed some sort of regulation by the British Government.⁸⁰ If this failed to sway the opinion of some of the chiefs in favour of the Treaty, there was a baser incentive for them to sign: 'If it should be necessary to propitiate their consent by presents, or other pecuniary arrangements, you will be authorised to advance at once to a certain extent in meeting such demands'.⁸¹

The need for a pre-emption clause – a guarantee that the Crown would be the sole body authorised to make the first offer to purchase Maori land – was also included in the instructions, as was the suggestion that an office for the Protection of Aborigines be established.⁸² Both of these measures were clear attempts to assert the position of the colonial Government in New Zealand as a trustee – enacting the will of the imperial power on the colony to enable it to assist its utilitarian destiny. Protection of the 'natives' until they became more developed was an important component in this aspect of Britain's policy for the Treaty. In concluding his instructions, Normanby offered some limited freedom for Hobson, under Gipps' guidance, to act as he saw appropriate for the circumstances in New Zealand. Normanby acknowledged that an undertaking as important as the acquisition of sovereignty would throw up issues and concerns which could not be anticipated in foresight, and that much would have to be left to Hobson's own discretion.⁸³

Finalising the Treaty

With the date for the meeting with the chiefs set for 5 February 1840, Hobson was now under pressure to produce some sort of agreement which could be presented to the chiefs in attendance. Although Normanby's instructions specifically provided for Hobson to enter into a treaty with

⁸⁰ Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, p. 38.

⁸¹ *Op. cit.*

⁸² *Ibid.*, p. 41.

⁸³ *Ibid.*, pp. 44-5.

the Maori, no draft of such an agreement was included in the instructions sent to Hobson, and there is no evidence that one existed. It was therefore left up to Hobson to act on his own initiative to produce a document⁸⁴ that would fulfil the requirements of intentional development prescribed by the Colonial Office, namely, the cession of sovereignty to the British Crown, and the imposition of British authority, implicitly in a trustee form, through the person of the Lieutenant Governor, over the entire country. Therefore, the treaty would have to be more comprehensive and far-reaching than Busby's Declaration of Independence, which applied to only a handful of chiefs representing a small area of the country. The provision in the Treaty for a cession of sovereignty was a means to an end rather than an end in itself. Furthermore, the doctrine of intentional development required additional provisions for the Treaty which would clarify the intention of the Crown to realise a positivist ideal of development for the colony. The fact that the Treaty of Waitangi contained provisions in addition to that securing a cession of sovereignty demonstrates that there were other motives behind the agreement.

By the second day of February, Hobson and his chief clerk, James Freeman, had produced some draft notes which were to form the conceptual basis of the Treaty of Waitangi. However, Hobson seems to have become ill, according to Busby's account,⁸⁵ and it was left to Busby to develop the notes into something which he thought would be more appropriate. This draft was then returned to Hobson on 3 February. It has been suggested that Hobson owed something to the concept of the Confederation of Chiefs as devised by Busby, and that Hobson favoured negotiation specifically with the Confederation.⁸⁶ However, the evidence points to exactly the opposite. Not only did Hobson himself dismiss the proposal for regional factories which he had originally suggested,⁸⁷ but Normanby's instructions to Hobson acknowledged New Zealand as a

⁸⁴ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 92.

⁸⁵ J. Busby, *Remarks Upon a Pamphlet Entitled The Taranaki Question*, Auckland, 1860, pp. 3-4

⁸⁶ C. Orange, pp. 35-6.

⁸⁷ W. Hobson to E. Hobson, 25 August 1837, in G. H. Scholefield, p. 65.

single sovereign state.⁸⁸ Furthermore, it is the second set of notes, in Freeman's handwriting,⁸⁹ that refer only to the Confederation. The first set of notes, in Hobson's handwriting, mentions both 'confederated' and 'independent' chiefs.⁹⁰

Strangely, on this occasion, only Busby's recollections mention Hobson's sickness, and suggest the seriousness of Hobson's state of health.⁹¹ On other occasions, during the following weeks, there are accounts from a range of others who were close contact with Hobson.⁹² It is possible that Busby may have exaggerated Hobson's condition at this stage in order to justify his own involvement in the drafting of the Treaty. Indeed, Busby later admitted, with some pride, to having effectively written the Treaty himself.⁹³

On the afternoon of 4 February, Hobson arranged for the version of the Treaty he had settled on to be translated into Maori. The task of translation fell into the hands of the head of the CMS operations in New Zealand, Henry Williams. Neither Henry Williams, nor his son Edward, who assisted with the translation, could be regarded as sufficiently conversant in Maori to undertake the responsibility. While there were others, particularly some of the missionaries such as Colenso, who were probably more fluent in Maori, they were not immediately available, and the urgency of assembling the Treaty within the brief time available precluded the utilisation of their skills. Williams was given just one evening to complete the draft.⁹⁴ His approach to the task would hardly

88 Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 38-9.

89 R. M. Ross, 'Te Tiriti O Waitangi: Texts and Translations', in *New Zealand Journal of History*, Vol. 6, 1972, pp. 129-67.

90 Op. cit.; P. Moon, *Hobson: Governor of New Zealand, 1840 - 1842*, p. 92.

91 J. Busby, *Remarks Upon a Pamphlet Entitled The Taranaki Question* pp. 3-4.

92 F. Mathew, pp. 68-9; S. M. D. Martin, p. 140; W. Brodie, *Remarks on the Past and Present State of New Zealand*. London, 1845, p. 17; A. Lane to G. Gipps, 28 March 1840, in *GBPP 1841*, Vol. 17, p. 14.

93 R. M. Ross, 'Te Tiriti O Waitangi: Texts and Translations', in *New Zealand Journal of History*, Vol. 6, 1972, pp. 129-67; P. Moon, *Hobson: Governor of New Zealand, 1840 - 1842*, pp. 92-3.

94 H. Williams, in H. Carleton, pp. 312-313.

have inspired confidence. Much of the detail in the English draft was considered by Williams to be impossible of translation into Maori:⁹⁵

On February 4, about four o'clock p.m., Captain Hobson came to me with the Treaty of Waitangi in English for me to translate into Maori, saying that he would meet me in the morning at the house of the British resident, Mr. Busby, when it must be read to the chiefs assembled at ten o'clock.

In this translation it was necessary to avoid all expressions of the English for which there was no expressive term in the Maori, preserving entire the spirit and tenor of the treaty, which, though severely tested, has never yet been disturbed, notwithstanding that many in power have endeavoured to do so.⁹⁶

The issue of translation is vital from a development perspective. Providing a version of the Treaty in Maori served at least to articulate the new position of Maori in the colony which the Treaty heralded. This way, the chances of '...government of the few to the injury of the many'⁹⁷ would be minimised through actively endeavouring to ensure Maori comprehension of the provisions of the Treaty.

Hobson was oblivious to Williams' problem of translating at this time and probably would not have been too interested either. He wrote to Gipps on 5 February in a mood of expectation and confidence, detailing the proceedings up until 5 February:⁹⁸

I have the honour to acquaint your Excellency, that immediately on my arrival here I circulated notices, printed in the native language, that on this day I would hold a meeting of the chiefs...for the purpose of explaining to them the commands I have received...and of laying before them a copy of a treaty which I had to propose for their consideration.

Accordingly a vast number of chiefs, with a multitude of followers, crowded in from every quarter, and at 12 this day they assembled under spacious tents, decorated with flags,

⁹⁵ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 93.

⁹⁶ H. Williams, in H. Carleton, pp. 312-313.

⁹⁷ J. S. Mill, *Vindication of the French Revolution of February 1848*, London, 1849, in J. M. Robson (ed.), *The Collected Works of John Stuart Mill*, Vol. 20, Toronto, 1984, p. 354.

⁹⁸ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 93.

which had been previously erected at Waitangi by the direction of Captain Nias, of this ship.⁹⁹

Maori had arrived at Waitangi to listen to the Crown's offer. The next task for Hobson was to secure Maori consent to the Treaty.

The Quest for a Mandate

As for the meaning of the text of the Treaty of Waitangi, in both Maori and English, this is a topic which has been exposed to torrents of arguments and theorising, and has already been competently examined by others.¹⁰⁰ It embraces issues of international law, Maori sovereignty, the constitutional basis of the country, and numerous other areas which are ripe for academic squabbling. What is more pertinent at this juncture is the manner in which the Treaty received a mandate from Maori, Hobson's role and motives in this process,¹⁰¹ and the significance of a Maori version of the Treaty to the Maori acceptance of the doctrine of development that had been devised for New Zealand. As has already been stated, it was in the interests of good government that Maori comprehend the terms and conditions of the Treaty, particularly as Article the Third gave Maori the same rights and privileges as British subjects.¹⁰² One of the truisms of governing a country was that if people in a society were not bound by the same law, then there was little point in even having a law.¹⁰³ Thus, when Hobson carried out his instructions to assert British sovereignty and law in New Zealand, it became crucial for proper Maori consent to be obtained for this action if all the peoples in New Zealand were to be covered by the same rule of law as the British intended. The need for a Maori version of the Treaty can therefore be seen as a device for enhancing the quality of

⁹⁹ W. Hobson to G. Gipps, 5 February 1840, *GBPP 1841*, Vol. 17, p. 8.

¹⁰⁰ C. Orange, 1987, pp. 40-43; I. H. Kawharu (ed.), *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi*, Auckland, 1989, part 1; R. M. Ross, 'Te Tiriti O Waitangi: Texts and Translations'; W. Renwick (ed.); K. S. Coates and P. G. McHugh (eds.), *Living Relationships, Kokiri Ngatahi: The Treaty of Waitangi in the New Millennium*, Wellington, 1998, et. al.

¹⁰¹ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 96.

¹⁰² Article the Third, Treaty of Waitangi 1840, see Appendix Two of this thesis.

¹⁰³ J. Bentham, *Of Laws in General*, p. 3.

Maori consent to be bound by the provisions of the Treaty. Maori willingness to be subject to British law was also the fundamental prerequisite for the establishment of order in the colony, without which the capacity to direct development would have been severely curtailed. As Mill later analysed the role of order: 'Those who are unable to make their ordinances obeyed, cannot be said to govern'.¹⁰⁴

One source which sheds an interesting light on some of Hobson's possible motives is a letter to the editor of the *Southern Cross* newspaper in July 1861. Its author, a Mr. W. F. Porter, cites, in turn, a letter written to him by an anonymous person who was directly involved in getting the Treaty signed. (It has since been suggested that the writer of this cited letter could only have been Henry Williams.)¹⁰⁵ The text of Porter's letter is important not only for its contemporary assessment of the pre-emption clause of the Treaty (that section which asserts the Crown's exclusive right to purchase land from Maori), but also because it attests to the lack of faith in Hobson that some of those involved in the process of getting the Treaty signed had.¹⁰⁶ Williams wrote that the chiefs asked for '...explanation upon explanation...' ¹⁰⁷ about the Treaty, and was insistent that Hobson's replies, especially on the preemption issue, were fully comprehended by those who heard it. Hobson explained the preemption clause to the chiefs as follows:

*The Queen is to have the first offer of the land you may wish to sell, and in the event of its being refused by the Crown, the land is yours to sell to whom you please. This explanation, I most conscientiously assert was given to them, and thus they understood it; and...had any other explanation been given to them, the treaty would never have been signed by a chief in the Bay of Islands....*¹⁰⁸

¹⁰⁴ J. S. Mill, *Considerations on Representative Government*, p. 384.

¹⁰⁵ R. M. Ross, 'The Treaty on the Ground', p. 24.

¹⁰⁶ P. Moon, *Hobson: Governor of New Zealand, 1840-1842*, pp. 96-7.

¹⁰⁷ Letter from Henry Williams? to W. F. Porter, in R. M. Ross, 'The Treaty on the Ground', pp. 33-34.

¹⁰⁸ Op. cit.

From Williams' viewpoint at least, the Maori chiefs at Waitangi had a considerable degree of comprehension of the provisions of the Treaty. Hobson also believed that he had explained the Treaty to the assembled chiefs as much as possible, and that he had addressed all their questions and concerns.¹⁰⁹

Maori had started gathering at Waitangi a few days before the Treaty was to be signed, and there was a definite mood of expectation among everyone present.¹¹⁰

...the countenances and gestures of the Natives, who were squatting grouped together according to their tribes, bore testimony to the interest which they took, if not in the business, in the gaiety and life of the day.¹¹¹

Hobson was satisfied at the way in which the day was unfolding, particularly as he had managed to undertake one of the major components of his brief so quickly.¹¹² Hobson recalled how he began the meeting at midday by announcing the general purpose of the Treaty to the chiefs, and the reasons why he had been appointed as Governor, emphasising the degree of mutual goodwill he was depending on: 'I assured them in the most fervent manner that they might rely implicitly on the good faith of Her Majesty's Government in the transaction'.¹¹³ British sovereignty was not so much being imposed on Maori, but based on Hobson's evaluation, it was being shared with them.¹¹⁴ This view bore the signs of a genuine belief that the proposed development that would be foisted on the colony was going to benefit Maori.

Hobson read out the text of the Treaty to the assembled chiefs at Waitangi, and Henry Williams translated what the Governor said into

109 W. Hobson to G. Gipps, 5 February 1840, *GBPP 1841*, Vol. 17, p. 8.

110 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 97.

111 W. Colenso, *The Authentic and Genuine Signing of the Treaty of Waitangi*, Wellington, 1890, (Capper reprint), pp. 12-13.

112 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 99.

113 W. Hobson to G. Gipps, 5 February 1840, *GBPP 1841*, Vol. 17, p. 8.

114 Op. cit.

Maori.¹¹⁵ After this was completed, Hobson invited the chiefs to ask any questions they had, and then left them to discuss the Treaty among themselves. This sort of spectacle had never previously been witnessed in New Zealand, and at the centre of this concoction of expectation, celebration, and trepidation, was Hobson. Hobson's explanation of the Treaty to the chiefs emphasised that in order for the welfare of all in the colony to be promoted, Maori had to give their consent to the Treaty which had been presented to them:

The people of Great Britain are, thank God! free; and, so long as they do not transgress the laws, they can go where they please, and their sovereign has not power to restrain them. You have sold them lands here and encouraged them to come here. Her Majesty, always ready to protect her subjects, is also always ready to restrain them. Her Majesty the Queen asks you to sign this treaty, and so give her that power which shall enable her to restrain them.¹¹⁶

This was not an entirely accurate statement in all respects. Maori had not, as a people, encouraged Europeans to emigrate to New Zealand. However, Hobson's main theme that he was attempting to convey to Maori was that the rule of British law would protect Maori from abuse by Europeans in the colony, through the exercise of British trusteeship over Maori. The rule of law would bring order to the colony, which was a co-requisite for progress.¹¹⁷

Hobson's message was translated and elaborated upon by Henry Williams, who explained to the assembled chiefs what Hobson had said in English. Williams' own interpretation of the Treaty, and the language he used to convey this meaning, suggest that what the chiefs agreed they were giving their consent to was something quite separate from what the English version of the Treaty promised.¹¹⁸

115 H. Williams, in H. Carleton, p. 313.

116 W. Colenso, pp. 16-17.

117 M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 40.

118 P. Moon, *Hobson: Governor of New Zealand, 1840 - 1842*, p. 102.

In the midst of profound silence, I [Williams] read the treaty to all assembled. I told all to listen with care, explaining clause by clause to the chiefs, giving them caution not to be in a hurry, but telling them that we, the missionaries, fully approved of the treaty; and that it was an act of love towards them on the part of the Queen, who desired them to secure their property, rights and privileges; that this treaty was a fortress for them against any foreign power which might desire to take possession of their country....Captain Hobson expressed his fears to me [regarding potential Maori opposition]....I cautioned him against showing any anxiety....¹¹⁹

Even more so than the English text of the Treaty, Williams' explanation to Maori of the purpose of the text of the Treaty enforced the perception that the Crown was asserting its sovereignty over the colony not as a symbol of conquest, but to protect and assist in the development of Maori as well as Europeans. In the explanations given by both Hobson and Williams to the chiefs at Waitangi, there was the consistent theme that without formal British intervention, the existing preconditions of the colony were somehow inadequate for any sort of improvement to take place. Without the assertion of British sovereignty, the colony would drift in its existing state of immanent development, bereft of any order. Mill had emphasised that development in colonies could not be assumed to be automatic simply because of the presence of Europeans, and that active guidance was required to facilitate colonial progress and improvement.¹²⁰ Hobson's efforts, in particular, to go to such trouble to clarify the meaning and intentions of the Treaty's text to Maori was consistent with Mill's warning that colonial trusteeship could not simply be arbitrarily imposed, because if it was accompanied by excessive coercion, then the dangers inherent in such coercion would eventually outweigh the benefits of trusteeship.¹²¹ The intent to develop Maori society contained within it a corresponding requirement that there be a willingness by Maori to surrender their own processes of immanent development in favour of the planned development of the colonisers.

¹¹⁹ H. Williams, in H. Carleton, p. 313.

¹²⁰ J. S. Mill, *Considerations on Representative Government*, p. 567.

¹²¹ A. Ryan, *The Philosophy of John Stuart Mill*, p. 253.

Maori Discuss the Treaty

Following Hobson's speech, and the translation provided by Williams, there was a brief interval, during which most of the chiefs shook Hobson's hands. Immediately after this, Busby stood up and attempted to infuse some certainty into one of the biggest issues of concern to Maori - the purchase of Maori land by the Europeans. Busby explained the pre-emption principle incorporated into the Treaty, whereby the Crown would have the sole preemptive right to purchase Maori land, and that land appropriated in any other way would be returned to Maori. Hobson then spoke again and reiterated this theme.¹²² Thereafter, about five hours of debate and discussion among the chiefs ensued. Concerns were highlighted by some chiefs over the effect the proposed Treaty would have on their land, and the authority they presently exercised.¹²³

The initial speeches delivered by some chiefs gave the impression that achieving Maori consent for the Treaty would be a hard struggle. Felton Mathew, the colony's Surveyor-General, described the scene:¹²⁴

After a while, one of the Chiefs started up, and in a strain of fervid and impassioned eloquence, accompanied with vehement gesticulation, denounced the treaty, and advised that the Governor should not be received, expressing his fear that the Lands would all pass from them, and they would become slaves. He was followed by several other chiefs, all of who expressed the same feeling....¹²⁵

The rhetoric of opposition was powerfully delivered, including threats of death, vengeance, and war.¹²⁶ However, although Hobson was aware that

¹²² W. Colenso, *The Authentic and Genuine Signing of the Treaty of Waitangi* (Wellington, 1890), p. 19.

¹²³ W. Hobson to G. Gipps, 5 February 1840, in *GBPP 1841*, Vol. 17, p. 8; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 102.

¹²⁴ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 102.

¹²⁵ F. Mathew, 'The Founding of New Zealand', in *The Journals of Felton Mathew, First Surveyor-General of New Zealand and His Wife, 1840 - 1847*, J. Rutherford (ed.), Dunedin, 1940, p. 35.

¹²⁶ Op. cit.; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 103.

opposition had been expressed by some chiefs over whether to sign the Treaty, he was not privy to the bluff that constituted much of this opposition. In a document prepared for the Court of Appeal in 1987, Sir James Henare explained the approach of some of the Ngapuhi chiefs as relayed to him through oral history. The Maori version of the discussion over the Treaty differs substantially from those accounts made by the Europeans present. Henare described the nature of the opposition to the Treaty by many of those chiefs present at the signing at Waitangi:¹²⁷

The historians say that all the Chiefs were violently opposed to the signing of the Treaty of Waitangi. But this was only token opposition. A token because it should have been obvious to all the historians and lawyers and everyone else who had been dealing with the Treaty....Why did they get up and oppose the signing of the Treaty and then immediately get up and sign it and append their moko? And then shook the Governor by the hands....¹²⁸

This was a cultural nuance common in Maori oratory, but evidently misunderstood by European observers.

There were also other issues playing on Hobson's mind at this time. The preparations made for the visiting chiefs at Waitangi had been inadequate to meet the numbers attending, and there was a strong possibility that many of the chiefs would soon drift off to their own tribal areas. The difficulty of re-convening such a meeting, with the same numbers and same sense of momentum, was a crucial factor in Hobson's desire to get the Treaty signed as soon as was practical, without betraying any impression of panic to the chiefs, or risking possible future allegations of coercion or undue expeditiousness from officials and humanitarian groups in London. Richard Taylor, a missionary present at Waitangi,¹²⁹ described Hobson's approach:

¹²⁷ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 104.

¹²⁸ J. Henare, Affidavit dated 1 May 1987, in *New Zealand Maori Council v Attorney General*, [1987], NZLR 641.

¹²⁹ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 105.

The Governor told them [the chiefs] he did not wish them to sign in haste and appointed a second meeting for the seventh, but when he had left I thought it most likely that nine-tenths of them would leave for their respective homes. I therefore sent a message to him and told him I would remain until I received his reply to give notice of the meeting being held the next day [February 6th]. His reply was favourable and the rough copy of the treaty was sent to me to get copied....I sat up late copying the treaty on parchment and kept the original draft for my pains.¹³⁰

Some Maori had already packed up and left by the morning of 6 February. Taylor's account of informing Hobson of the need to get the Treaty signed on the sixth seems to conflict with events that took place on that morning.¹³¹ It appears that Hobson had no intention of holding the signing until the seventh. There was a clear expectation at Waitangi that the Lieutenant Governor would come to shore from the *Herald* on the morning of the sixth, and when there was no sign of this occurring, concerns began to be expressed among both the settlers and Maori present.¹³² A message was sent to the *Herald* anxiously requesting Hobson's attendance on shore. Shortly afterwards, a slightly dishevelled Hobson arrived at Waitangi, wearing his civilian clothes. Had the urgent communication not been made with Hobson, there was every probability that he would have remained on board the *Herald* until the seventh as originally planned. Hobson had earlier contended that a meeting held so soon after the conference of the fifth might not give the chiefs adequate time for reflection. He preferred to allow them the whole of the sixth to consider the issues before signing. Fortunately for Hobson, as events turned out, the sixth became the day of the signing. A heavy rain-storm broke out at Waitangi on the morning of the seventh, and continued, almost without pause, for the entire day.¹³³ This event alone would have diminished the number of Maori signatories, and would have dampened the enthusiasm of those remaining.¹³⁴

130 R. Taylor, in T. Buick, p. 150.

131 Op. cit.

132 T. Buick, p. 150.

133 W. Colenso, p. 35.

134 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 106.

Hobson wrote to Gipps on 6 February, after having been alerted to the urgency of the situation, and the need to get the Treaty signed, and having successfully concluded the initial process of getting the chiefs in attendance to sign the document.¹³⁵

...the treaty was signed in due form by 46 head chiefs, in presence of at least 500 of inferior degree. As the acquiescence of these chiefs, 26 of whom had signed the declaration of independence, must be deemed a full and clear recognition of the sovereign rights of Her Majesty over the northern parts of this island.¹³⁶

Unlike the meetings, debates, and discussions of the previous few days, the proceedings of the sixth of February were much more straightforward. Essentially, Hobson's primary goal was now to secure signatures for the Treaty. There was no time allotted or given for further discussion. The pomp and ceremony of the previous day had given way to a more businesslike attitude.¹³⁷ Henry Williams read out a copy of the Maori draft of the Treaty to the signatories. Colenso then followed this up by offering his own interpretation of the meaning of the text in Maori. This clarified any remaining misconceptions the chiefs may have had as to the Treaty's exact meaning.¹³⁸ Hobson placed the emphasis on the '...free and intelligent consent...' of Maori to the provisions of the Treaty, as his instructions required him to do.¹³⁹

There was an anxious hesitation after the explanations of Williams and Colenso. The party representing the Crown had exhausted all the arguments at their disposal, and now had to patiently wait. Mathew described the events which followed:¹⁴⁰

135 Op. cit.

136 W. Hobson to G. Gipps, 6 February 1840, *GBPP 1841*, Vol. 17, p. 8.

137 F. Mathew, p. 40.

138 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 107.

139 Normanby to W. Hobson, 14 August 1839, in *GBPP 1840*, Vol. 33, p. 37.

140 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 107.

Still, however, they [the Chiefs] hung back...after a long pause, one of them rose and came forward with great dignity and...[signed] the parchment, at the same time saying...“let those who approve it do the same, and they who do not like it, let them remain silent”. After this, they came forward with great eagerness....¹⁴¹

However, the Treaty as it stood on 6 February was far from a conclusive surrender of sovereignty by Maori. Only a handful of chiefs had signed the document, and it was to be many months before a more geographically representative sprinkling of Maori signatures appeared on the document.¹⁴²

The biggest hurdle - that of possible Maori opposition to the Treaty - had been overcome by Hobson almost incidentally, and not because of any particular skill he brought to the process. Hobson had hardly captivated the chiefs, either with his physical presence or with anything he had to say. By mid-afternoon on 6 February, with the Treaty signed, the visiting chiefs were beginning to disperse. Despite the expectation, promises, and the fleeting sense of moment, the signing of the Treaty of Waitangi altered practically nothing in the newest addition to the British Empire in the days immediately following 6 February 1840. Hobson, had now possessed a mandate, albeit a fragile paper one, from many Maori chiefs, and had successfully carried out the instructions he had received to secure the nominal sovereignty of the country in the name of the Crown. However, the practicalities of governing the colony were far removed from these successes, and were only just dawning on him. As copies of the Treaty were being circulated around the country by some of the missionaries to collect further signatures,¹⁴³ Hobson gradually became ensnared in the numerous and intricate difficulties inherent in his post.¹⁴⁴ The bureaucracy of colonial government, which Bentham had campaigned against,¹⁴⁵ was starting to spread in New Zealand. Ironically, as the

141 F. Mathew, p. 40.

142 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 108.

143 C. Orange, p. 64

144 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 108.

145 L. Woodward, pp. 368-9.

British attempted to act in a trusteeship role over New Zealand, there was an accompanying risk that the attendant growth in the colony's bureaucracy could hinder the colonial Government's ability to promote development. What was to overcome this potential problem was the will behind the intention to achieve improvement in the colonial society. Throughout the early period of the establishment of formal colonial rule in New Zealand, the colonial bureaucracy, despite suffering from corruption and incompetence, remained committed to the plans of developing the colony.

Issues Arising from the Mistranslation of the Treaty

As for the variations between the English and Maori versions of the Treaty, the apparent disparities clearly raised no concern whatsoever among those directly involved in its formation. The first English draft of the Treaty has not survived to the present day.¹⁴⁶ The Maori copy that the chiefs signed was a revised version made by Richard Taylor from the original translation.¹⁴⁷ Hobson sent five copies of the English version (all of which contained differences between them) to London and Sydney, yet it appears that the Maori translation which was signed by the chiefs is not based on any of these five English versions, and neither are any of the English versions a translation from the Maori document.¹⁴⁸

Hobson's inexpert estimation of the requirements of the translation of the English version into Maori left the country with an awkward and at times frustrating legacy. The dilemma posed by Hobson's oversight or folly is one which seems to escape simple resolution. The varying versions of the Treaty of Waitangi, in both English and Maori, resulted in a cross-cultural impasse which was succinctly summarised by one analyst of the Treaty:¹⁴⁹

146 R. M. Ross, 'Te Tiriti O Waitangi: Texts and Translations', pp. 129-67.

147 Op. cit.

148 Op. cit.; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, pp. 108-9.

149 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 109.

...it is impossible to regard the Maori version [of the Treaty] as quite complete, although it carries the highest authority, nor the English ones as authoritative, although they are far more explicit. Like many dramatic texts, each has been born, here maimed and deformed, of the pressures of context.¹⁵⁰

It is only with the expanse of time between the signing of the Treaty and present-day analyses that such conclusions can be comfortably reached. For Hobson and his officials, the immediate challenges that lay ahead of them precluded such opportunities for reflection. However, Hobson was adamant in his faith in the Maoris having fully understood the document they were committing themselves to and that not the slightest element of coercion had been employed by the British in acquiring Maori consent to the agreement. In response to a question from Colenso, as they were witnessing the first chiefs putting their marks to the Treaty, Hobson stated: 'If the Native chiefs do not know the contents of this treaty, it is no fault of mine. I wish them fully to understand it. I have done all that I could do to make them understand the same...'.¹⁵¹

These thoughts were later reiterated and expanded on in a letter Hobson wrote to Bunbury in April 1840. Hobson argued that he had followed Maori protocol, and had also explained '...in the fullest manner...' the reasons for the Treaty and its provisions. He concluded that this part of his job had been successfully undertaken: 'In this way I satisfied myself I had complied with the spirit of my instructions'.¹⁵²

Hobson's reassurances to Gipps on the Maori understanding of the Treaty echoed these comments, and enforced what Hobson obviously saw as the critical point: full Maori comprehension of the terms and implications of the Treaty:¹⁵³

¹⁵⁰ D. F. McKenzie, *Oral Culture, Literacy and Print in Early New Zealand: The Treaty of Waitangi*, Wellington, 1985, p. 45.

¹⁵¹ W. Hobson, in W. Colenso, p. 33; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 109.

¹⁵² W. Hobson to T. Bunbury, 29 April 1840, in T. Bunbury, *Reminiscences of a Veteran*, Vol. 3, London, 1861, pp. 63-4; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, pp. 109-110.

¹⁵³ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 110.

I then read the treaty and in so doing dwelt on each article, and offered a few remarks explanatory of such passages as they might be supposed not to understand. Mr. H. Williams, of the Church Missionary Society, did me the favour to interpret, and repeated in the native tongue, sentence by sentence, all I said. When I had finished reading the treaty, I invited the chiefs to ask explanations on any point they did not comprehend, and to make any observations or remarks on it they pleased.¹⁵⁴

Hobson and his colleagues sincerely believed that they had explained the articles of the Treaty as far as was possible, and that Maori comprehension of the document, at least among those Maori in attendance at Waitangi, was thorough. Although the extent of Maori comprehension of the Treaty is debatable, the fact that there was broad consent to its provisions by Maori (at least at the Waitangi signing) represented a substantial step forward towards the implementation of the doctrine of intentional development as far as the British were concerned.

The Maori Version of the Treaty

Thus far, the doctrine of intentional development commencing through the Maori consent to the provisions of the Treaty has been considered on the basis of the English text of the agreement. However, the fact that the Treaty was poorly translated into Maori, with consequently significant differences in the meaning of the text, raises concerns about how Maori understood the British intent to develop the country, as opposed to how the British believed Maori understood the forthcoming changes indicated in the Treaty.

Furthermore, at a broader level, the Treaty was a European device used in international relations, and was therefore an unprecedented experience for most Maori in 1840. As a result, it is necessary to explore not only what the Maori understandings of the provisions of the Treaty were, but also, how Maori viewed the concept of a treaty.

¹⁵⁴ W. Hobson to G. Gipps, in C. Terry, *New Zealand, Its Advantages and Prospects as a British Colony*, London, 1842, p. 17.

One of the key differences between the Maori and English texts of the Treaty of Waitangi is over the use of the notion of 'sovereignty'. In the English text, Maori clearly ceded sovereignty '...absolutely and without reservation...'.¹⁵⁵ From the British perspective, sovereignty involved the power of the Crown over its subjects, based on a vague combination of consensual and habitual submission, and the evolution of a social contract between ruler and ruled.¹⁵⁶

There were limitations on the power of the British sovereign, however. These became more defined following the Interregnum, when the power of the sovereign was restricted by the ascendancy of Parliament.¹⁵⁷ In practice, by the nineteenth century, this meant that treaties were arranged by the British Government, but still concluded in the name of the Crown.

Paul McHugh draws the distinction between legal and political sovereignty. He defines legal sovereignty as '...the constitutional authority vested in the Crown in its executive, legislative...and judicial capacities',¹⁵⁸ whereas political sovereignty describes the relationship between the Crown and its subjects.¹⁵⁹ It is this latter form, with its emphasis on consent of the community as the ultimate source of sovereign power,¹⁶⁰ that was immediately at stake at the signing of the Treaty of Waitangi, with the promise that legal sovereignty would ensue once Maori consent had been obtained.¹⁶¹ It is the way in which the idea of sovereignty was translated into Maori upon which the '...moral validity of the Treaty hangs'.¹⁶²

155 Article the First, Treaty of Waitangi (English version). See Appendix Two of this thesis.

156 P. G. McHugh, 'Constitutional Theory and Maori Claims', p. 28.

157 M. A. R. Graves and R. H. Silcock, *Revolution, Reaction, and the Triumph of Conservatism: English History 1558 – 1700*, Auckland, 1984, pp.442-7.

158 P. G. McHugh, 'Constitutional Theory and Maori Claims', p. 33.

159 Ibid., pp. 33-4.

160 Ibid., p. 34.

161 See Preamble, Treaty of Waitangi, see Appendix Two of this thesis.

162 R. J. Walker, 'The Treaty of Waitangi as a Focus of Maori Protest', in I. H. Kawharu (ed.), p. 263.

‘Sovereignty’, as it appeared in Article the First of the English text of the Treaty, was translated in the Maori text as ‘kawanatanga’ – a missionary neologism¹⁶³ derived from the work ‘kawana’, meaning Governor. Thus ‘sovereignty’ was synonymous with ‘Governorship’ in the Maori version of the Treaty. This has fundamental implications for the Maori understanding of what precisely they were ceding to the Crown. According to the Maori text, the Maori signatories to the Treaty were effectively granting Hobson the right to exercise his governorship over the country. His was hardly the same as a full cession of sovereignty, especially as there had never been a Governor in the colony until that time, and so it would have been highly unlikely for any of the Maori signatories to even know what precisely governorship entailed. ‘Kawanatanga’ could equally be seen from the perspective of the Maori signatories to the Treaty as an almost administrative function, rather than a sovereign one.

Had the British used the term ‘mana’ instead of ‘kawanatanga’ to convey the sense of sovereignty, then there would certainly have been a clearer understanding of this provision of the treaty by the Maori signatories. ‘mana’ had been used in the 1835 Declaration of Independence to denote sovereignty, and so was evidently familiar to at least some Maori.¹⁶⁴ The failure to use ‘mana’ in the Maori text of the Treaty as a translation of ‘sovereignty’ may have been one of the reasons for such widespread Maori endorsement of the Treaty. Alan Ward has suggested that had the word ‘mana’ been used in the Treaty to denote sovereignty, practically no chief would have signed the agreement.¹⁶⁵ Moreover, the exclusion of any mention in the Maori text of the Treaty of a cession of mana could have given the clear impression to some of the Maori signatories that their mana/sovereignty would not be affected by giving their consent to the Treaty.

163 Op. cit.

164 J. Busby, *He Whakaputanga o te Rangatiratanga o Nu Tireni - A Declaration of the Independence of New Zealand*, Bay of Islands, 1835. See Appendix One of this thesis.

165 A. Ward, p. 42.

The other aspect of 'kawanatanga' that needs to be considered at this juncture is to whom would it apply. At the time of the signing of the Treaty, Hobson did not create the impression among certain Maori that he possessed either the character or means to exercise any authority over them,¹⁶⁶ and so it is conceivable that at least some of the Maori signatories assumed that kawanatanga would apply only over Europeans in the colony.

The delineation of sovereignty is further blurred by the inclusion of the term 'rangatiratanga' in Article the Second of the Maori text of the Treaty. In the English version of the Treaty, the relevant phrase states that Maori would be entitled to '...full, exclusive, and undisturbed possession... of their lands, estates, forests, and fisheries'.¹⁶⁷ In effect, this amounts to the conferring and definition of specific property rights which Maori had exercised only in a customary fashion up until that time. However, the use of 'rangatiratanga' in the same portion of the Maori text has major implications for the allocation of sovereignty in the Treaty.

'Rangatiratanga' translates approximately as 'chieftainship'.¹⁶⁸ It was a guarantee for the chiefs of their authority,¹⁶⁹ autonomy, '...and above all their mana, as chiefs'.¹⁷⁰ It was far more than the mere physical possession referred to in the English text of the Treaty.¹⁷¹ This is perhaps the major contradiction between the two versions of the Treaty. In Article the First of the English version, all sovereign power went to the Crown, whereas in Article the Second of the Maori version, the sovereignty that the chiefs exercised was guaranteed *for them* by the Crown. This view has serious implications for the issue of Maori consent to the enactment of British trusteeship rule in New Zealand. It would imply that there was no

¹⁶⁶ E. J. Wakefield, *Adventure in New Zealand from 1839 to 1844*, Vol. 2, London, 1845, pp. 45-6.

¹⁶⁷ Article the Second, Treaty of Waitangi, see Appendix Two of this thesis.

¹⁶⁸ I. H. Kawharu (ed.), 'Glossary', p. 314.

¹⁶⁹ E. T. J. Durie, 'The Treaty in Maori History', in W. Renwick, (ed.), 1991, p. 157.

¹⁷⁰ M. P. K. Sorrenson. 'Towards a Radical Reinterpretation of New Zealand History: the Role of The Waitangi Tribunal', in I. H. Kawharu (ed.), p. 159.

¹⁷¹ C. Orange, p. 41.

explicit Maori consent for British trusteeship to be extended to Maori, and therefore there was no Maori consent for Britain to take over and actively guide the development of the colony. However, this perspective is militated against to a minor extent by the fact the Hobson, Williams, and Colenso all gave detailed explanations to Maori of the precise meaning and intention of the Treaty and its text, so that the chiefs at Waitangi at least¹⁷² may have gained the impression that they were ceding something much closer to what the text of the Treaty they signed suggested.

However, this is a slight consideration, and should not intrude on the wider issues of what Maori ceded, and who would rightfully possess sovereign power in the colony under the provisions of the Treaty. Eventually, it was the systematic way in which Britain assumed sovereign authority over the colony in practice in the years following the conclusion of the Treaty that was to finally confirm the ascendancy of the Crown's sovereignty over that of the Maori. The dilemma emerging from the conflicting translations of the Treaty remained unresolved however.

Proclaiming Sovereignty

In an effort to finalise the Crown's accession of sovereignty over New Zealand, on 21 May, Hobson proclaimed British sovereignty over the whole of the North Island on the basis that the Treaty had confirmed this, and over the South Island by the right of discovery.¹⁷³ Constitutionally, these Proclamations were to be of critical importance. Hobson's patience during the four months it had taken thus far to collect further Maori signatures for the Treaty had been stretched to breaking point. As his patience withered, so too did his faith in the effectiveness and lasting importance of the Treaty as a basis for British rule, and as a means of securing the sovereignty of the country for the Crown. A letter written by Hobson in April 1840 indicates his changing view on the Treaty,

¹⁷² W. Hobson to T. Bunbury, 29 April 1840, in T. Bunbury, pp. 63-4.

¹⁷³ W. Hobson, Proclamations of Sovereignty, 21 May 1840, in *GBPP 1841*, Vol. 17, p. 32-34.

suggesting that the Maori signatories did not constitute a single sovereign group:

In this state of society, formed of a vast number of petty democracies, without any union of purpose, or acknowledged leader, it will be impossible to observe the usual formality of negotiating a treaty. The mode I followed was in accordance with the native custom. I collected the chiefs by a circular notice, and when assembled addressed them on the subject I had to recommend for their consideration.¹⁷⁴

Hobson clearly felt that the Treaty would be inadequate to fulfil the requirements laid down by Normanby in respect to securing sovereignty over the colony.¹⁷⁵ A further, and for Hobson, urgent initiative was necessary. The outcome were the Proclamations of Sovereignty.¹⁷⁶ The slowing momentum of collecting Maori signatures for the Treaty required a more deliberate and uncompromising assertion of British sovereignty as far as the Governor was concerned. If the sovereignty issue was resolved – that is, the full cession of Maori sovereignty was somehow achieved, Hobson could then proceed with expanding his administration and implementing the plans for developing the colony that the Colonial Office had recommended. Even as missionaries were scouring the lower North Island for additional Maori endorsement of the Treaty, it had already, for all intents and purposes, been relegated by Hobson to the status of an interim agreement – one which had now been superseded. Hobson had, in his own mind, put the Treaty behind him by mid-May 1840. When he later wished to enforce concepts mentioned in the Treaty, such as the Crown's right of preemption for example,¹⁷⁷ he used Ordinances rather than the supposed authority of the Treaty.¹⁷⁸

Not all residents of New Zealand, though, were convinced by the merits of Hobson's Proclamations. In September 1840, the North Island

¹⁷⁴ W. Hobson to T. Bunbury, 29 April 1849, in T. Bunbury, p. 61.

¹⁷⁵ Normanby to W. Hobson, 15, 15 August 1839, in *GBPP1840*, Vol, 33, pp. 37-45.

¹⁷⁶ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 144.

¹⁷⁷ Guaranteed under Article the Second of the Treaty of Waitangi, see Appendix Two of this thesis.

¹⁷⁸ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 144.

Congregationalist missionary Barzillai Quaipe issued a strong pronouncement on the changed status of Maori land following the Proclamations of Sovereignty by Hobson:¹⁷⁹

The individual who privately entertains and has publicly expressed such a notion...[that] the Natives have no absolute and uncontrollable right over the lands held by them from their forefathers from time immemorial...is very unfit to be entrusted with the fates of Aborigines.¹⁸⁰

In a letter written in 1842, Quaipe drew attention to the fact that there was far from universal endorsement of the Treaty by Maori, and that therefore, there was something almost fraudulent about the universal assertion of sovereignty over New Zealand that was contained in Hobson's Proclamations of Sovereignty:¹⁸¹

...entirely from the universal assertion of Her Majesty's sovereignty over New Zealand when only a very small part of the territory had been ceded to her...while the Government is not in possession of the physical force to make itself respected in a single Native Pa.¹⁸²

Although British sovereignty had now been declared over New Zealand, there are indications that Hobson either misunderstood or deliberately ignored the nature of Maori sovereignty. His assertion, for example, that he had had to arbitrarily declare sovereignty over the South Island because of the 'uncivilised' state of the Maori there – about which he claimed to have 'perfect knowledge'¹⁸³ – was nothing more than an excuse justify the Proclamations of Sovereignty. Hobson's concerns had shifted in the preceding two months away from obtaining genuine Maori consent for the Treaty, to securing British sovereignty to fulfil the requirements of the instructions he received from Normanby in August the previous year.¹⁸⁴

179 Op. cit.

180 *The New Zealand Advertiser and Bay of Islands Gazette*, 17 September 1840.

181 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 144.

182 B. Quaipe to A. Wells, Kororareka, 14 March 1842, in P. Kennett, *Unsung Hero: Barzillai Quaipe*, Palmerston North, 1991, p. 70.

183 W. Hobson to Secretary of State, 25 May 1840, in *GBPP, 1841*, Vol. 17, p. 138.

184 Normanby to W. Hobson, 15, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 37-45.

The planning Hobson applied to the circulation of the Treaty around the North Island had lacked any order and consequently sometimes resulted in overlap and confusion. When, for example, Major Bunbury arrived in Tauranga on 11 May 1840, having specifically been dispatched there by Hobson, he discovered that almost all the local chiefs had already signed a copy of the Treaty which had been brought and explained to them by the missionary Alfred Brown.¹⁸⁵ Yet, in March 1840, Hobson had sent Brown a copy of the Treaty (which Brown received on 1 April) because the missionary had plans to collect signatures in this region¹⁸⁶ - the fault for this debacle therefore lay indisputably with Hobson.¹⁸⁷

Missionary complicity in Hobson's chaotic scheme to collect signatures for the Treaty was not universal however. Brown had been advised against giving the Government any assistance by a fellow missionary. There was a strain of anti-Crown feeling emerging among some individuals in the missionary movement which was tempering the more widespread missionary enthusiasm for the Treaty:¹⁸⁸

You will of course exercise your own judgement as to how far you become a *servant* of the government in getting names to the Treaty - as for myself I intend having nothing to do with the matter, as I fear we shall find theory and practice (when they begin to work) two different things....let not the glitter of a Government influence us. Let us remember *what we are!* what we are called to...The times are becoming trying & it will soon appear what we are made of.¹⁸⁹

The implications for the missionaries resulting from the assistance they offered Hobson's administration were made clear by CMS leader Dandeson Coates:¹⁹⁰

¹⁸⁵ T. Bunbury to W. Hobson, 15 May 1840, in *GBPP 1841*, Vol. 17, pp. 17-18, 103-104.

¹⁸⁶ C. Orange, p. 69.

¹⁸⁷ P. Moon, *Hobson: Governor of New Zealand, 1840 - 1842*, p. 146.

¹⁸⁸ *Ibid.*, pp. 146-7.

¹⁸⁹ J. Wilson to A. N. Brown, 24 April 1840, in F. Porter, p. 157.

¹⁹⁰ P. Moon, *Hobson: Governor of New Zealand, 1840 - 1842*, p. 147.

They [the missionaries] have acquired the confidence of the Natives as their friends and benefactors. In virtue of that confidence the Chiefs were induced to sign the Treaty of Waitangi, understanding as the missionaries also understood, that the proprietary rights to whole lands of the Island, not alienated by themselves, were secured to them. How can the missionaries remain among them under the imputation of having deceived and betrayed them.¹⁹¹

This segment was published in 1844, after the colonial administration had veered away from its commitments under the Treaty, and suggests that the CMS missionaries were taken advantage of, as were the Maori signatories to the Treaty, for motives that were still concealed in 1840.

Doubts Over the Proclamations

Hobson's unilateral Proclamations of Sovereignty over the whole of the country, issued on 21 May 1840, were tenuously made. He justified the claim over the North Island by virtue of the Maori cession of sovereignty through their signing of the Treaty, and the claim over the South Island on the fragile pretext of discovery:¹⁹²

...I...assert, on the grounds of Discovery, the Sovereign Rights of Her Majesty over the Southern Islands of New-Zealand, commonly called 'The Middle Island', and 'Stewart's Island'; and the island commonly called 'The Northern Island' having been ceded in Sovereignty to Her Majesty....Whereas, By a Treaty bearing Date the Fifth day of February [1840]...made and executed by me William Hobson...I...do hereby Proclaim and Declare, to all Men, that from and after the Date of the above-mentioned Treaty, the full Sovereignty of the Northern Island of New Zealand, vests in Her Majesty Queen Victoria...¹⁹³

Irrespective of the impatience Hobson was feeling over the need to secure British sovereignty over the whole territory of New Zealand, the fact remains that this sovereignty was eventually asserted unilaterally, and not

¹⁹¹ D. Coates, *The New Zealanders and Their Lands*, London, 1844, p. 48.

¹⁹² P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, pp. 147-8.

¹⁹³ W. Hobson, Proclamations of Sovereignty, 21 May 1840, in *GBPP 1841*, Vol. 17, p. 32-34.

on the basis of the British having obtained the full, 'free and intelligent consent' of Maori that Hobson had been instructed to acquire.¹⁹⁴

At the time Hobson declared sovereignty over New Zealand, he was still waiting on Symonds, Bunbury, Henry Williams, and William Williams to return with the copies of the Treaty they had taken to various parts of the country to collect further signatures. Indeed, at that crucial juncture, Hobson did not even know whether any of these representatives had been successful in obtaining any Maori signatures at all, but he did not let this prevent him from making the Proclamations. The day before the Proclamations of Sovereignty were made, Hobson wrote a brief letter to the Secretary of the local committee of the CMS in the northern district,¹⁹⁵ giving thanks for missionary assistance,¹⁹⁶ clearly indicating that the process of obtaining further Maori consent for the Treaty was at an end:

The period having arrived for proclaiming the sovereign authority of Her Majesty over these islands, it accords no less with my public duty, than it gratifies my personal feelings, to acknowledge in the most ample manner, the efficient and valuable support I have received...from the Church Missionary Society, in carrying into effect with the native chiefs, the views and objects of Her Majesty's Government....I beg you will accept and convey to every member of the mission in New Zealand, my cordial and heartfelt thanks for the very zealous and effective assistance they have rendered me in the execution of my duty.¹⁹⁷

With this type of statement, Hobson obviously felt that he was now able to cast the Treaty of Waitangi aside as far as its role of legitimising the British claim to the sovereignty of New Zealand was concerned.

The Proclamations of Sovereignty over the North and South Islands, which overtook the Treaty of Waitangi as the principal basis for the assertion of British sovereignty in New Zealand, were gazetted in London

194 This was a requirement in the instructions Hobson received from Normanby, see Normanby to W. Hobson, 14, 15 August 1839, in *GBPP1840*, Vol. 33, pp. 37-45.

195 W. Hobson to R. Davis, 20 May 1840, in W. Williams, pp. 7-8.

196 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, pp. 148-9.

197 W. Hobson to R. Davis, 20 May 1840, in W. Williams, pp. 7-8.

on 2 October 1840,¹⁹⁸ which, in effect, amounted to ratification of the Treaty – or the nearest thing that the British Government had to offer at the time. A Royal Charter to establish New Zealand as a separate colony was issued on 16 November 1840, after which Letters Patent were published which secured Hobson's appointment to the position of Governor.¹⁹⁹

The Significance of the Treaty from a Development Perspective

In addition to its immediate purpose of securing a British cession of sovereignty over New Zealand, the Treaty of Waitangi served as the cornerstone of the British doctrine of intentional development for New Zealand. There are several dimensions of the Treaty that reveal the intent to develop New Zealand – that is, both the Maori and European inhabitants – which was the basis of this doctrine.

The Nature of the Relationship Between Maori and European in the Treaty

Although the relationship between Maori and European in 1840 varied enormously from one area to the next, depending on the extent of European settlement and degree of contact with Maori,²⁰⁰ there are some general themes that emerge that provide an indication of the overall nature of the interaction between the two groups in the context of the Treaty.

Superficially, the British would appear to be the dominant party to the Treaty on the basis that they possessed the biggest empire in the world. In contrast to the military might of the British Empire, Maori society was made up of disparate tribes, with no single unitary legal or administrative system,²⁰¹ and with an estimated combined population of around

¹⁹⁸ Russell to W. Hobson, 10 November 1840, in *GBPP 1841*, Vol. 17, p. 19.

¹⁹⁹ Op. cit.; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 149-50.

²⁰⁰ A. S. Thompson, *The Story of New Zealand*, Vol. 1, London, 1859, pp. 314ff.

²⁰¹ W. Swainson, *New Zealand and its Colonisation*, pp.80-1.

100,000.²⁰² Yet, this apparent imbalance in power was hardly evident within the country. Firstly, Maori outnumbered the European population in New Zealand by a ratio of around fifty to one.²⁰³ In addition, the embryonic British administration in New Zealand was not endowed with an army to enforce its will.²⁰⁴ Such circumstances precluded any unilateral enforcement of sovereignty over New Zealand by the Crown, and therefore put the onus on the British to obtain, where possible, the full and free consent of Maori.

From the perspective of Britain's doctrine of development for the colony, the absence of any element of coercion was an important building block for the intention to bring about progress and improvement in New Zealand. The dangers of coercion were later highlighted as barriers to development,²⁰⁵ and had British force been used to arbitrarily assert British rule in New Zealand, the prospect for the development of both Maori and Europeans in the colony would have been harmed.

One of the clearest pieces of evidence that there was no British coercion of Maori to sign the Treaty is that concerning the Waikato chief Te Wherowhero. According to William Symonds – one of Hobson's senior officials – the reason that Te Wherowhero refused to sign the Treaty was simply that he was not personally given the pomp and attention that he had heard was given to other Maori signatories.²⁰⁶ In such circumstances, the British did not bring force to bear on the situation, and Te Wherowhero remained a non-signatory of the Treaty.

The Treaty of Waitangi was not a device for conquering Maori, but rather, for incorporating them into the scheme for the development of the colony that had been formulated in Britain. One of Hobson's comments to Maori

202 A. Ward, p. 13; K. Sinclair, *The Origins of the Maori Wars*, p. 15.

203 Op. cit. The European population in New Zealand in 1840 was estimated to be around 2000, J. M. R. Owens, 'New Zealand Before Annexation', p. 50.

204 Normanby advised Hobson that it was '... impossible at the present time to dispatch any of Her majesty's troops to New Zealand', see Normanby to W. Hobson, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 43.

205 J. S. Mill, *On Liberty*, p. 224; J. S. Mill, *Bentham*, pp. 114-6.

206 W. Symonds to Colonial Secretary, 12 May 1840, in *GBPP 1841*, Vol. 28, p. 102.

following the signing of the Treaty at Waitangi was that, as a result of the conclusion of the Treaty, Maori and European in the colony were now one people.²⁰⁷ This statement is indicative of the intent to incorporate Maori into the stream of development that was envisaged for New Zealand, rather than apply the planned development to a parochial group comprising of only the settler population.

Maori Capacity to Conclude the Treaty

The absence of coercion is insufficient, in itself, to demonstrate that Maori were willing participants in the scheme to develop the colony, or that they appreciated the implications or even comprehended the provisions of the Treaty. In addition, for Maori to be bound to the Treaty, they would necessarily have to possess the capacity to conclude a treaty as far as the British were concerned.²⁰⁸ In practice, this meant that Maori would have to exercise sovereignty in order to be able to cede it. The right of the British to acquire Maori sovereignty was the sort of act that was later justified by the anticipation that the abrogation of the rights of one group in a society could ultimately lead to the betterment of the society as a whole.²⁰⁹ However, the exact nature of Maori sovereignty as it stood in 1840 is a problematic one, and needs to be tackled from the perspective of Maori themselves, as well as from the standpoint of the British Government.

The nature of Maori sovereignty, as it existed in 1840, defies a single classification because the extent to which Maori communities were influenced by European ideas varied considerably, mainly on the basis of the extent to which there had been contact between Maori and European. Keith Sinclair wrote of many Maori communities having experienced a ‘...rapid and shattering transformation...’²¹⁰ as a result of contacts with

207 Hobson spoke these words in stilted Maori: ‘He iwi tahi tatau – We are one people’. W. Hobson, in L. Cox, *Kotahitanga: The Search for Maori Political Unity*, p. 75.

208 B. Kingsbury, p. 121.

209 J. S. Mill, *Chapters on Socialism*, pp. 355-6.

210 K. Sinclair, *The Origins of the Maori Wars*, p. 12.

Europeans prior to 1840. In particular, European values, disseminated mainly by missionaries and settlers, were of ‘...great immediate temporal harm...’ to Maori,²¹¹ as the traditional social structures that bound Maori communities together were being challenged and in some cases broken down.

If Maori communities were in such a state of transition, with no apparent political unity, is it possible to even consider them as being a single sovereign entity in 1840? One of the reasons why a definitive answer cannot be given to this question is that it depends on a European concept – sovereignty – being applied to a non-European culture. Therefore, the discussion of Maori sovereignty necessarily defers to a non-Maori concept for its basis. This is not necessarily an irresolvable dilemma because the Treaty itself was also an instrument of European creation, and consequently, the discourse of Maori sovereignty and of the provisions and intent of the Treaty can sit relatively comfortably together. What requires examination therefore is the British perception of Maori sovereignty at the time of the signing of the Treaty.

In practice, the British recognition of indigenous sovereignty sometimes tended to be adapted to suit the requirements of the moment, rather than being based on any firm definition that was not open to interpretation and variation. The fact that Britain annexed some colonies without any treaty, or other formal declaration of assumption of sovereignty, suggests that there was little respect overall in the Colonial Office for the sovereign rights of some indigenous groups.

However, in New Zealand’s case, because there were definite plans to enact a doctrine of development, the issue of sovereignty needed to be clarified. If Maori consent for the exercise of British trusteeship in the colony was to be obtained through a Treaty,²¹² then the extent of

211 Ibid., p. 13.

212 P. G. McHugh, ‘Constitutional Theory and Maori Claims’, p. 28.

sovereignty that Maori possessed first had to be defined before it could be ceded to the British.

In the period immediately before annexation, the Colonial Office began to fine-tune its definition of Maori sovereignty. Evidently, the type of sovereignty the Colonial Office believed Maori exercised was not the sort that would be conducive to the British intent to develop the colony. In particular, there was a lack of order in the colony,²¹³ and without such order, progress could not coexist.²¹⁴ As a corollary to this the Colonial Office felt it necessary to extend its sovereignty to New Zealand so that it could administer over a growing British population living in a territory that was beyond British jurisdiction at the time.²¹⁵

Therefore, the British Government had the requirement to effectively diminish the value of Maori sovereignty in order to better validate its own claim to assuming sovereignty over the country following the signing of the Treaty. The assumption seems to have been that only with the exercise of the British form of sovereign authority could progress and improvement in the colony be achieved. So while Lord Normanby acknowledged that Maori sovereignty over New Zealand was ‘indisputable’,²¹⁶ this type of sovereignty was none-the-less deemed to be inadequate to assist the British in transforming Maori from their perceived state of lawlessness.²¹⁷ Consequently, Normanby qualified his concession that Maori exercised full sovereignty over the country by observing that their dispersed political organisation and their ‘incompetence’ to act as a single political group.²¹⁸ Sir George Gipps, the Governor of New South Wales at this time, and Hobson’s immediate superior, later argued that

213 Normanby to Attorney-General, 30 May 1839, in R. McNab, Vol. 1, pp. 739-40; J. Stephen to W. Backhouse, 12 December 1838, in *GBP 1840*, Vol. 33, pp. 3-4; J. Stephen to A. Spearman, 13 June 1839, in *GBPP 1840*, Vol. 3, pp. 32-3; Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 37-40.

214 M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 40

215 This issue was raised in J. S. Mill, *Civilisation*, p. 121; also see *Yearbook of the International Law Commission 1976 II (Part II)*, p. 73ff, in United Nations Document A/CN.4/L.263/Add. 1, New York, 1976.

216 Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, p. 37.

217 *Ibid.*, pp. 37-39.

218 *Ibid.*, p. 38.

regardless of what country was being considered, if the inhabitants were ‘uncivilised’, then they would only be entitled to claim a ‘qualified dominion’ over the territory they lived in.²¹⁹ It appears from this that the British recognition of Maori sovereignty was limited to a generalised appreciation that Maori society possessed an unanimity of language, culture, values, and religious belief. This was, in effect, the extent of Maori sovereignty that the British were prepared to acknowledge.

Maori sovereignty was inconsistent with British rule not because of any suggestion of the inability of Maori to govern themselves, but because it did not impose the sort of order that was perceived to be necessary to foster development among Europeans as well as Maori in the colony. The diminished status given to Maori sovereignty by British officials in the late 1830s appears to have been a means of justifying the reason why Maori were expected to cede sovereignty to the Crown – a legitimate justification in terms of the contemporary belief that order was a necessary precondition for any sort of development to occur.²²⁰ Moreover, if British rule had commenced without fully removing Maori sovereign power – for example, if Britain assumed *de facto* sovereignty over the colony without a treaty – then Maori could have a stronger basis in the future to challenge the right of the colonial government to implement its particular doctrine of development. As it stood though, those Maori who committed their hapu and iwi to the provisions of the Treaty also – according to the English wording of the Treaty – extinguished their rights to challenge the Crown’s decisions thereafter.

A Revolution in Authority

The Treaty of Waitangi, unlike some of the other treaties created by the British in the eighteenth and early nineteenth centuries, aimed to achieve much more than simply indicate to the outside world that New Zealand

²¹⁹ G. Gipps, in Report from the Select Committee of the House of Commons on New Zealand, 29 July 1844, in *GBPP 1844*, Vol. 13, pp. 5-6.

²²⁰ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 40.

had been annexed to the British Empire. It also served, for example, as confirmation that a new system of rule, a new government, and new expectations for the colony had supplanted the existing systems of government, and the existing patterns of immanent development.

This revolution in authority also involved the displacement of indigenous leaders with those appointed by the colonising power. However, despite the potential for upheaval that such change might suggest, the manner in which the revolution transpired was comparatively free from serious challenge, especially from Maori in the period under consideration.

Part of the reason for this was that the transition was not instantaneous in most of the affected areas. For example, although Hobson became Lieutenant-Governor – and therefore effectively the colonial despot of New Zealand – on 6 February 1840, his nominal position was never matched by a corresponding capacity in practice to exercise the sort of power the role suggested. Similarly, with the departments he established, their impact on the colony could be hindered by poor resourcing or incompetence.²²¹ Such a case was the Office of Protector of Aborigines, whose ability to wield its influence over the entire Maori population was limited by a lack of funding, poorly-skilled staff, and an inability to comprehend the fullest extent the requirements of the Office. Indeed, such was its poor level of performance that a later New Zealand Governor, Sir George Grey, stated that its work was conducted ‘...in so unusual a manner that is almost impossible to obtain information on subjects with which that office was connected’.²²²

It was the gradual change in society occasioned by an increase in European settlement that was a major contributor to the revolution in authority in the longer term. Michael Adas has observed that in New Zealand’s case, ‘...indigenous leaders continued to control semiautonomous enclaves, but their authority was eroded as the strength

221 G. Browne, 25 May 1861, in *Appendices to the Journal of the House of Representatives*, Wellington, 1861, E-3A.

222 G. Grey to Stanley, 3 June 1846, in *GBPP 1847*, Vol. 28, p. 5.

and viability of their societies as a whole declined'.²²³ Although it may have been what amounted to a displacement of the indigenous population over several decades following the signing of the Treaty of Waitangi that helped to achieve the revolution in authority, it was the Treaty which created the basis for civil government in the colony – which in turn was a feature that gave an added sense of security to impending settlers,²²⁴ and which enabled this longer-term transition to occur.

Yet, this inability to effect rapid change, albeit as a consequence of incompetence or deficient resources, was never-the-less consistent with the type of transformation that was deemed to be favourable by certain social philosophers of the period. For Maori in New Zealand, they were undoubtedly experiencing a situation in which their established doctrines and opinions were becoming disordered²²⁵ in the face of the influx of a new culture and new ruling elite.

However, there was a trade-off built into the Treaty between the loss of sovereignty Maori experienced, and the redefinition and articulation of their rights under the new authority. The problem of the clash of rights between different cultures meant that some uniformity of rights would be necessary prior to any planned progress and improvement taking place.²²⁶ As all the inhabitants of New Zealand were to be covered by the doctrine of development for the colony, the requirement existed that they all be given identical legal protection. Thus, while Article Three of the Treaty did not specifically make Maori British subjects, it did furnish them with all the same rights and privileges as British subjects.²²⁷

²²³ M. Adas, *Prophets of Rebellion: Millenarian Protest Movements against European Colonial Order*, Chapel Hill, 1979, pp. 46-7.

²²⁴ The securing of land purchases by the Crown was an important consideration for settlers in New Zealand in the 1840s in particular, see Proclamation of G. Gipps in A. H. McLintock, *Crown Colony Government in New Zealand*, p. 54.

²²⁵ J. S. Mill, *The Spirit of the Age*, p. 177.

²²⁶ J. S. Mill, *The East India Company's Charter*, London, 1852, in J. M. Robson (ed.), *The Collected Works of John Stuart Mill*, Vol. 30, Toronto, 1990, p. 34

²²⁷ Article the Third, Treaty of Waitangi, see Appendix Two of this thesis.

The speed at which the revolution of authority took place in New Zealand as a result of the conclusion of the Treaty of Waitangi may not have been as rapid as the popular notion of a revolution might imply, but regardless of this, it did herald a revolution in the holders of power in the colony. The shift of power effected by the Treaty of Waitangi signalled the intent of the direction of British policy with regards to the exercise of power in New Zealand, rather than merely reflecting the status quo of British intervention in New Zealand at that time. Phrases in the Treaty such as ‘the enjoyment of Peace and Good Order’, ‘...the rapid extension of Emigration from both Europe and Australia’, and ‘...Her Majesty being desirous to establish a settled form of civil government’,²²⁸ all suggest the future direction of intended development for the colony, rather than the state of the colony at the time the Treaty was signed.

The rights defined in the English version of the Treaty for Maori included the same general rights and privileges as British subjects,²²⁹ the right to full, and undisturbed possession of their lands and other physical possessions, and the right to sell their lands to the Crown (before any other purchasers) at a mutually agreeable price.²³⁰ An extra layer of rights implicit in the Treaty (extrapolated from the specific provisions of the Treaty) was that as a result of the imposition of British rule, the opportunity would exist for Maori development to be directed to the same goals as their European counterparts in the colony. This ‘right to development’ for Maori is a distinguishing feature of the Treaty of Waitangi,²³¹ and sets it further aside from those treaties whose purpose was solely the annexation of territory or the protection of trade.

228 Preamble, Treaty of Waitangi, see Appendix Two of this thesis.

229 Article the Third, Treaty of Waitangi, see Appendix Two of this thesis.

230 Article the Second, Treaty of Waitangi, see Appendix Two of this thesis.

231 The Development Principle of the Treaty of Waitangi was identified by the Waitangi Tribunal in 1992, Waitangi Tribunal, *Ngai Tahu Sea Fisheries Report* Wai-027, Wellington, 1992.

Upholding Free Trade

The reluctance with which the British Government viewed intervention in New Zealand from the mid to late 1830s²³² never fully disappeared, even though the decision was finally made to annex the colony.²³³ This is significant because it reveals firstly the absence of any urge to acquire New Zealand simply for the sake of expanding the British Empire, but more importantly, because it hints that New Zealand might be guided to self-government at some future point so as to alleviate the burden of possessing the colony. Certainly, the financial burden for the British Government that New Zealand quickly emerged as was an issue of ongoing concern among colonial officials in London.²³⁴

This continuing doubt over the value of New Zealand as a colony could explain in part why the Treaty of Waitangi contained no reference to trade protectionism, as previous British treaties with some colonies had.²³⁵ Instead, the Treaty left open the entire issue of trade, with no mention of tariffs, quotas, or monopolistic rights to resources. Within the British Empire, the shift towards a doctrine of Free Trade, from roughly the early 1820s, meant that the former justification in acquiring colonies – that of economic gain – no longer held sway.²³⁶ Furthermore, within the Colonial Office, the ascendancy of the doctrine of Free Trade produced ‘...a liberal climate of opinion toward the political development of colonies’.²³⁷ Specifically, this opinion was tilting towards the need to foster greater political and economic autonomy within the colonies.²³⁸ However, there were limits to this emerging ideal of colonial

232 Glenelg, in H. E. Egerton, p. 292; H. Labouchere to W. Hutt, 1 May 1839, in *GBPP 1840*, Vol. 33, pp. 7-8.

233 Even the act of annexation was excused and almost apologised for by the Colonial Office, see J. Stephen to H. Labouchere, 15 March 1839, in W. D. McIntyre and W. J. Gardiner (eds.), pp. 8-10.

234 Russell to W. Hobson, 9 December 1840, in *GBPP 1841*, Vol. 17, p. 26; Treasury Minute, 10 March 1843, in *GBPP 1843*, Vol. 33, pp. 48-52; Stanley to Officer Administering the Government in New Zealand, 13 March 1843, *GBPP*, 1843, vol. 33, p. 313.

235 Anglo-Dutch Treaty 1619, in D. G. E. Hall, p. 330; Treaty of Paris 1784, in *ibid.*, pp. 363-4; Anglo-Dutch Treaty 1824, in *ibid.*, pp. 550-1; G. S. Graham, p. 42.

236 J. W. Cell, pp. 93-4.

237 *Ibid.*, p. 94.

238 *Op. cit.*

emancipation. Stephen was an ardent supporter of Free Trade,²³⁹ but in the case of the West Indies, he had to actively restrict Free Trade in order to prevent the abuse of indigenous labour.²⁴⁰ The protection of people in the colonies was therefore an important precondition to the Colonial Office endorsing Free Trade.²⁴¹

The philosophy of Free Trade was also a pervasive one within New Zealand's colonial Government. Hobson's successor as Governor, Robert FitzRoy, argued before the Legislative Council in Auckland in 1844 that: 'That principle so true and beautiful in theory, – so difficult to be carried out in practice in the old countries – the principle of Free Trade, – we have here, in this new country (as it may be called) – in this youngest of colonies, endeavoured to carry into effect'.²⁴² It was evident that the intention to foster Free Trade was an underlying consideration rather than an overt requirement for Governors of New Zealand in the early 1840s, and it is conceivable that this implicit Free Trade sentiment was a feature of the Treaty because it could assist in the colony becoming less financially dependent on Britain over time. Hobson's concern over the lack of trade occurring in New Zealand²⁴³ testifies to the importance with which he saw the role of trade in the development of the colony, and its prospects for greater autonomy.²⁴⁴

The more pressing requirement for Free Trade by Hobson's administration, however, was based on the fact that trade represented a source of revenue through taxation by means of customs duties²⁴⁵ In an economy starved of tax revenue, these duties made a valuable contribution to the funding of the colony's Government. However, ironically, the

239 P. Knaplund, p. 255.

240 Op. cit.

241 Ibid., pp. 255-6.

242 R. FitzRoy, address to Legislative Council, 28 September 1844.

243 W. Hobson to Principal Secretary of State for the Colonies, 4 December 1841, in *GBPP 1842*, vol. 28, pp. 179-80.

244 Op. cit.

245 F. Mathew, p. 216; 'Revenue and Expenditure Estimates for One Year', Office of the Colonial Secretary, 2 July 1841, in C. Terry, *New Zealand, Its Advantages and Prospects as a British Colony*, London, 1842, p. 353.

imposition of customs duties eventually began to restrict trade,²⁴⁶ and so the Legislative Council, with specific reference to the doctrine of Free Trade, abolished these duties in 1844, citing the welfare of the colony that Free Trade would bring as a basis for the decision.²⁴⁷

A 'Civilising' Instrument

The efforts of the CMS missionaries in particular to act as a 'civilising' force on Maori for at least two decades before the Treaty of Waitangi was signed, could lead to the perception that the Treaty was just another step in the broader process of encouraging Maori to adapt to European ways. The Treaty specifically heralded a 'rapid extension'²⁴⁸ of immigrants arriving in New Zealand in the foreseeable future. This fact alone would suggest that modifications in Maori society would become more urgent if the majority population in the colony (Maori until 1858)²⁴⁹ were to accommodate this influx. However, the Treaty's role in the whole process of 'civilising' Maori was far more significant.

The Treaty was much more than just a continuation of the existing processes of introducing European values to Maori. This is because it indicated a specific and concerted intent to develop Maori that was part of Crown policy, rather than being the product of the often vague 'civilising' urges of some of the missionaries. The Preamble to the Treaty, for example, refers to the policy of imposing British laws on Maori.²⁵⁰ And immediately following the conclusion of the Treaty, Hobson announced the formation of the Office of Protector of Aborigines, whose underlying purpose would be to actively civilise Maori, as part of the effort to develop the colony.²⁵¹ Thus did the Treaty sanction an official policy of

²⁴⁶ R. FitzRoy, *Remarks on New Zealand*, p. 34.

²⁴⁷ *Op. cit.*

²⁴⁸ Preamble, Treaty of Waitangi, see Appendix Two of this thesis.

²⁴⁹ K. Sinclair, *The Origins of the Maori Wars*, p. 15.

²⁵⁰ Preamble, Treaty of Waitangi, see Appendix Two of this thesis.

²⁵¹ W. Hobson to Russell, 26 May 1841, in *GBPP 1842*, Vol. 28, p. 404.

civilising and developing Maori that continued in various forms for decades thereafter in the colony.²⁵²

The Treaty as a Manifestation of the Doctrine of Development

In New Zealand's case in the early 1840s, for a doctrine of development to have effect, one of the preconditions was that any rights exercised by the indigenous peoples that could possibly obstruct the doctrine would have to be dissolved. Rights were therefore deemed acceptable by virtue of the fact that they either were included with the Treaty's provisions, or at least did not clash with them. The acceptability of suppressing or even eliminating Maori rights (cannibalism is an example) was tolerable on the dual bases that Maori were classified as 'uncivilised',²⁵³ and that the intent to develop the colony would bring them benefits that Maori would not otherwise experience in their state of immanent development. With the prevailing view of the need to civilise a group before that group could experience development,²⁵⁴ and the requirement that order be amalgamated with progress,²⁵⁵ the Treaty set the stage for a redefinition of Maori rights. However, the extent to which the subsequent modification and definition of these rights were directly linked to Maori development was subsumed by the broader presumption that British ways were necessarily 'civilised', and that Maori ways were correspondingly 'uncivilised'. Something that was not quite consistent with the acknowledgement that even among some Europeans, 'uncivilised' characteristics could be present.²⁵⁶

252 See M. P. K. Sorrenson, 'Maori and Pakeha', in G. W. Rice (ed.), pp. 141-166.

253 B. Kingsbury, p. 127; J. S. Mill, *On Liberty*, p.136; G. Gipps, in 'Report from the Select Committee of the House of Commons on New Zealand', 29 July 1844, in *GBPP 1844*, Vol. 13, pp. 5-6.

254 J. Bentham, UCLMC, 1818, Box 164, p. 39; J. S. Mill, *Civilisation*, p. 126.

255 M. P. Cowen and R. W. Shenton, 'The Invention of Development', p.34.

256 J. Bentham, UCLMC, 1818, Box 164, p. 39. Ironically, it was concern over the 'uncivilised' behaviour of so many Europeans in New Zealand that led to missionary calls for further formal British intervention in the colony. See J. Stephen to W. Backhouse, 12 December 1838, in *GBPP 1840*, Vol. 33, pp. 3-4.

The sentiment that greater order was required for New Zealand in the period preceding the Treaty of Waitangi provides another trace of the link between the Treaty and the doctrine of development for New Zealand devised by the Colonial Office. At this time, order was seen as being inextricably linked to progress,²⁵⁷ and therefore, the intentions for New Zealand's development hinged on the exercise of British order in the colony. For this reason, the Treaty of Waitangi specifically refers to the Crown's objective of establishing a '...settled form of Civil Government...' that would '...avert the evil consequences...' of a state without order.²⁵⁸ Furthermore, the Treaty provided for a colonial despot, rather than an elected representative of the colony, to be appointed to impose this order on New Zealand. Finally, as if to remove any doubt as to the extent of the despot's authority that the Treaty would transfer from the indigenous peoples, the English text of the Treaty unambiguously ceded to the Crown '...absolutely and without reservation all the rights and powers of Sovereignty...' which Maori either exercised and possessed, or were supposed to exercise or possess.²⁵⁹

Conclusion

Because the issue of consent was such a vital role in the enactment of colonial trusteeship, the Treaty of Waitangi can be seen as a pivotal device by which this consent was obtained from Maori. The initial effort expended by the Hobson administration to explain the provisions and purpose of the Treaty to the chiefs at Waitangi supports the assertion that the 'free and intelligent consent' of at least some of the Maori signatories to the Treaty (that is, those at Waitangi) was obtained. This was notwithstanding the substantial differences in the conferring of sovereignty in the two versions of the Treaty. Thereafter, British trusteeship could be exercised in the colony on the basis of this consent.

257 J. Bentham, UCLMC, 1818, Box 164, p. 39; S. Ashton, pp. 6-19.

258 Preamble, Treaty of Waitangi, see Appendix Two of this thesis.

259 Article the First, Treaty of Waitangi, see Appendix Two of this thesis.

Inherent in this approach were implicit assumptions about the racial inferiority of indigenous peoples in the colonies, and the belief that the British could achieve improvement in the colony, as they themselves defined it, on behalf of the indigenous peoples. Whether Maori fully understood that they had conceded the right to the British to direct the future of their development (to goals that were not explicit in the Treaty) was not addressed by the British at this time. In a similar vein, the absence of nation-wide endorsement of the Treaty by all hapu and iwi leaders was not considered by the British as an impediment to their plans to initiate a phase of intentional development for the colony.

The Treaty, in its English version, formally gave Britain the right to preside over both Maori and Europeans in the colony, although the right to exercise this trusteeship role and initiate intentional development in New Zealand did not automatically confer on the Crown the actual capacity to do so. The Treaty therefore served the role of a device which demonstrated to the British the proof of Maori consent for the Crown to nominate its own model of development for the colony.

Although it may not have immediately appeared so at the time, the Treaty of Waitangi ushered in a new epoch of order in New Zealand. The widespread Maori consent that British sovereignty or government (depending on which version of the Treaty is being considered) would be established in the colony eventually allowed the Colonial Office to introduce the full order of British rule as the foundation for improvement and progress in the colony. This positivist view of order presumed that the natural rules that guided development could be harnessed and actively applied to achieve a particular model of development. It was also presupposed that the colonial administration would therefore employ methods of enforcing order as a means to an end – the end being the doctrine of development it was charged with implementing. The imposition of British order over the entire colony would also overcome one of the barriers to the potential success of intentional development. This barrier was the presence of two rival, distinct, and generally

incompatible forms of society, at two different stages of 'civilisation', existing in the one colony.²⁶⁰

In terms of the theme of intentional development, the Treaty of Waitangi represented an important departure from many previous British treaties. Most British treaties that aimed at a cession of sovereignty from indigenous peoples in colonies focussed overwhelmingly on the sovereignty issue. Whatever other provisions may have been included tended to be there either to appease missionary concerns, or to give token recognition to the rights of indigenous societies.²⁶¹ With the Treaty of Waitangi, the cession of sovereignty to the Crown was obviously very important, but for a different reason. It was not to achieve any military, strategic, or economic goal, as had been the case with some of the African treaties. Rather, the cession of sovereignty in the Treaty of Waitangi was included as a provision to enable the doctrine of intentional development that had been devised for New Zealand to be implemented.

Even those provisions, such as the preemption clause, which on the surface might appear as a device to protect Maori land, were actually a means by which the Crown could impose its control over the status of Maori land. The pressure that the preemption clause put on Maori to change the status of their land from communal to individual tenure was a major aspect of the intentional development that Britain brought to bear on the colony. It also had the effect of putting the future development of the colony firmly in the hands of the colonial administration, thereby replacing the disorder of immanent development that had predominantly characterised the development of the colony prior to 1840.

The absence of any mention of trade restrictions in the Treaty of Waitangi is a good indication of the Free Trade philosophy that influenced the text of the agreement. Free Trade in the colonial setting was not just about

260 M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 67.

261 F. D. Lugard, pp. 15-16.

liberalising commercial activity, but was part of a broader scheme to assist colonies to become financially independent of Britain.

Finally, the Treaty of Waitangi was a turning point in the colony's development in that it signalled that the intentional development of the colony, which had been devised in the preceding years, was about to move from being a doctrine that was planned to a practice that would be actively implemented. As a corollary to this, the existing immanent development in the country would be supplanted by these policies of intentional development, and the authority of the Crown would override that of any other group in the colony.

The following chapter of this thesis explores the legacies of the Treaty as the device which heralded the implementation of the doctrine of intentional development for the colony. The two main areas that are considered are the attempts at the economic and jurisprudential development of the colony along the lines prescribed by the Colonial Office. The effective practice of intentional development for the colony could be negated if there was insufficient capacity or competency on behalf of the colonial administration to convert the intent to develop with the practice of development. It is this link between the desire for development and the effective performance of development functions²⁶² which forms the basis of the analysis in the following chapter.

262 W. Glade, in M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 65.

6. FROM A DOCTRINE OF DEVELOPMENT TO THE CORRUPTION OF DEVELOPMENT

Although the Treaty of Waitangi can be seen as the final manifestation of the Colonial Office's doctrine of development for New Zealand, it also represented the starting point for the practice of this development in the colony. However, to consider the Treaty as only the fruition of the Colonial Office's plans for development in New Zealand would be to ignore how it functioned, and the often intricate correlation between policy and practice.

The purpose of this chapter is to examine the practice of development in New Zealand in the approximately two years following the signing of the Treaty of Waitangi, and to evaluate the reasons why the planned development for New Zealand in this period did not match the expectations for the development of a society set down by contemporary social philosophers. In the course of this examination, attention is given to factors that contributed to the corruption of the development ideal, and how these factors in some cases derailed the entire process of intentional development for the colony.

There are two areas of Government activity which are focussed on in this chapter for analysis of the presence of corruption in the process of development: justice and the economy. The common thread binding these two spheres of Government involvement in New Zealand between 1840 and 1842 is the fact that the capacity of the colony's Government to direct their development was – for various reasons – inadequate. This leads not only to the corruption of the ideal of development in New Zealand, but also to the undoing of the practical advances in development that had occurred in the form of the Treaty of Waitangi, which contained the promise of development for the colony in line with the doctrine of development that had been created for New Zealand by the Colonial Office.

The Notion of Corruption.

The frequently utopian ideals of positivist development philosophers in the early part of the nineteenth century seeped into the construction of colonial policy, and even the formation of a specific doctrine of development, as occurred in New Zealand's case. However, any assessment of the impact these models of development cannot cease at the policy-formation stage. As Lord Acton wrote, a need exists to '...watch the process as well as the result'.¹

Cowen and Shenton draw attention to the way in which the commencement of the practice of development is allied to the issue of corruption.² In this context, corruption is defined as those actions or circumstances which undo the previous advances of development, or which somehow adversely affect the 'essential idea' of development.³ Cowen and Shenton cite the classical origin of this concept of corruption influencing development, in which corruption is portrayed as '...a phase of decay and decomposition following the phases of expansion and maturation in the cycle of development'.⁴ In the 1840s, the social philosopher and cleric John Henry Newman took the idea of corruption a stage further by arguing that it was actually an inherent characteristic of development, and was therefore implicitly unavoidable in the practice of development.⁵

The notion of the unavoidability of corruption affecting development is an important one, because without it, all development practice could be defined as a failure if it veered even slightly from the prescribed ideal. Yet, because corruption is an unavoidable corollary of development, a different perspective can be explored. What is more important is not the fact that development practice failed to live up to the expectations of the

¹ Acton, in M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 9.

² M. P. Cowen and R. W. Shenton, *Doctrines of Development*, pp. 94-100.

³ *Ibid.*, p. 95.

⁴ *Ibid.*, p. 96.

⁵ *Ibid.*, p. 94.

ideal, but the *extent* of this divergence of the implementation of the doctrine of development from its original intentions.

With this approach, it then becomes necessary to examine and evaluate the details of the practice of development in New Zealand from the time of the signing of the Treaty of Waitangi to the conclusion of the first governorship in 1842. This reveals the types of problems the British trusteeship administration encountered in effecting the particular form of development that was heralded in the Treaty of Waitangi.

Attempting to Assert British Justice

The role of state-imposed order as a prerequisite for the state to direct the development of the colony was a key requirement for Hobson's administration if it was to achieve the improvement it was charged with attaining.⁶ Just as the cession of sovereignty, through the Treaty, had conferred on the colonial administration the right to act in a trusteeship role to guide the economic development of the colony, so too did it grant Hobson's Government the power to extend British justice to the colony. However, McHugh's analysis of the distinction between political sovereignty and legal sovereignty,⁷ discussed in Chapter Five of this thesis, has an important bearing here. The Crown may have obtained legal sovereignty over the colony by concluding the Treaty of Waitangi, but the matter of acquiring practical Maori consent to be bound by this sovereign authority was yet to be achieved.⁸

This section examines how the regime of British justice was introduced in New Zealand in the years immediately following the signing of the Treaty of Waitangi, and the connections between the extension of British justice not just to the settlers, but to Maori as well, as part of the doctrine of

6 Comte argued that order was a prerequisite for progress to occur, see M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 28.

7 P. G. McHugh, 'Constitutional Theory and Maori Claims', pp. 33-4.

8 *Op. cit.*

intentional development. The implementation of this doctrine, as it related to the justice system, was dependent on the capacity and competency of the colonial government to convert the intent to develop into the practice of development. The elements of incompetence and the inadequate resources available to the colonial administration represented the two principal forces leading to the corruption of this ideal.

Incorporating Maori into British Justice

The immediate consideration for Hobson's Government was how Maori would be brought under the umbrella of British law. Technically speaking, Maori were automatically placed under British law by virtue of the fact that they had given their consent to the Treaty of Waitangi and because British sovereignty over the entire territory of the colony had been confirmed through the Proclamations of Sovereignty of May 1840.⁹ There was also little doubt among some colonists that Maori needed to be included in this new justice system on the basis that they were already being assimilated into the European society in the colony:

Considering the great number of the Aborigines, on the Northern Island, their habits, their intelligence, and consequent aptitude for civilisation, and knowledge of the useful arts of social life; it would be evident of what most momentous importance is it, that judicious measures should, at once, be adapted relative to them.¹⁰

This line of thinking reflected ideas about the value and necessity of colonial trusteeship, and the inclusion of indigenous peoples in the legal regime of the colonising power. Constitutional power in the country became property in trust,¹¹ with the colonial Governor effectively acting as '...the guardian of his subjects'¹² on the presumption that for the Maori subjects in particular, it was no longer appropriate for them to continue

⁹ W. Hobson, Proclamations of Sovereignty, 21 May 1840, in *GBPP 1841*, Vol. 17, pp. 32-4.

¹⁰ C. Terry, p. 204.

¹¹ J. Bentham, UCLMC, c. 1795, Box 170, p. 182.

¹² *Op. cit.*

existing under their own legal system. The contemporary view was that this trusteeship would allegedly enable the indigenous population to break out of the fetters imposed upon them by their 'racial inferiority'.¹³ British trusteeship could not be fully introduced into the colony however, and neither therefore could officially-directed development take place, without the successful introduction of British justice. The system of British laws, as applied to colonies, provided a framework for the Crown to execute policies and administer justice as foundations for development to take place. Without the universal application and full implementation of the system of British justice, any other policies that the Government attempted to implement would only have limited effect. In turn, this limited effect could be interpreted as evidence of the corruption of the ideal of the universal application of British justice throughout the colony.

The Meeting of Two Systems

One of the difficulties which emerged as a by-product of the colonisation process was that of the clash between different legal systems. Hobson had presupposed that the proclamation of British sovereignty over New Zealand, together with the Treaty of Waitangi, would negate any doubts over the pre-eminence of British law and sovereignty in New Zealand.¹⁴ The fact that consent had been obtained from Maori, in the form of a treaty of cession, for British trusteeship to be asserted over them strengthened Hobson's view. What he failed to immediately appreciate, however, is that devices such as a treaty did not suddenly extinguish traditional indigenous customs and laws. Moreover, during this period, Maori still outnumbered settlers by almost fifty to one,¹⁵ thus making it difficult for the colonial administration to coerce Maori to follow British law if Maori chose not to comply. It was unavoidable, therefore, that there were bound to be points of conflict when the two legal systems –

¹³ S. Corbridge, p. 730.

¹⁴ W. Hobson to R. Davis, 20 May 1840, in W. Williams, *Plain Facts Relative to the Late War in New Zealand*, Auckland, 1847, pp. 7-8.

¹⁵ A. Ward, p. 13; K. Sinclair, *The Origins of the Maori Wars*, p. 15; J. M. R. Owens, 'New Zealand Before Annexation', p. 50.

and the communities that upheld them – came into contact, notwithstanding the provisions of the Treaty which (in both versions) conferred the function of government to the Crown's representative in the colony.¹⁶

The problems inherent in one nation imposing its legal system on another were explored by James Mill¹⁷ just a few decades earlier. According to James Mill, the idea was poorly understood that nations seeking to command others relied on making the commanded nation dependent on the introduced systems of justice. He also drew attention to the possible practical problems when one nation endeavoured to impose its legal will on another:

An independent nation would resent a command...by another....Neither can it properly be said that nations, taken aggregately, prescribe...laws to one another severally; for when did they ever combine in any such prescription? When did they ever combine to vindicate [punish] the violation of them? And how could they ever be expected to do so? The inconveniences, which must be felt from any movement to lend effect to the law of nations, are...formidable. *Nations hardly ever combine without quarrelling* [author's italics]....For...nations to combine in any one enterprise is impossible.¹⁸

James Mill's son was similarly concerned about the issue of legal domination over a people, observing the repugnance felt by a people who become governed by a foreign institution,¹⁹ but he qualified this by observing that a 'civilised' government may have to be despotic to '...a considerable degree', in order to maintain and promote the benefits of civilise society.²⁰

16 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 215.

17 James Mill was the father of John Stuart Mill.

18 J. Mill, *Essays on Government, Jurisprudence, Liberty of the Press, and the Law of Nations*, London, 1825 (New Jersey, 1986), p. 5.

19 J. S. Mill, *Considerations on Representative Government*, p. 376.

20 *Ibid.*, p. 377.

George Clarke junior, a colonial official in New Zealand, offered his prescription for how the legal system of two nations might be combined in the New Zealand setting in the early 1840s. He commenced his argument by stating that the alternative to Maori accepting British justice would be war between Maori and European. Clarke's preference was for Maori to be assimilated – subtly and slowly – into the British system of justice that was being established in the colony: 'Our only hope of keeping peace between the races, was by gradually modifying their system until it should be merged into our principles of possession'.²¹ Clarke attributed the Maori resistance to British laws to the speed at which they were introduced: '...I am very strongly of [the] opinion, that nearly all our contention with the Maoris has arisen from our disregard of these fundamental considerations, or from the attempt to abolish them to suddenly, and with too high a hand'.²² Yet, law of the colonising power needed to prevail in the colony for development to take place,²³ especially that form of development which included the indigenous society as well as the settlers. If a society could not meet this precondition, then it would not possess the means to develop.²⁴

A significant feature of the exercise of British law in New Zealand was the way in which the Governor, rather than officials in Britain, was responsible for the 'mechanics' of applying British law and devising legislation specifically for the colony. Even if this colonial legislation was inept, or its implementation was ineffective, Stephen believed that it was '...generally more wise to acquiesce than to enter into a contest to prevent it'.²⁵ Stephen's view was that through nurturing this independence in the process of colonial legislating, colonial administrations would '...grow wise by experience'.²⁶ In particular, Stephen stressed that legislation introduced into the colonies should be

21 G. Clarke, *Notes on Early Life in New Zealand*, p. 47.

22 Op. cit.

23 J. Bentham, UCLMC, c. 1795, Box 170, p. 182; J. S. Mill, in M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 41.

24 J. S. Mill, *Autobiography*, pp. 206-7.

25 J. Stephen, 4 December 1841, in P. Knaplund, p. 261.

26 Op. cit.

egalitarian, and should not be an ‘...injustice to any particular class...’ within the colony.²⁷

A Case of Assimilation

The practice of introducing and spreading the British justice system, as part of the process of fostering order in the colony’s society, was highly problematic. The reason for this was that Maori had their own system of justice which met all their law and order requirements. Consequently, there was little direct incentive for Maori to abandon their existing system for that of the coloniser’s. Therefore, some sort of catalyst was required to trigger the further extension of British law over Maori,²⁸ especially as the option for the arbitrary enforcement of British law over the entire colony was logistically impossible at this time. It was a crime committed by a Maori which brought this encounter of two systems to a head. The crime was one of murder. Ensign Best, writing on 24 November 1841, described the course of events:

It appears that a Mrs. Robertson lived on a small Island in the Bay of Islands, her family consisting of an old servant called Tommy Bull and two children of which one was a grandchild of Rewa a chief of some weight. A Native named Mukatu [Maketu] had been in her employ some days and had quarrelled with Bull whom he murdered as he lay asleep about six o’clock one evg [sic] he then went into the house and attacked Mrs. Robertson who at first beat him off but was eventually tomahawked....Mauri and Pachia [sic] hurried to the spot and in a day or two the murderer fell into the hands of Rewa who delivered him up to the civil power.²⁹

At first glance, this looked like an ordinary case of a person having committed murder, being apprehended, and awaiting trial. However, there were complications involved that were to potentially entrap the colonial Government in the issue. The first of these factors was that the

²⁷ Op. cit.

²⁸ The mid-twentieth-century development theorist Walt Rostow argued that the stimuli for such changes were usually most effective when they came from outside the society, see W. W. Rostow, ‘The Take-Off Into Self-Sustained Growth’, p. 27.

²⁹ A. D. W. Best, p. 329.

accused, Maketu, was a highly-ranked Maori, and a close relation of the famous Nga Puhi chief Hongi. Because of this, it was thought prudent to remove Maketu to Auckland - out of the Nga Puhi tribal area where he may have had some local support and sympathy. The second factor that made this case exceptional was that one of the victims was the grandson of another powerful Maori chief. The potential therefore existed for an inter-tribal war, with the possibility of the British administration being embroiled, either as a peace-maker or backing one side against the other.³⁰ As if this was not enough for Hobson to contend with, the anticipation among pockets of settlers in Northland of tribal war³¹ compelled them to seek the protection of the French, whose convenient presence in Kororareka on the French navy ship *L'Aube* was a sign to Hobson of the lingering, and not entirely welcome, presence of a foreign power.³² Precisely the sort of disorder that was an enemy to intentional development seemed about to descend on the colony.

Events in the Bay of Islands – one of the largest European settlements in New Zealand – threatened to get out of control as a result of Maketu's arrest. One report stated that 400 Maori were about to descend on a European settlement, although this was not verified.³³ The CMS missionary Richard Davis, who was in Waimate at the time, expressed his worries about the escalation in tensions, and the fears among the European population in Northland over the possibility of reprisals by Maori, and a complete breakdown in the rule of British law: 'After he [Maketu] had been given up...and removed to Auckland for trial, there was a considerable reaction amongst the natives, and many threats of an alarming tendency were held out against the white people'.³⁴ The very

30 R. Davis to J. N. Coleman, 31 December 1841, in J. N. Coleman, *A Memoir of the Rev. Richard Davis*, London, 1865, p. 268.

31 W. Hobson to Principal Secretary of State for the Colonies, 16 December 1841, in *GBPP 1842*, Vol. 28, p. 191.

32 A. W. D. Best, p. 329; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 217.

33 *Ibid.*, p. 330.

34 R. Davis to J. N. Coleman, 31 December 1841, p. 268; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, pp. 217-8.

restricted extent to which British law and order applied in the colony seemed about to be exposed.

In Auckland, Hobson instructed prison personnel to intercept Maketu's mail for intelligence purposes, and discovered that the chief had written, through a scribe, of plans to assassinate Hobson and attack British troops.³⁵ Eventually though, the apparent tension in Northland began to lose momentum, and it was not until March 1842 that Maketu was tried, convicted, and finally executed for the murders he had committed.

The Judge presiding over the case was Chief Justice William Martin. Justice Martin, according to William Gisborne, a nineteenth century New Zealand parliamentarian, was a worthy choice for the position. Gisborne believed Martin to be an ideal appointment, describing him as a person '...of high attainments; able as a lawyer...endowed with a mind of great power, and possessed of a large fund of information....He had an enthusiastic love for the native race, and he did much for its welfare'.³⁶ This so-called 'love for the native race' was a clear sign that the paternalistic intention to 'protect' Maori existed and was practiced by the judiciary in the colony. The language is of protection and assistance, with the implicit belief that the British administration was the entity that would bring benefits and improvement to Maori.

Although there was an air of bewilderment among many Maori observers at the court case, the inevitability of this new system of justice was nonetheless accepted:³⁷

The court was crowded with natives. They were at a loss to understand why a legal gentleman should defend the prisoner. "What is this for?" asked one of them; "you know he is guilty, as well as we do, and yet you appoint a man, who knows

³⁵ W. Hobson to Principal Secretary of State for the Colonies, 16 December 1841, in *GBPP 1842*, vol. 28, p. 191.

³⁶ W. Gisborne, *New Zealand Rulers and Statesmen, 1840 - 1885*, London, 1886, pp. 12-13; P. Moon, *Hobson: Governor of New Zealand, 1840 - 1842*, p. 218.

³⁷ P. Moon, *Hobson: Governor of New Zealand, 1840 - 1842*, p. 218.

nothing of the matter, to persuade the judge that he is not guilty".³⁸

George Clarke snr., the Protector of Aborigines, later described his own involvement in the case, and the way in which the British system of justice was broadly accepted, according to his interpretation, by those Maori present:³⁹

The Trial was...the first Criminal Sitting of the Supreme Court in New Zealand...It was for the Government itself a question of life and death. The greatest care was to make everything clear to the Maoris, and it was an anxious task to make them understand the meaning of our antique forms of law. There were many natives in the court, who, of course, had never seen our way of procedure; they listened with intense interest as...I explained the principle that the law assumed a man innocent until he was proved to be guilty....The contrast was so great between the deliberation of the trial and the passionate way in which the Maoris were accustomed to settle such matters among themselves, that they were struck with admiration and awe at the formality and patience of the whole proceeding.⁴⁰

According to Clarke's account of events, there was not so much a conflict of fundamental values between Maori and European when it came to the issue of what was considered legal or illegal. Instead, it was more a matter of Maori adjusting to the new system that was being 'put to the test' in the form of this murder trial. The process of assimilating Maori into the British legal system appeared to be occurring with virtually no resistance in this instance. The benefit of this for Maori, from the British perspective, was that it would assist with the acceptance by Maori of the dimension of British trusteeship that dealt with extending British law over the colony. For Maori to benefit from British conceptions of development, the principle of inclusion in the legal system of the trustee was critical.⁴¹ This was an important punctuation point for the ascendancy of British order in the colony. The Crown had demonstrated

38 J. Buller, p. 373.

39 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 219.

40 G. Clarke, pp. 42-3.

41 J. S. Mill, *The Spirit of the Age*, pp. 170-8.

to Maori that its legal system could operate in place of the Maori one. As Maori gradually became absorbed into this new system, the capability of the British administration to create an environment of order from which development could be directed increased.

However, the Maketu case also revealed a source of corruption affecting the universal application of British law in New Zealand. Maori had effectively given their consent for the British trial to take place. The prevalence of British justice in this instance was based on Maori giving permission for the introduced regime to apply to one of their own people. There was no real possibility that the trial would have proceeded as it did had there been determined Maori opposition to it. Thus, the need to acquire Maori approval for British law to be applied to them was a fundamental weakness in the ideal of applying and enforcing British law throughout the colony.⁴² Maori doubt over the introduced British legal system had been keen at the time of the Maketu trial, as Ensign Best described:

...there had been much talking and...many of the Chiefs dreaded the introduction of British Law fearful of sharing the fate of Mukatu [sic]...[but some chiefs] feared not the law...and knew that they were made to restrain the bad and not oppress the Good.⁴³

Best's account suggests that at least the chief he interviewed was beginning to accept the predominance of British law. However, Best unfortunately did not ask his interviewee what the Maori reaction would have been if they had not found favour with the new legal regime. Britain was attempting to fulfil a trusteeship function in New Zealand, but it had yet to establish itself in a position where Maori were obliged to obey the law or face punishment in all circumstances. The sort of revolution in society, which Mill described as being necessary in countries to bring about transformation and development,⁴⁴ had yet to take place in New

⁴² See M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 95.

⁴³ A. D. W. Best, p. 351.

⁴⁴ J. S. Mill, *The Spirit of the Age*, p. 176.

Zealand. Instead, the shift by Maori to embracing the British legal system was a gradual process.⁴⁵ This gradualism was in itself another form of corruption, because it acted as an ongoing delay to the full rule and application of British law, and in such a circumstance, delayed development amounted to corrupted development and development foregone. To encourage the acceptance of the British justice system, Hobson attempted a reconciliation with Maketu's family,⁴⁶ but this triggered an unfavourable reaction among many Europeans, who perhaps with some justification were concerned that attempts by the Government at appeasing Maori represented a double-standard in the application of the law.⁴⁷

Hobson's decision to appease Maketu's relatives perhaps highlights a gulf that had developed as Hobson, who more than any other official was responsible for maintaining good relations with Maori, moved towards a closer understanding of his earlier suspicion that the British sovereignty over New Zealand did not mean that Maori laws and customs would simply cease to exist.⁴⁸ The Governor's attempts at reconciliation can be interpreted as a tacit concession that to some extent, the European legal system had to integrate with the cultural values of Maori if peace and order was to be maintained in the colony.⁴⁹ This produced a paradox in the implementation of the intentional development in the colony. Order was not imposed, but only gradually evolved, with a great deal of dependence on Maori consent. This had the effect of reducing the fortitude of this order, and therefore its usefulness in creating an environment to promote development. This is not to say that efforts at conciliation were wholly inconsistent with intentional development, but

45 This was something that the Fabians later identified as being the probable and preferable approach to such a challenge. See I. Britain, p. 61.

46 G. Clarke, p. 43.

47 A. D. W. Best, p. 374.

48 W. Hobson to Undersecretary of State for the Colonial Office, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 42-3.

49 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, pp. 220-1.

simply that the failure to fully implement British law in the colony had the potential to debilitate the course of the intended development.⁵⁰

Moves towards cross-cultural conciliation may have been under way in New Zealand, but mutual mistrust seemed to persist.⁵¹ George Clarke jnr. was relieved that the trial of Maketu was finished, but was also dismayed that among some settlers there was a lingering dissatisfaction over the way the whole issue had been handled: ‘The colonists are, as usual, in a discontented state, and are now petitioning Her Majesty against the Governor, and against his measures’.⁵² This hints at another potential source of corruption of the ideal of enforcing British law in the colony. While Hobson’s endeavours to achieve reconciliation may have been beneficial to the eventual acceptance by Maori of the foreign system of law, settler impatience at what they perceived to be a dual standard in the application and enforcement of this law⁵³ could threaten the Governor’s approach – especially if the settlers succeeded in having the Governor recalled.⁵⁴

Hobson was more buoyant than others with the outcome of the Maketu affair, noting how feelings in both camps had quietened down in the aftermath of the trial, and that British justice had eventually triumphed: ‘In the case of Maketu...the excitement which prevailed to a considerable extent on his capture, and which it was apprehended would be followed with violence, has subsided into perfect tranquillity’.⁵⁵ At the very least, the Maketu case was not a set-back for the extension of British justice in New Zealand.

50 See M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 95.

51 P. Moon, *Hobson: Governor of New Zealand, 1840–1842*, p. 221.

52 G. Clarke, p. 44.

53 Op. cit.

54 Plans had been made by the Colonial Office to recall Hobson when news of his death arrived in London, see J. S. Marais, *The Colonisation of New Zealand*, Wellington, 1927, p. 233. Hobson’s successor, Robert FitzRoy, was recalled, mainly as a result of pressure from certain settler groups, in 1845.

55 W. Hobson to Principal Secretary of State for the Colonies, 12 March 1842, in *GBPP 1842*, vol. 28, p. 192.

The Maketu case was symbolic of the extent to which the administration of justice had been subsumed by the imported British system, and how this new system had spread to incorporate Maori. The main implication of this extension of British justice was that Maori justice, which had been iwi and hapu based, was gradually being displaced by the imported model in certain areas.⁵⁶ Trusteeship, in the context of the application of British law in New Zealand, was not able to be instantly imposed by virtue of the Treaty of Waitangi having been signed. Instead, the move by Maori towards accepting the full weight of British law was gradual and uneven. However, the trend to greater Maori acceptance of British law had been initiated. Not only did this begin the enforcement of order over Maori in the colony, but it was also part of the mechanism designed to transform Maori to the ways of their colonisers. The introduction of British law in its colonies generally was ‘...a powerful agent of civilisation’,⁵⁷ and so the gradual but more certain extension of British law may have delayed the full imposition of order over the entire country, but by the same token, the civilising effect of this gradualist process was achieving one of the aims of the doctrine of intentional development, and was contributing to the revolution of authority in the colony.

A Policy of Moderation

Hobson’s method of gradually assimilating Maori into the British justice system was starting to prove an unpopular policy for the Governor, especially among those settlers who believed that Maori ought to automatically and fully fall under British jurisdiction.⁵⁸ Yet, as other crimes were reported which were perpetrated by Maori against settlers (as opposed to crimes being committed by Maori against other Maori), Hobson displayed an even greater reluctance to exercise a heavy-handed approach. The Auckland newspaper editor Samuel Martin gave some

⁵⁶ S. M. D. Martin, p. 159; W. Hobson to Principal Secretary of State for the Colonies, 12 March 1842, in *GBPP 1842*, Vol. 28, p. 192.

⁵⁷ J. S. Mill, *Memorandum on the Improvements in the Administration of India During the Last Thirty Years*, p. 152.

⁵⁸ S. M. D. Martin, p. 159.

examples of the way in which the colonial administration dealt with certain crimes, especially those allegedly committed by Maori. After a theft was allegedly committed by a Maori labourer, Martin wrote:

I complained to the Governor, who directed me to the Police Magistrate. I procured persons who made depositions before him as to the robbery and the murder - I even offered to procure evidence to convict the native offender, but nothing was done by the Government.⁵⁹

Martin developed a growing concern at the way in which Hobson's administration seemed hesitant to pursue Maori offenders if it involved causing Maori to rebel against British law. It appeared as though British law could only be applied to Maori if they did not feel inclined to oppose it. Martin was concerned about where such a policy might lead:

...the natives are encouraged to proceed to every species of excess through sheer contempt for the Government, and an acknowledgement of the imbecility of the fools to whom it is unhappily entrusted. What the end will be, it is not difficult to foresee. Wrong, oppression, and imbecility will in the end bring on a general insurrection, and one or other race will be exterminated.⁶⁰

There were many reasons for Hobson's reticence, the most obvious one being that to provoke Maori retaliation for the punishment of certain crimes would be to risk possibly uncontrollable outbreaks of violence.⁶¹ Partial order had to be constantly balanced with the civilising effects of the spread of British law. Furthermore, the claim to legal sovereignty over the country by the British could not be shown to be too distanced from the limited political sovereignty that the colonial Government actually possessed.⁶² Therefore, the plans for the development of the colony could only proceed at a pace that did not provoke adverse reactions from Maori. The Governor's inability to prevent attacks on settlers

59 Op. cit.

60 Op. cit.

61 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 222.

62 P. G. McHugh, 'Constitutional Theory and Maori Claims', pp. 33-4.

would not be looked on favourably by the British Government but Hobson had to weigh up this imperative with the fact that to appear too lenient to offenders would be to lose face among the settlers - something which could be equally as perilous to that order that already existed in the colony. Moreover, many of the crimes of violence, robbery and vandalism allegedly perpetrated against settlers by Maori were a response by Maori to their realisation that under British law they sometimes had little or no rights to their land at all once it had been sold. Places which were sacred to Maori could be (literally) walked over roughshod by Europeans once they purchased the land - apparently with impunity.⁶³ These conflicting concerns, which the Governor had to balance as effectively as he could, were one of the major limits to his otherwise despotic rule in the colony, and to the effective imposition of order. If progress was to occur in New Zealand, as intended by the Colonial Office, then it would have to occur at the same pace as the extension of order. The two were directly interrelated.

Of course, this delicate balancing act being performed by Hobson was of no concern to settlers. They demanded justice and retribution for what they saw as plain criminal behaviour. One newspaper editor wrote in April 1842 of how a party of Maori had assembled on 3 March 1842 in Whangarei and during the following three days had attacked the homes of eight settler families, vandalising the buildings, and stealing goods to the value of £200.⁶⁴ The article then went on to say that these attacks were based on the pretext of the Maori involved claiming an interest in the land being used by the settlers, and in some instances on the violation of sacred sites (*wahi tapu*). The newspaper editor concluded by expressing the view that '...strong measures must be taken by the government to subdue the natives; for if this case is not punished, the settlers will be compelled to quit New Zealand, their property being no longer safe'.⁶⁵ However, social evolution, rather than revolution, seemed to be the only approach that

⁶³ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 222.

⁶⁴ *Bay of Islands Observer*, 7 April 1842. Probably written by Barzillai Quaife, a Congregationalist missionary and newspaper editor in the Bay of Islands.

⁶⁵ *op. cit.*; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, pp. 222-3.

could be effectively adopted by Hobson as a practical measure to spread British justice in the colony.

One of the victims of the robbery wrote a letter to the editor of the *Bay of Islands Observer*⁶⁶ which was subsequently published. The views of this writer encapsulate the mood among many settlers who were feeling insecure, who doubted the seemingly vague claims by Maori to wahi tapu (sacred sites), and who were angered at the Governor's apparent impotence in dealing with Maori hostility:⁶⁷

...there is no mark at the places which they alleged to be tabooed and no warning given. Besides, the reasons for their taboo are quite frivolous....The truth is, the taboos are only a pretext for exacting payment from the Europeans, and for committing robberies...The Governor ought to do away with the taboos altogether, or compel the natives to fence the places.⁶⁸

The advice of senior local officials, like Major Thomas Bunbury, seems to have been a heavy influence on Hobson's judgement during this time. Hobson's previous career in the navy had accustomed him to resolving conflict with force, or at least, direct and unquestioned orders, but now Bunbury's more solicitous approach was having sway. Bunbury's views on the role of the military in maintaining order are insightful, particularly considering his position as a commander of troops:⁶⁹

The military, I conceive, ought rarely to be required to act or appear, as the slightest check they might receive, would be attended with the most disastrous consequences. It is true that the natives are not prepared to cope with the courage and discipline of British troops, but if the former are ever unadvisedly pent up in their Pas or forts - despair may supply the place of both.⁷⁰

⁶⁶ *Bay of Islands Observer*, 7 April 1842.

⁶⁷ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 223.

⁶⁸ John Gorrie, letter to the editor, in *Bay of Islands Observer*, 7 April 1842.

⁶⁹ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 223.

⁷⁰ T. Bunbury, p. 121.

Generally, the absence of an adequate British military force in the colony left the Governor with no alternative in most cases but to seek non-military solutions to problems of law enforcement. This at least gave the impression of an absence of coercion in the exercise of Hobson's trusteeship powers. However, the absence of coercion in itself was not necessarily equivalent to the presence of Maori consent to British rule.

Yet, the British administration in New Zealand occasionally did show force when dealing with Maori - even if there was more bluff than substance in the display. The murder of a settler near Paihia by a Maori from Tauranga in April 1840 resulted in a war party of 300 Northland Maori assembling and demanding that the accused be handed over to them for summary execution. This revealed another challenge for the colonial Government when it came to exercising British law. One witness to the British response to the Maori war party describes the course of events and the effects of the British exhibition of their military strength:⁷¹

As soon as the [British] troops were formed they advanced along the beach headed by the Major [Bunbury] and Mr. Shortland....The promptitude with which the troops arrived, their steady, silent, but rapid advance along the beach so unlike the straggling order and noisy habits of the Maoris, completely cowed them, they either laid down or hid their arms and when the troops arrived to within 50 paces of them, they were all squatted on the ground with countenances indicative of anything but ease.⁷²

However, this show of British might was largely bluster. The tenuous basis of this British bluff was revealed by the missionary, stating that:

...had the slightest fear been shown on the part of the Magistrates or had the demands of the Natives been for a moment listened to...a precedent would have been established which would have rendered it difficult to administer justice in future.⁷³

⁷¹ P. Moon, *Hobson: Governor of New Zealand, 1840 - 1842*, p. 224.

⁷² J. Johnson, Diary Entry, 17 March - 28 April 1840, MS, Auckland Public Library

⁷³ Op. cit.

Henry Williams claimed that the Maori war party had been convinced that they should withdraw, but decided to remain as soon as they discovered that some British troops were arriving. Williams and others tried to explain to Shortland that the Maori were not a threat and had no intention of creating any hostility, to which Willoughby Shortland, one of Hobson's officials, aggressively replied: 'I will not be dictated to by anyone; go and tell those Maories that if they do not lay down their arms immediately, I will fire upon them'.⁷⁴ Hobson was also prepared to show force at times seemingly just to affirm his own capacity in this area. However, knowing when to appease or when to threaten was always a delicate and subjective decision for the Governor to make.

Another occasion that drew a military response from Hobson involved the report of a disturbance between Maori and some sailors in Northland. This case demonstrated how Hobson was committed to a full resolution of conflicts, more than just suppression through a demonstration of a military presence. The incident, in which Hobson had been informed twelve sailors had been killed by Maori, took place in June 1840. Despite the possibility of risking a Maori uprising, Hobson was firm in his course of action,⁷⁵ as he subsequently described to the Governor of New South Wales:

This alarming account...induced me to request Captain Lockhart to send forward a small detachment of troops, with directions to the officer in command to fire a rocket if a reinforcement should be required. It appears by Captain Lockhart's report...that appearances induced the officer to make the concerted signal, that a reinforcement was sent; that on the arrival of the troops the natives retired.⁷⁶

Lockhart's report to Hobson betrayed how nervous and ill-prepared the troops in this show of British might were,⁷⁷ and demonstrates that the

⁷⁴ W. Shortland, in H. Carleton, *The Life of Henry Williams, Archdeacon of Waimate*, Auckland, 1874, pp. 21-22.

⁷⁵ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 225.

⁷⁶ W. Hobson to G. Gipps, 10 July 1840, in *GBPP 1841*, Vol. 17, p. 22.

⁷⁷ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 225.

execution of British sovereign authority in the colony was sometimes precarious:

On returning to our boats, some of the natives were seen crouching in the scrub above us. An alarm was made by a mob of armed drunken sailors and civilians that the natives were making an attack. Some of the civilians cried "Fire! fire!" and fired several shots in the direction of the natives. In the shouting and disturbance which ensued, I am sorry to say that three or four muskets were fired by the soldiers without any orders from me.⁷⁸

Hobson followed up on this slightly embarrassing incident by requesting a meeting with Pomare, one of the most powerful chiefs in Northland, whose pa had been at the centre of the allegations. Hobson concluded that Pomare '...had shown that he has proper respect for our power', and that if there was any danger to life, it would come from the licentious behaviour of the sailors. Hobson stressed that his object in employing the military was to preserve peace and order by restraining disorder - whether it be perpetuated by Maori or European.⁷⁹ Order and stability were meant to be two of the principal supports maintaining the edifice of British rule in New Zealand, but in the early years of British administration of the colony this order was only tenuously maintained, and had the effect of placing the intended development which rested on this order on a weak footing.

Lord Russell (Normanby's successor), on receiving Hobson's report expressed his strong approval for the measures enacted by the Governor for quelling the unrest.⁸⁰ He seemed to believe that a stronger show of British force was the most effective means of advancing the political sovereignty of the British in New Zealand.⁸¹

By the end of 1841, British authority had apparently been asserted in certain parts of the country, and in issues of justice Hobson could afford to

78 S. Lockhart to W. Hobson, 6 June 1840, in *GBPP 1841*, Vol. 17, p. 23.

79 W. Hobson to G. Gipps, 10 July 1840, in *GBPP 1841*, Vol. 17, p. 23; P. Moon, *Hobson: Governor of New Zealand, 1840 - 1842*, p. 226.

80 Russell to W. Hobson, 25 December 1840, in *GBPP 1841*, Vol. 17, p. 23.

81 *Op. cit.*

be increasingly confident in the prevalence of British law in some areas of the colony.⁸² The shows of force, counterbalanced by episodes of passivity and compromise, were all part of the gradual and uneven process of the assertion of British trusteeship over New Zealand. Considered overall, the demonstration of military force (as opposed to its actual employment in combat) only took place in exceptional and occasional circumstances, and hardly constituted unreasonable coercion. However, the consent of Maori in particular, but also of some European settlers to British rule was still fragile in some cases, and this accounted for the gulf between the legal sovereignty declared in the Treaty, and the deficiency in the political sovereignty that was practiced by the colonial administration in New Zealand during this period.

It did not help Hobson's cause, or the cause of good government in the country, that the Colonial Office had not sent a single soldier to accompany the Lieutenant Governor when he sailed for New Zealand. Only Gipps, perhaps because of his personal experience and close proximity, seemed to have sympathised with Hobson's predicament, and sent out a sergeant and four troopers of the New South Wales mounted police. Stephen was aware of the lack of enforcement Hobson had for his administration, and wrote to a colleague that Russell was actually surprised when he was informed of this situation:⁸³

You will see that Captain Hobson was fully alive to the danger which Lord John Russell has pointed out, and was told that there were no troops to spare for his protection, but that he must endeavour to organise a militia, or a police, or some local force. If it should be thought that this was not a very satisfactory solution of the difficulty, the only answer I can supply is, that it was adopted at a moment when the most pressing demand for troops existed in every part of this country, as well as in India and North America. There is not a spare regiment anywhere.⁸⁴

⁸² P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 226.

⁸³ *Ibid.*, p. 231.

⁸⁴ J. Stephen to W. Smith, 21 September 1839, *GBPP 1840*, Vol. 33, p. 126.

Based on this statement from Stephen, the reason for the lack of subsequent British support was based on the low priority with which the Colonial Office placed New Zealand in the greater scheme of the British Empire.

The only consolation Stephen could offer was to insinuate that the Royal Navy might occasionally be able to send a ship to the region,⁸⁵ but stressed the difficulty of such a measure because of the enormous scale of the Empire, and the burdens that this imposed on the British Government:

In this, as in a multitude of other cases, the Government have been compelled to choose between a considerable increase of the Army or Navy, and a very defective protection of the vast trans-marine Empire, which we possess, and are extending to every quarter of the globe. The latter course has been preferred.⁸⁶

Hobson was concerned and slightly bewildered over the absence of military support for his Government, as he expressed as early as August 1839.⁸⁷ In particular, Hobson feared that if he had an insufficient military force at his disposal, his administration could become vulnerable to those groups in the colony which opposed the imposition of British rule:

There are one or two subjects that have not been noticed that I hope may still engage the attention of the Secretary of State. No allusion has been made to a military force, nor has any instruction issued for the arming and equipping of Militia. The presence of a few soldiers would check any disposition to revolt, and would enable me to forbid in a firmer tone those inhuman practices I have ordered to restrain. The absence of such support will, on the other hand, encourage the disaffected to resist my authority, and may be the means of entailing on us difficulties that I am unwilling to contemplate.⁸⁸

⁸⁵ J. Stephen to W. Smith, 21 September 1839, *GBPP 1840*, Vol. 33, p. 126; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 231.

⁸⁶ J. Stephen to W. Smith, 21 September 1839, *GBPP 1840*, Vol. 33, p. 126.

⁸⁷ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 232.

⁸⁸ W. Hobson to Under Secretary of State for the Colonial Office, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 42-3.

Normanby's reply, whilst acknowledging the problem, simply denied Hobson the utilisation of troops in the foreseeable future. Normanby must not have seen the situation in New Zealand as having been anywhere near as threatening to Hobson's administration as Hobson himself perceived it. For Normanby, problems of domestic order could and should be resolved domestically, without the need for the British Government to become committed militarily:⁸⁹

...I am perfectly aware of the great advantage which you might derive from a military force, and of the inconvenience to which the want of it may expose you. This, however, is a difficulty which must be encountered. It is impossible at the present time to detach any of Her Majesty's troops to New Zealand, nor can I foresee a definite period at which it will be practicable to supply that deficiency. It will probably, therefore, be necessary to raise a Militia, or to embody an armed police. But this is also amongst the questions which must be reserved for consideration after your arrival, and upon which it will be your duty to consult with the Governor of New South Wales.⁹⁰

Normanby's opinion was consistent with the emerging view that excessive or undue coercion was counter-productive with the notions of progress and improvement in a society,⁹¹ and that a colonial society in particular that did not remove the adverse influence of coercion would not be fit for development.⁹²

Even as early as 1837, Hobson noted that the establishment of a more formal British presence in New Zealand would necessitate the involvement of British troops, but he qualified his submission with a degree of caution that experience later forced him to abandon:⁹³

Though this undertaking [deploying British troops in New Zealand] should be commenced with the greatest good faith

⁸⁹ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 232.

⁹⁰ Normanby to W. Hobson, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 43.

⁹¹ J. S. Mill, *Autobiography*, pp. 206-7; J. Stephen, 4 December 1841, in P. Knaplund, p. 261.

⁹² Op. cit.

⁹³ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 232.

and purest intentions, it would be open to misrepresentation, and in a remote country, where it is hardly to be expected the law would be very efficiently administered, it might be eventually perverted by British subjects to selfish purposes.⁹⁴

Significantly, Hobson's concern here was not so much with Maori lawlessness, but with the lawlessness of British subjects in the colony. Hobson effectively seems to have linked development in the colony with the Crown's ability to exercise trusteeship over the settler population, as though he had no immediate prospect of exercising similar rule over Maori. This represented a dilution of the principle of trusteeship, despite the fact that it may have been born out of necessity, and brings into question the extent to which such trusteeship could function, if it was only implemented among a small percentage of the country's population – those who were prepared in practice to give their consent to British rule. Certainly though, the lack of resources to establish regional branches of government, and to provide the colonial government with a military force, seriously impaired Hobson's ability to achieve development as comprehensively or as quickly as he otherwise would have been able to.

Instruments of Government

The 'mechanics' of New Zealand's first colonial Government had a direct bearing specifically on the ability of the Government to carry out British policy in the colony, and generally on its capacity to fulfil its trusteeship function. Under the New Zealand Act of 1840, passed by the British Parliament, Letters Patent were issued on 16 November that year (known as the Charter of 1840)⁹⁵ which established the islands of New Zealand as a separate colony.⁹⁶ The Letters Patent also authorised the Governor or Lieutenant Governor in New Zealand to form a Legislative Council

⁹⁴ W. Hobson to R. Bourke, 8 August 1837, *GBPP 1837-8*, Vol. 40, p.4.

⁹⁵ W. R. Jourdain, *Land Legislation and Settlement in New Zealand*. Wellington, 1925, p. 55.

⁹⁶ Separate from New South Wales.

responsible for the enactment of ordinances to regulate the colony.⁹⁷ In this way, it was conceived that the doctrine of intentional development could be put into practice.

The chief instrument of Government in colonial New Zealand was the Governor himself. With near-dictatorial powers, his effectiveness was limited only by the extent of his understanding of the country, and his ability to liaise with the disparate interest groups in the colony and gain their support. It was generally assumed that Governors, being on location in the colony, would have a better appreciation of the requirements of the country than the officials back in Britain.⁹⁸ While the scheme for the development of the colony had been formed in Britain, because Hobson was on location in the colony it was (wrongly) assumed that he would be in a better position to make judgements about the implementation of the planned development. However, doubts about Hobson's understanding of the colony in the early 1840s were raised by Bunbury, who blamed a combination of biased advice and incomplete knowledge as reasons for Hobson's overall failure as Governor:⁹⁹

When I was at New Zealand, I often heard it asserted by Government officers and would-be wise people, that the Home authorities were not to interfere with Local Government everything would go well, and that at so great a distance it is absurd to suppose they can be so well informed of the native character, customs and prejudices, as those on the spot; but I rather opine that Her Majesty's Government was much better informed of what the Colony really required than any of the three governors they first employed, and even the native character was better understood by them as a whole.¹⁰⁰

The body which existed to support Hobson in his governing function was the Executive Council.¹⁰¹ However, in practice, Hobson treated the

⁹⁷ W. R. Jourdain, *Land Legislation and Settlement in New Zealand*, Wellington, 1925, p. 55; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 226.

⁹⁸ T. Bunbury, p. 89; J. Stephen, 4 December 1841, in P. Knaplund, p. 261; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 227.

⁹⁹ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 227.

¹⁰⁰ T. Bunbury, p. 89.

¹⁰¹ A. H. McLintock, *Crown Colony Government in New Zealand*, pp. 94-105.

Executive Council similarly to the way in which Charles I treated his Parliaments. Hobson acted as a colonial dictator.¹⁰² He only called the Executive Council when it suited him. It never met regularly or frequently, and played only a small role in the major decisions of the day.¹⁰³

Operating in tandem with the Executive Council was the Legislative Council.¹⁰⁴ Its function was to exist as a body with which Hobson could consult when passing ordinances.¹⁰⁵ In practice though, neither the Executive Council nor the Legislative Council were a barrier to Hobson's capacity to exercise his individual will in governing the country in the manner he saw as fit.¹⁰⁶

All the members of the Legislative Council were able to be suspended at the Governor's whim, subject to the consent of the Secretary of State for the Colonies, and they were all obliged to vote with the Governor on any issue which he declared to be of sufficient importance.¹⁰⁷ Thus, Hobson's thinking translated directly into the thinking of the Colonial Government in New Zealand. For Swainson, this period of Crown Colony Government was a very temporary substitute for the more responsible Government which was to follow.¹⁰⁸ Swainson was describing the transitory stage New Zealand was currently in, which however undesirable, was a necessary requirement for reaching an improved state in the colony. Swainson saw Hobson's Government as a form of absolute monarchy – in which the Governor was answerable to no-one else in the colony¹⁰⁹ – that was acceptable as an interim measure until more

¹⁰² T. Bunbury, p. 89.

¹⁰³ W. Swainson, pp. 358-60, 364-5; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 227.

¹⁰⁴ Russell to W. Hobson, 9 December 1840, *GBPP 1841*, Vol. 17, p. 26.

¹⁰⁵ A. H. McLintock, *Crown Colony Government in New Zealand*, pp. 94-105.

¹⁰⁶ W. Swainson, pp. 358-60, 364-5; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 227-8.

¹⁰⁷ A. H. McLintock, *Crown Colony Government in New Zealand*, pp. 94-105.

¹⁰⁸ W. Swainson, pp. 358-60, 364-5; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 228.

¹⁰⁹ W. Swainson, pp. 358-60, 364-5.

responsible systems of rule could be put in place.¹¹⁰ This matched Mill's prescription for the transition period of colonial development. The prescription specifically included provision for despotic rule in colonies, provided however, that this despotic rule was exercised by an incorruptible governing elite.¹¹¹

The first session of the Legislative Council of New Zealand was opened on 24 May 1841, and all members of the public were permitted to attend. Hobson used the occasion to express his views on the policy direction required for the colony.¹¹² His speech is therefore extremely important for appreciating the intentional development planned for New Zealand. He commenced by stressing the need for the passage of laws which would best provide for '...the administration of justice and the contingencies of social life in New Zealand'.¹¹³ The proposed measures would include the imposition of customs duties, the establishment of a court system, and the prohibition of the distillation of alcohol. Hobson concluded by emphasising the significance of the role of the colony's Government to civilise Maori:

We have a solemn and important duty to perform; by our means conflicting interests are to be reconciled, harmony and tranquillity established, and measures are to be adopted for improving and elevating the character of the aboriginal inhabitants....¹¹⁴

It was to be the colonial government, and not private enterprise, that would lead development in the colony through enforcing order and through working to prescribed goals for society. Hobson specifically did not say that he merely wished to rule over Maori and Europeans in the country for the sake of administering the colony. Instead, he articulated

¹¹⁰ J. Bentham UCLMC, 1770s, Box 27, p. 161; J. S. Mill, *On Liberty*, pp. 219, 308; J. S. Mill, *Democracy and Government*, p. 181.

¹¹¹ J. S. Mill, *Democracy and Government*, pp. 180-2.

¹¹² P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 229.

¹¹³ W. Hobson, in C. Terry, p. 50.

¹¹⁴ *ibid.*, pp. 50-1.

here a specific intent to foster development.¹¹⁵ In line with the emergent development philosophers under consideration in this work, the improvement and elevation of Maori was prescribed by the British, without any Maori input into decisions about how they should develop, and to what specific end this development was aimed, other than assimilating Maori into European society in the colony. This is one of the clearest statements made by Hobson of the overt intention of his administration to use its trusteeship role to nurture development among the indigenous population.

Developing the Legal System

When New Zealand separated from the direct legal jurisdiction of New South Wales, Hobson's Attorney General, Swainson, oversaw a radically liberal development in the formation of New Zealand's laws:

In the structure of the laws themselves...a precedent was established in framing them in simple, concise, and intelligible language; of confining the matter of each clause to a single subject; of arranging the clauses methodically under appropriate heads; and of avoiding the prolixity and tautology by which our English enactments were usually distinguished. And not being hampered by any complicated pre-existing system, nor impeded by the opposing influence of a powerful profession, the lawgivers of the Colony were also enabled to effect amendments in the law, which the British Legislature has hardly yet succeeded in accomplishing.¹¹⁶

Swainson saw the possibility not just of replicating the British legal system in New Zealand, but of actually improving it. His reforms had, as their starting point, the state of the colony at this time:

A simple system of oral pleading, suited to the primitive condition of the community, was established, for eliciting the issue in civil actions; and the form and language for indictments in criminal proceedings were materially amended. Of enactments of a more permanent character, that relating to

¹¹⁵ Op. cit.

¹¹⁶ W. Swainson, p. 94-5.

real property is perhaps the most conspicuous for the boldness of its alterations. Many useless forms and subtleties in this abstruse branch of the law were abolished; not a few of its rules were amended....The changes effected...were of so sweeping a character, as even to attract the guarded attention of the authorities at home.¹¹⁷

The colonial government was directing development in the country through undertaking transformations in the format of legislation. Like the other aspects of the state-directed development, this was not change for its own sake, but change deliberately intended to make society function in an improved state.

Swainson's ideas on legal reform mirrored those of development philosophers of the time, who saw that colonies offered the opportunity for new types of legal and governmental regimes to be introduced.¹¹⁸ There had been disillusionment expressed with the existing structures of government in Britain, and an emerging belief that the country was approaching the point of discarding many of its old doctrines and institutions, and would thereafter devise new ones to replace them.¹¹⁹ Mill, for example, argued that the fundamental nature of these institutions needed to be changed, rather than just repaired, in order to enable social and economic transition to take place.¹²⁰

Deprived of the means to implement a comprehensive system of government in New Zealand, Hobson's actual authority proved repeatedly to be confined to only small regions of the country. An assessment made twenty years later shows that effective government still had not managed to penetrate beyond a few centres of European settlement:¹²¹

Some of the most populous districts, such as Hokianga and Kaipara, have no magistrates resident among them; and many, such as Taupo, Taranaki, and the country about the East Cape,

¹¹⁷ Ibid., pp. 95-6.

¹¹⁸ J. S. Mill, *The Spirit of the Age*, pp. 170-8.

¹¹⁹ Op. cit.

¹²⁰ Op. cit.

¹²¹ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 234.

have never been visited by an officer of the Government. The residents in these districts have never felt that they are the subjects of the Queen of England, and have little reason to think that the Government of the Colony cares at all about their welfare.¹²²

Again, it was a case of the legal sovereignty of the Crown as expressed in the Treaty of Waitangi being an ideal which was not reflected in the political sovereignty exercised by the colonial administration. Swainson's vision of readjusting and even redesigning parts of the system of the colony's government and its institutions, which bear a strong resemblance to Mill's more revolutionary proposals,¹²³ could not be effected when there was not even the mechanism in place for any rule, no matter in what form, to cover the entire colony. Because there were difficulties insofar as the Crown was unable to exercise its trusteeship over the entire colony, the principle of gradual extension of this trusteeship, and the cautious guidance of the population towards a utilitarian end, became the method of operation of the Hobson's administration – however obscured the utopian element in the planned transition had become in practice.

However, although British law did not, in practice, extend over the whole country, and Maori law, especially in some of the more remote areas of the country was still prevalent, Hobson had at least succeeded in the initial work of establishing a European legal system in part of the colony. This had important implications for the Treaty insofar as it demonstrated that the intent to assert British sovereignty over the country, as the Treaty had plainly promised, had not been achieved in practice. Moreover, in the absence of the full implementation of British sovereignty, the immanent development that accompanied the Maori legal system could persist, and act as a counterbalance to the intentional development Hobson was endeavouring to implement.

¹²² G. Browne, 25 May 1861, in *Appendices to the Journal of the House of Representatives*, 1861, E-3A.

¹²³ J. S. Mill, *The Spirit of the Age*, pp. 170-8.

A Policy for Natives

For all its dynamism, and enormous capacity to endure attacks of various forms on it, the British Empire had not generally acted towards the indigenous peoples over whom it ruled in a way that could ever have been described as equitable, and this fact was unable to be ignored, especially by those within the colonies:¹²⁴

The treatment of the unprotected Aborigines, in most British and European colonies, reflects greatly on the character of the respective Governments. Generally, the property, the homes, and not infrequently the lives of the poor natives have been sacrificed, for the convenience of settlers, and extension of a settlement; and unoffending natives have been expelled and exterminated from the land of their birth, by their supineness and neglect of the Government, in the first instance, in not establishing a just and adequate system of protection for them....¹²⁵

The general character of British colonisation in the eighteenth century was a feature that Bentham had described as ‘tyranny’.¹²⁶ However, this is not to say that Bentham consequently wished to abandon the indigenous peoples of a colony entirely through demanding that Britain unilaterally withdraw from its colonies. On the contrary, he argued that ‘uncivilised’ communities would have to be brought into a ‘civilised’ state, and until this was done, such communities would be unable to progress to the utilitarian ideal.¹²⁷ The means of transformation might vary, and have the effect of dislocating the indigenous communities from their existing social and economic structures, but this was justified by the ends.

Throughout the nineteenth century, there was a general belief that progress and improvement in the colonies was not possible without

¹²⁴ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 234.

¹²⁵ C. Terry, pp. 214-5.

¹²⁶ J. Bentham, *Emancipate Your Colonies!*, p. 408.

¹²⁷ J. Bentham, UCLMC, 1818, Box 164, p. 39.

‘civilising’ the indigenous populations of those colonies.¹²⁸ The issue of what to do about the presence of ‘uncivilised’ people who were indigenous to a colony, and who therefore had some claim to sovereign rights over the colony, was one that directly confronted by the Colonial Office. In line with the prevailing social philosophies of the time, the Colonial Office had developed a policy on New Zealand which required the intentional development of Maori to be carried out. However, the plans to implement such a doctrine had to be carefully considered. Hobson’s regime had to navigate around the often temperamental relationship between Maori and Europeans in the colony if the doctrine was to be put into practice.

Richard Davis, a missionary living in New Zealand in the early 1840s believed that the unrest among some groups of colonists with the policies of Hobson’s administration would lead to Maori being drawn into conflict with the Crown rather than any assimilation of Maori into the European system occurring:

I fear the colonisation of this country [New Zealand], through the discontent of the colonists with the measures of the Government, will be productive of disastrous consequences. The poor natives are in much danger from them on every point. They agitate and irritate them against the measures of the Government. They endeavour to make use of them in every possible way, so as to accomplish their objects of keeping possession of their lands, and possessing property. The Governor, and the Government generally, are well-affected towards them; this is a great mercy, as I hope it is an earnest of future protection.¹²⁹

The fact that the possibility existed of some sort of civil war erupting indicated that the Treaty of Waitangi had failed to convince many in the society that sovereign power over the colony now resided with Hobson’s administration. According to the above statement, the colonial

¹²⁸ Op. cit.; J. S. Mill, *Civilisation*, p. 126. The Fabians later also put great store in the element of civilisation in a society as a prerequisite for that colony’s future development, see S. Olivier, *Letters and Selected Writings*, London, 1948, p. 112.

¹²⁹ R. Davis to J. N. Coleman, 31 December 1841, in J. N. Coleman, p. 269.

government was tilting too far towards accommodating Maori sentiments in the process of incorporating Maori into the realm of British rule. This delicate balancing act was allegedly being poorly managed by the Governor. The consequence of dissatisfying any major sector in society was a potential erosion of the order the Crown depended on to be able to effectively carry out its policies to bring about improvement in the colony as a whole.

From the outset, Hobson had committed himself and his administration to governing New Zealand as competently and as fairly as possible, given the meagre resources allotted to him by the Colonial Office. But during his early months in office, his task had been hindered by staff who had proven inadequate.¹³⁰ It was only with the arrival of two more experienced officials in New Zealand in September 1840 that Hobson was able to provide more effective leadership. The two men dispatched to assist Hobson were William Swainson and William Martin.¹³¹ The triumvirate of Williams gave the country the strongest government it had yet experienced, although Hobson's rule was still underscored by an acknowledgement of the inherent weakness of his administration and of British authority in general in the colony,¹³² and particularly among the Maori communities.¹³³ Overall, the abilities of Hobson and most of his officials fell well short of the elite imperial cadre which Mill envisaged was necessary to bring about effective trusteeship in the colonies, and their ensuing intentional development.¹³⁴ The failure of officials in New Zealand to meet this ideal standard meant that the processes of development they were responsible for guiding would be compromised.

¹³⁰ S. M. D. Martin, p. 81. Cowen and Shenton draw attention to the problems of incompetent implementation of doctrines of intentional development, see M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 65.

¹³¹ W. Gisborne, p. 14; A. H. McLintock, *Crown Colony Government in New Zealand*, p. 121.

¹³² A. H. McLintock, *Crown Colony Government in New Zealand*, pp. 120-121.

¹³³ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 235.

¹³⁴ J. S. Mill, *Democracy and Government*, pp. 180-2; M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 65.

The Office of the Protector of Aborigines

Hobson foresaw from early on the potential for problems in relations between Maori and European, even though the difficulties that were being experienced at the time were comparatively slight:¹³⁵

...the native population offer us but trifling interruptions; yet their habits are so inveterately opposed to those of civilised life, and their practices so repugnant to the customs of Englishmen, that we can scarcely hope to preserve such harmony when the settlers become more numerous.¹³⁶

Other opinions about the native population at this time were more constructive however, and appeared in direct contrast to the pejorative view that Hobson sometimes allowed himself to express:¹³⁷

There are some - perhaps many persons - who look on the New Zealanders [Maori] themselves as impediments to the prosperity of British settlers in that country. To such a person I would say: the best customers of the settlers in New Zealand are the natives. They are the purchasers of a large amount of blankets, clothing, hardware...and other articles for which they pay in ready money, in native produce...in land, or by their own labour. The amount of native produce consumed by the settlers is really surprising; and a similar practice will continue, while peace prevails....¹³⁸

The imposition of British law on Maori was riddled with pitfalls however. One contemporary account written about of the difficulties in legislating for Maori stressed the importance of Maori conforming to European expectations.¹³⁹ The writer, Ernst Dieffenbach, seemed almost puzzled that the outcome of this imposition had been less than favourable:¹⁴⁰

¹³⁵ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 235.

¹³⁶ W. Hobson to Principal Secretary of State for the Colonies, 15 October 1840, in *GBPP 1841*, vol. 17, p. 113.

¹³⁷ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 235.

¹³⁸ R. Fitzroy, *Remarks on New Zealand in February 1846*, London, 1846, p. 67.

¹³⁹ E. Dieffenbach, pp. 136-8.

¹⁴⁰ Op. cit.; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 236.

A feeling of regret is, I believe, very generally excited among thinking men, when they observe how little benefit has resulted to barbarous tribes from their intercourse with the people of civilised nations....I see no difficulty in legislating for the different people amongst whom colonies have been established, although the minutiae of a legislative design must always be modified according to the different races. I think there can be little difference of opinion as to the general principles....¹⁴¹

According to Dieffenbach's impression, the incorporation of Maori society under the umbrella of British law was portrayed almost as a remedy for some of the adverse effects Maori were experiencing as a consequence of their interaction with Europeans. Certainly, British law was perceived as a force for the improvement of Maori society.

The informal channels of authority still remained important for the Governor to enact his rule, but Hobson was finding it harder, for example, to rely on the goodwill of missionaries to liaise between Maori and the Crown. The waning of these unofficial links forced Hobson to experiment with seeking a more formal, and hopefully more lasting alternative which would secure order in the colony.¹⁴²

The Protector of Aborigines was an office Hobson devised based on the instructions he received from Normanby in August 1839.¹⁴³ Normanby's requirement for this Office reflected precisely the sort of trusteeship responsibilities that had been recommended by social philosophers of the time,¹⁴⁴ and was a key aspect of the doctrine of intentional development for the colony. In this paternalistic view of the colonies, direct British guidance of the indigenous peoples in the Empire would allow colonial governments, acting in trusteeship capacities, to offer development to these peoples who were seen to be otherwise incapable of achieving such

¹⁴¹ E. Dieffenbach, pp. 136-8.

¹⁴² P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 236.

¹⁴³ Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 37-40.

¹⁴⁴ J. Bentham, UCLMC, 1818, Box 164, p. 39.

development.¹⁴⁵ However, the practicalities of the Office were open to question:¹⁴⁶

“Protector of Aborigines” is the official person by whom these duties are professed to be performed; but it is perfectly impracticable, that the various numerous duties of such an office, over such an extent of country, and so great a number of natives, can be performed by one person, with satisfaction to the Government, or with justice to the Aborigines.¹⁴⁷

In commenting on the instructions he received from Normanby in 1839, Hobson initially noted that the exact role of the Office was unclear, and requested further clarification of the envisaged functions of the Office:¹⁴⁸

...allusion is made to the Protector of Aborigines. Were the functions of this officer confined to the protection of the natives from physical injury or injustice there could not be two opinions on the subject of his duty; but in matters which relate to their general welfare he and I, with equal zeal in their cause, may entertain very different ideas. I sincerely hope that the duties of this officer may be exactly defined, and that the Government may be secured from the effect of captious opposition.¹⁴⁹

Normanby’s reply did little to resolve Hobson’s query,¹⁵⁰ but is important in the context of the theme of trusteeship insofar as it was specifically a device of the Governor’s rule:

The Protector of Aborigines cannot be brought into any relation to you which would throw any doubt on the respective limits of your authority and is, because he would be in the fullest sense of the term your subordinate officer, yielding implicit obedience to all your lawful instructions, and reporting to you all his proceedings.¹⁵¹

145 J. Bentham, UCLMC, c. 1775, Box 169, p. 97.

146 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 237.

147 C. Terry, p. 218.

148 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 237.

149 W. Hobson to Under Secretary of State for the Colonial Office, 15 August 1839, in *GBPP 1840*, Vol. 33, p. 43.

150 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 237.

151 Normanby to W. Hobson, 15 August 1839, in *GBPP 1840*, Vol. 33, p. 45.

According to this explanation, the desire to ‘protect’ Maori was subservient to the imposition of British rule in the colony. Thus, Maori rights could be protected, but as a secondary condition – provided that the protection of these rights coincided with the broader goals of British trusteeship in the colony, and that these rights were essentially European rights. The intention to develop Maori allowed the desire to offer protection to be crafted into a peculiar form, in which ‘protection’ amounted to Maori having to surrender those aspects of their culture which the British saw as barriers to their development.

Russell’s instructions to Hobson in January 1841 were more straightforward in clarifying the purpose and funding of the Office of Protector of Aborigines.¹⁵² Russell – Normanby’s successor as Colonial Secretary – cited its roles in land transactions and ‘civilising’ functions as being its main priorities:

As often as any sale shall hereafter be effected in the Colony, of the lands acquired by purchase from the Aborigines, there must be carried to the credit of the department of the Protector of Aborigines, a sum amounting to, not less than fifteen, nor more than twenty per cent. in the purchase money, which sum will constitute a fund, for defraying the charge of the Protector’s establishment, and for defraying all other charges, which on recommendation of the Protector, the Governor and Executive Council, may have authorised, for promoting the health, civilisation, education and spiritual care of the natives. Such sums, when not immediately required, must be invested in the best securities in New Zealand, or in New South Wales, in the name of the Governor. If, at any future time, the fund should be found to exceed every reasonable demand for this service, any ulterior augmentation of it may be suspended, until the want of additional funds, shall become apparent, or shall be reasonably anticipated. But generally speaking, the proceeds will probably be expended within the year.¹⁵³

The irony in these instructions was that the payment to ‘protect’ Maori, and to assist them with their development, was to come from the sale of Maori land – which economically and spiritually was one of the features

¹⁵² P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, pp. 237-8.

¹⁵³ Russell to W. Hobson, 28 January 1841, in *GBPP 1841*, Vol. 17, p. 52.

most likely to retard Maori development. Yet, apparently from the British perspective, the possession by Maori of the traits of 'civilisation', rather than Maori possession of their ancestral land, took priority. The intent to develop Maori towards the goal of civilisation overrode this sort of moral dilemma.

Hobson's personal religious leanings also played a part in the formation and character of the Office of Protector of Aborigines. Before appointing George Clarke snr. As the Protector, Hobson undertook consultations with local missionaries from the CMS (of which Clarke had been a former secretary). The CMS recommendations in Clarke's favour assured Hobson that Clarke was a suitable person for the post. The importance of missionary opinion should not be understated during this period – Hobson's reliance on them for confirming the appointment of a Government official illustrates how this influence could manifest itself.¹⁵⁴

The CMS played an important role in terms of British trusteeship in New Zealand. It was the CMS which had convinced the Colonial Office of the need for the Office of Protector of Aborigines in the first place,¹⁵⁵ and which had thereafter provided two of the staff members of the Office.¹⁵⁶ The difficulty was that a missionary now presided over the very temporal issue of land. The possibility of the convergence of missionary goals with those of the Colonial Office's on a colony was explained by a contemporary cleric, John Henry Newman, who described the idea of development as being '...in the air, working consciously or unconsciously in all minds'.¹⁵⁷ Certainly in New Zealand's case, the fact that there was a shared urge among missionaries and officials to civilise Maori worked in favour of the Colonial Office's plans to develop the colony along a particular and prescribed line. Among many missionaries, the gulf

¹⁵⁴ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 238.

¹⁵⁵ Report of the House of Commons Committee on Aborigines in British Settlements, June 1837, in *GBPP 1837-8*, Vol. 40.

¹⁵⁶ George Clarke, and George Clarke junior.

¹⁵⁷ J. H. Newman, in M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 90.

between policy and practice was widening at this time. As one missionary noted to a younger colleague in 1843:¹⁵⁸

You know, my young friend, that the Directors [of the London Missionary Society] are not acquainted with the state of things, and we are, and we must adapt our proceedings to the circumstances. The Directors write excellent instructions which look very well on paper, but they become a mere bagatelle when we get here.¹⁵⁹

In a book written in 1839, one New Zealand missionary¹⁶⁰ was scathing of the behaviour of some of the CMS missionaries in the colony - of whom Clarke had been their one-time secretary. The particular complaint was that the missionaries had succumbed to the temptation of acquiring land cheaply from Maori for personal financial gain:¹⁶¹

I was credibly informed on the island that there is scarcely one of them who has not managed in this way to secure for himself or his children in perpetuity a large extent of valuable territory....the case of these missionaries is in this respect the most monstrous that has occurred in the whole history of missions since the reformatations.¹⁶²

Swainson, too, could not remain unaware of the descent of many of the missionaries into profiteering through land purchases:¹⁶³

...some of the Missionaries...stationed in the country availed themselves of the permission given by the Church Missionary Society to purchase land from the natives for the use and benefit of their families: but these missionary claims eventually proved to the parent society a source of painful interest. Even in a merely financial point of view, it is a short-sighted economy to expose a Christian Missionary to the temptation of eking out a provision for his family by trafficking with an ignorant people for the purchase of their lands. For, to be efficient, the Missionary must be altogether

¹⁵⁸ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, pp. 237-8.

¹⁵⁹ J. Williams, in N. Gunson, *Evangelical Missionaries in the South Seas 1797 - 1860*, PhD Thesis, Australian National University, 1959, p. 224.

¹⁶⁰ J. D. Lang, *New Zealand in 1839*, London, 1839.

¹⁶¹ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 239.

¹⁶² J. D. Lang, pp. 34 & 37.

¹⁶³ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 239.

beyond even the suspicion of self-seeking objects....The [CMS] Missionaries had taken advantage of their position to secure their own aggrandizement...¹⁶⁴

In the effort to assert order and foster development among Maori, the colonial administration in New Zealand used the CMS as a de facto bureaucracy to assist in the implementation of its plans for development in the colony. Yet corruption had begun to intrude into the operations of some missionaries,¹⁶⁵ making the already difficult task of enacting development even more problematical.¹⁶⁶

Could Clarke, who was one of the senior CMS figures in New Zealand, have been oblivious to the abuses that were allegedly so prevalent in his organisation? If so, he would hardly have been the fitting nomination by Hobson for Protector of Aborigines. If, however, he was aware of such abuses, then his ethics would have to be questioned. Either way, Clarke could be condemned as an inappropriate choice to carry out native policies¹⁶⁷ in the name of the Crown.

In practice though, these considerations mattered very little. The conflicting demands of the post of Protector of Aborigines proved irreconcilable and the position was abolished six years later.¹⁶⁸ Clarke had to match the requirements of maintaining Maori welfare, while also being an integral part of the British administration which had set itself up as the exclusive purchaser of Maori land. There was no way that Clarke could ever be completely neutral in such circumstances. This reflected one of the principal dilemmas of the Office of Protector of Aborigines, and by extension, a problem with the execution of British trusteeship in New Zealand. The dilemma was based on the fact that the British intention to guide Maori development necessitated substantial intervention in Maori affairs, on the basis that that development was founded on

¹⁶⁴ W. Swainson, p. 92.

¹⁶⁵ Op. cit.

¹⁶⁶ see M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 90.

¹⁶⁷ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, pp. 239-40.

¹⁶⁸ G. Grey to Lord Stanley, 3 June 1846, in *GBPP 1847*, Vol. 38, pp. 5-6.

British ideas of progress and improvement. However, when this intervention extended into the Crown trading Maori land, and going as far as profiteering from the land it purchased from Maori,¹⁶⁹ the conflict of interests was too great, and any intended development was negated to a considerable extent by these counter-productive actions of the Crown.¹⁷⁰

However, the alienation of Maori land does not seem to have been linked by the Governor at this time with a regression in Maori development. Instead, the focus was on civilising Maori as the perceived basis for Maori improvement.¹⁷¹ Possession or lack of possession of ancestral land hardly featured in the Crown's intent to 'civilise' Maori.

Occasionally, there were times when the value of the post of the Protector of Aborigines would have seemed considerable to Hobson, mainly as a supplementary source of advice for the Governor. In 1841, Clarke was able to warn Hobson about growing Maori discontent over the land issue – in particular, the feeling among some Maori that they had lost their land through European trickery.¹⁷² Clarke had witnessed how a shortage of funds had forced Hobson, in effect, to abuse the Crown's monopoly right to purchase Maori land by paying less than what the market would have dictated to have been a fair price.¹⁷³ The Crown's subsequent profiteering by on-selling the land to settlers did little to endear Hobson and his administration to Maori,¹⁷⁴ and seemed to achieve little, if anything, in terms of Maori development. The goals set down for the Office of Protector of Aborigines, focussing on the '...health, civilisation, education and spiritual care of the natives',¹⁷⁵ was corrupted by a shortage of funds to enable the Office to function effectively, and the temptation by

169 Report of George Clarke, Protector of Aborigines, 26 June 1841, in *GBPP 1842*, vol. 28, pp. 100-10.

170 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 240.

171 Report of George Clarke, Protector of Aborigines, 26 June 1841, in *GBPP 1842*, vol. 28, pp. 100-10..

172 Op. cit.

173 Ibid., pp. 190-1.

174 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 240.

175 Russell to W. Hobson, 28 January 1841, in *GBPP 1841*, Vol. 17, p. 52.

the Crown to abuse its trusteeship power over Maori for immediate financial gain.

Clarke was convinced, though, of the value of his work in the larger process of civilising Maori. In a report he wrote in 1841, he sensed the importance of extending the scope of his Office in order to both 'protect' Maori rights, and to protect the colonial administration from the consequences of those rights being abused:

...his Excellency will at once perceive the necessity of approved officers being stationed so as to visit the natives, to correct evil disseminations and misapprehensions arising therefrom....The New Zealanders [[Maori] are jealous of their liberty, as well as of their lands; they see them as intimately connected, and they are carefully watching and comparing every public act, deducing from thence positive conclusions as to the conduct that will be pursued towards themselves....One rash, injudicious step, and the whole country is involved in trouble and ruin; conciliatory measures, such as have happily marked the first year of his Excellency's government, and a lasting friendship ensues...though it cannot be hid from his Excellency that the seeds of discord have and are being sown among the natives.¹⁷⁶

Because the colonial Government avoided using coercion to get Maori to comply with British law, the fostering of closer relations between Maori and the Crown was an important function if British trusteeship over Maori was to work effectively. The trade-off in this approach was that the order which supported this trusteeship was diminished.

Clarke's advice was, on the whole however, too inconsistent to have been of any real long-term worth to Hobson. While sometimes recommending an almost pacifist approach, Clarke was not always able to contain his frustration over the inability of the Government to apply British law throughout the country. In 1842, an impending clash between two Maori tribes saw Clarke pursuing a more confrontational, and certainly less diplomatic line. Taraia, a Ngati Tamatera chief from the Thames region,

¹⁷⁶ Ibid., pp. 99-100.

was planning an attack on tribes in the Tauranga area over a disputed pa that had been captured, and over other issues associated with land encroachment.¹⁷⁷ The outcome of the conflict was the death of several Tauranga Maori, and two reported cases of cannibalism. Clarke made hesitant gestures at mediation, but these were rejected by Taraia, who insisted that the issue was strictly between Maori.¹⁷⁸

On 17 June 1842, the Executive Council met to assess the situation, and decide on a course of action.¹⁷⁹ Here, Clarke not only rejected the idea that a peaceful, negotiated settlement could be reached, but went as far as to reject the idea of a summons being issued to Taraia, arguing that the chief had no respect for British rule. Clarke suggested a show of military force as being the only way to enforce the decision of the civil authorities. Orders were thereafter given for soldiers at Auckland to embark on the Government brig and seize Taraia.¹⁸⁰

Within a week, however, Clarke had reversed his position, and returned to his more familiar theme of conciliation - probably in acknowledgement of the Government's inability to offer a sufficiently strong display of force.¹⁸¹ Moreover, Clarke believed that if the Government did attempt to exercise its military muscle, it might dent the fragile goodwill that had been carefully moulded between some Maori and the Government.¹⁸² Hobson agreed with this more passive approach, being well aware himself of the weakness of the military strength at his disposal.

The conciliation was a success in that it averted further conflict, and resolved the dispute over the land which had triggered the initial hostilities.¹⁸³ But for Hobson, his failure to 'fight fire with fire' was

177 G. Clarke to W. Hobson, 15 June 1842, in I. Wards, *The Shadow of the Land*, Wellington, 1968, p. 61.

178 Op. cit.; P. Moon, *Hobson: Governor of New Zealand, 1840 - 1842*, pp. 240-1.

179 J. Buller, p. 376.

180 Op. cit.; P. Moon, *Hobson: Governor of New Zealand, 1840 - 1842*, p. 241.

181 G. Clarke to W. Hobson, 15 June 1842, in I. Wards, p. 61.

182 G. Clarke to Colonial Secretary, 30 June 1842, in *GBPP 1842*, Vol. 28, p. 101..

183 J. Buller, p. 376.

interpreted as a sign of impotence by both Maori and Europeans,¹⁸⁴ although Bunbury strangely maintained that Maori had ‘...an almost superstitious dread of the dangers they would have to encounter by coming into hostile collision with the [British] military’.¹⁸⁵ The triumph of the Protector of Aborigines in this instance was ironically a defeat for Hobson, even if he was unaware of it. The Crown’s order over the colony, that was so necessary for progress to be initiated, had been demonstrated to be virtually non-existent. Moreover, the Protector of Aborigines, who was meant to be a force for ‘civilising’ Maori, had been responsible for this diminished order.

This compromise by the Protector of Aborigines also offers an example, however slight, of the gradual process of Maori transition towards accepting European models of government. Although this was a feature Mill had predicted would take place in colonies under British trusteeship during the transition stage of social development,¹⁸⁶ the Crown’s utter dependence on Maori consent adversely affected Hobson’s ability to actively lead Maori society without first obtaining Maori agreement for any changes he proposed.

Hobson’s and the Colonial Office’s initiative in having a separate arm of the Government devoted to protecting Maori interests would have done nothing detrimental to the perception of his regime among certain members of the British Government, which favoured this sort of initiative,¹⁸⁷ in part because it had the potential to assist the trusteeship duty of the Hobson administration over Maori.¹⁸⁸

184 Op. cit.

185 T. Bunbury to General Officer Commanding, 2 August 1842, in I. Wards, *The Shadow of the Land*, Wellington, 1968, pp. 62-3; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 241.

186 J. S. Mill, *The Spirit of the Age*, pp. 174-5.

187 Lord Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 37-38.

188 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 242.

The success of the Protector of Aborigines in altering the view of Maori towards the Crown was limited overall. In 1846, Governor Grey reflected on the position of the Protector of Aborigines,¹⁸⁹ and how he saw it as having failed to allow the Government to penetrate Maori attitudes on British intervention in New Zealand.¹⁹⁰

The business of this office was conducted by the late Protector of Aborigines in so unusual a manner that it is almost impossible to obtain any information upon subjects with which that office was connected, as they were shrouded with studious mystery.¹⁹¹

Governor Browne was also later critical of the Office¹⁹² because of its inability to effect any real change, beyond exercising an advisory capacity.¹⁹³

...in other colonies where the Europeans have assumed the duties connected with the government of partially civilised tribes, it has been found necessary to have officers regularly trained and educated for those duties...In New Zealand the Government is, and always has been, unable to perform its duty, for want of a sufficient number of agents so trained and qualified for the service required of them.¹⁹⁴

The professionalism of the Office of the Protector of Aborigines was further corrupted by the presence of nepotism. Two of Clarke's sons were employees of the Protectorate Department, as was Shortland's brother.¹⁹⁵ Despite the alleged shortage of suitably qualified personnel in the colony, such a situation could not be fully justified, something which again highlights Hobson's reluctance, or inability, to rein in practices which were harmful to his administration.¹⁹⁶ This circumstance also highlights

189 G. Grey to Stanley, 3 June 1846, *GBPP 1847*, Vol. 28, p. 5.

190 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 242.

191 G. Grey to Stanley, 3 June 1846, *GBPP 1847*, Vol. 28, p. 5.

192 G. Browne, 25 May 1861, in *Appendices to the Journal of the House of Representatives*, 1861, E-3A.

193 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 242.

194 G. Browne, 25 May 1861, in *Appendices to the Journal of the House of Representatives*, 1861, E-3A.

195 Shortland was appointed as interim Governor following Hobson's death in 1842.

196 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 242.

the gulf between the paternalistic and possibly even idealistic intentions of British policy, which were heavily informed with contemporary ideas about development, and the corruption of such policies in the colonies.

Overall, Hobson's rather amateur experiments in native policy met with little immediate success. When it became evident that the Protector of Aborigines was no longer serving his needs, Hobson was obliged to fall back on to the conventional official structure that existed in the hope that it would be sufficiently able to manage Maori affairs. Even the most lofty of ambitions were dragged down by a perpetual shortage of public funds, but more importantly, there was a great cultural divide which few Europeans at the time could traverse. Even though the Governor allocated £2,000 in 1841 for the 'protection' of Maori (a paltry sum when viewed in contrast with his other areas of spending) there was difficulty in finding staff who were competent and sufficiently aware of Maori interests to administer this money,¹⁹⁷ and ultimately, the Protector of Aborigines failed, overall, to achieve the British-defined Maori development and improvement in the colony that it had sought to do. Maori 'civilisation' had not been noticeably advanced, and no discernible modernisation of Maori had taken place in the time the Office functioned that can be attributed directly to its operations. Neither can any subsequent Maori development be ascribed solely to the actions or policies of the Protector of Aborigines.

The future social and political progress of the colony relied on an ordered process of development among all peoples in the colony, and to this end, the Office of Protector of Aborigines was established in an effort by the Crown to extend its order to Maori society. However, like other branches of the colony's Government, it was inadequately resourced, and depended mainly on compromise and concessions rather than any clear capacity to impose the will of the Government to assert its programme of intentional

¹⁹⁷ W. Hobson to Secretary of State for Colonies, 4 August 1841, in K. Sinclair, *The Origins of the Maori Wars*, p. 108; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, pp. 242-3.

development over Maori. The Office of the Protector of Aborigines also failed to precisely articulate a projection of the future shape that Maori improvement would assume. Instead, it relied on more vague notions of civilisation as its goal. Part of the problem of the Crown delegating roles of intentional development to non or semi-government functionaries was that there was no certainty that these people shared the same understanding of the doctrine of intentional development that the Crown had stipulated for the colony. As a result of the combination of these factors, the processes of immanent development in Maori society were not superseded by the colonial government, as the Treaty's provisions specified would be the case. This made the process of converting the idea of development into an effective practice of development even more difficult to undertake.

The blame for the general failure of Hobson's native policy lay partly in London. The Colonial Office had little experience in dealing with such matters and so was prepared to put its faith in the Office of the Protector of Aborigines as a means of achieving its goals of development for the colony. Stephen's personal approach to native affairs in the Empire revealed how senior officials lacked a detailed appreciation of the issues involved. Stephen believed that when a white race began to colonise a country peopled by an indigenous group, the fate of the indigenous group would eventually be extinction.¹⁹⁸ Hardened by the cynicism of years of experience, Stephen saw no practical alternative. Yet, from a humanitarian point of view, such an outcome was untenable. The problem was that the Empire could not afford the enormous resources required to 'protect' indigenous groups, and so some sort of alternative was needed. This alternative was found in the recommendations of the CMS. Missionary principles were conveniently and instantaneously translated into colonial government policies. Thus Normanby's first set of instructions to Hobson advised him to appoint a Protector of Aborigines to prevent cannibalism, to promote the civilisation of the Maori, and

198 J. Stephen in J. S. Marais, p. 256.

specifically to lend support to the missionaries - even in the form of financial assistance if necessary. This was exactly in accordance with CMS recommendations.¹⁹⁹ These goals, which aimed at modernising Maori, denied Maori the opportunity to continue with aspects of their culture within the emerging European colonial society.²⁰⁰

The link between the intentional development doctrine of the Colonial Office and the CMS notions of Maori development was so close in part because they both emerged almost in unison, in an environment in Britain where new ideas about development were coming to the fore. However, the success of these doctrines, when implemented in the colony, was another matter. There was no attempt to resolve the contradiction of protecting Maori on the one hand, and attempting to assimilate them into the European society on the other. These conflicting goals of the Office can be seen as part of its underlying purpose: not to protect, as its title implied, but to actively alter the Maori belief system as part of the intentional development of Maori devised by the British.

If Hobson continued to misdirect his native policy, it was in part because he misunderstood it.²⁰¹ This was made very clear by Swainson, who observed that information on the colony was sparse:

...the Governor of New Zealand...is in an unenviable and anomalous position. In the various forms of books, pamphlets, and Parliamentary Reports...very little is generally known of the real condition, social and political, of its aboriginal Native race - of their power and influence - and of the qualified character of their submission to British rule. No special provision was made for their government; and...they take no part in the exercise of the ...Government of the country....²⁰²

199 Normanby to W. Hobson, 14 August 1839, *GBPP 1840*, Vol. 33, pp. 44-5; P. Moon, *Hobson: Governor of New Zealand, 1840 - 1842*, p. 243.

200 Cannibalism was a cultural practice for example which the missionaries strictly forbade.

201 P. Moon, *Hobson: Governor of New Zealand, 1840 - 1842*, p. 245.

202 W. Swainson, pp. 367-8.

However, rather than proposing the inclusion of Maori in the system of government in the colony, Swainson implied that the sovereignty that Britain acquired through the Treaty of Waitangi should be the basis for British trusteeship rule in the colony, without any mention of including Maori in this government:

The natives of New Zealand ceded their independence, not to the English settlers, but confidently to the justice and wisdom of the British Crown; and the British Government became morally responsible for their just and paternal government.²⁰³

William Gisborne, a nineteenth-century member of the New Zealand House of Representatives, echoed this view about the dilemmas Hobson faced - dilemmas which were clearly accentuated by a lack of empathy with Maori concerns:²⁰⁴

His [Hobson's] first duty was to negotiate with uncivilised tribes for the country which he was commissioned to govern. Then he was called on to substitute peace, order, and good government for absolute anarchy; and to do this under different and dangerous conditions. On the one hand, an aboriginal race, armed, warlike, jealous of its own position, suspicious of interference, and ignorant of English law, language, and habits, occupied the country....²⁰⁵

This segment also highlights the difficulty the Crown faced of reconciling the full legal sovereignty that had secured over New land with the less-than-complete political sovereignty that they exercised in this period.

A Hardening of Attitudes

A less tangible change occurred in relation to the Government's treatment of Maori during Hobson's rule. As time went on, there seems to have been a growing intolerance towards the Maori system of law and justice²⁰⁶

203 *Ibid.*, p. 379.

204 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 245.

205 W. Gisborne, pp. 8-9.

206 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 246.

as part of the acceleration of the application of British trusteeship rule in the colony. FitzRoy later commented on this transition, in which there was an evident impatience with the indigenous belief system, which coincided with the extension of British law over Maori communities:

...in 1842 the tide began to turn. More settlers arrived in every ship. The natives were not only treated with less caution and less kindness than previously, but they were threatened, even on trifling occasions, with the punishments of English law (to them unintelligible); and they were told by ill-disposed or unreflecting white men that their country was taken from them, that they were now Queen Victoria's slaves, and that they could not even sell their own property - their land - as they pleased. These taunts were felt deeply....the chiefs began to feel that they were no longer the principal persons; but that their influence and power were diminishing rapidly....²⁰⁷

Part of the reason for this intolerance can be attributed to the fact that, if Hobson's administration was to fulfil a trusteeship role, it was vital for British law to embrace everyone in the colony. As long as Maori were not fully under the rule of British law, colonial trusteeship over Maori could not be fully exercised, and therefore Maori progress and improvement was not achievable along the lines envisaged. Furthermore, the failure to implement British law throughout the entirety of the colony was a source of corruption to the ideal of British sovereignty being exercised over all of New Zealand, as the Treaty had expressed.

Hobson held out some hope that improvements in relations between Maori and European would occur,²⁰⁸ but he was unable to devote enough time to native affairs, and relied on others, who were often even less informed than he, to fill the gaps as they opened. The result was a series of reactive policies aimed at preventing problems as opposed to dealing with issues comprehensively and finding solutions.²⁰⁹ In one sense, the hardening of attitudes among the colony's British administrators towards the Maori

207 R. Fitzroy, pp. 11-12.

208 W. Hobson to H. Williams, in W. Williams, *Plain Facts Relative to the Late War in the Northern District of New Zealand*, Auckland, 1847, p. 9.

209 P. Moon, *Hobson: Governor of New Zealand, 1840 - 1842*, p. 246.

system of justice was inevitable. As the colony accelerated along the path towards becoming a modernised state, those aspects of the country's legal and other structures which were incompatible with the new colonised regime emerged as more pronounced barriers to the '...total transformation...' towards an economically prosperous and comparatively stable future.²¹⁰

The Corruption of the Colonial Economy

The Proclamations of Sovereignty made by Hobson in May 1840²¹¹ put New Zealand in a position where it was empowered to manage its own affairs with the goal of transforming itself into an economically self-supporting colony.²¹² The economic burden of colonies had made this a goal of the Colonial Office for New Zealand.²¹³ However, the despotic colonial rule of the Governor in New Zealand failed to lead to any convergence of interests between those of the Government and those of the people being governed.²¹⁴ New Zealand's administration had struggled through a difficult first few months since the signing of the Treaty, but what it was yet to encounter was the spectre of an economy which was moving towards a crisis,²¹⁵ and which would stretch the capacity of the trustee administration to foster progress and improvement in the colony beyond the limits that otherwise may have been possible. This section explores the divergence of the practice of economic management in the colony from the ideal of prudent economic administration leading to economic independence,²¹⁶ and the types of corruption which debilitated the capacity of the colonial Government to achieve this ideal.

210 W. E. Moore, p. 89.

211 W. Hobson, Proclamations of Sovereignty, 21 May 1840, in *GBPP 1841*, Vol. 17, pp. 32-4.

212 See J. Bentham, *Emancipate Your Colonies!*, p. 410.

213 Russell to W. Hobson, 9 December 1840, in *GBPP 1841*, Vol. 17, p. 26.

214 A requirement for social development described by Mill, see J. S. Mill, *Democracy and Government*, p. 180.

215 P. Moon, *Hobson: Governor of New Zealand, 1840 - 1842*, p. 166.

216 J. Stephen to A. Spearman, 13 June 1839, *GBPP 1840*, Vol. 33, pp. 32-3.

The financial state of New Zealand's colonial Government from 1840 to 1842 in some ways shrouded nearly all the other areas of the Crown's activity in New Zealand. In his capacity as Governor, Hobson was responsible for keeping the country solvent, and barring a war or some other extraordinary event incurring unforeseen expenses, the colony's administration was expected to be self-funding, with only a small budget being allocated by the Colonial Office for Hobson and his immediate staff.²¹⁷ The Colonial Office was reluctant to provide any funding beyond the absolute minimum it was felt necessary to sustain the governments in its colonies. However, Felton Mathew, the colony's Surveyor-General, believed that the reckless fashion of Hobson's economic management, in particular his expenditure, heralded difficulties for the colony as a whole, regardless of the minimal funding received from the British:

It is impossible to deny that Captn. Hobson's administration was marked by a most lavish and injudicious expenditure, based on the anticipated prosperity of the Colony, and the expected productiveness of the Land fund - an idea nurtured by Captn. Hobson's previous knowledge...²¹⁸

The first major cracks in the doctrine of intentional development for New Zealand were evident in Mathew's criticism. The competency of the Governor did not match the requirements of achieving economic improvement in the colony. Incompetence was to emerge as a major source of corruption for the economic development ideal for New Zealand. The most ardent intentions that economic improvement occur could not overcome a deficiency in the Governor's abilities. Furthermore, the Colonial Office's excessive stringency in funding its colonial administrations undermined the prospects for the comprehensive economic development of New Zealand, and therefore damaged the

²¹⁷ Op. cit.; P. Moon, *Hobson: Governor of New Zealand, 1840 - 1842*, pp. 165-6.

²¹⁸ F. Mathew, 'The Founding of New Zealand', in *The Journals of Felton Mathew, First Surveyor-General of New Zealand and His Wife, 1840 - 1847*, J. Rutherford (ed.), Dunedin, 1940, p. 216.

chances for the success of its own goals for the development of the colony. Ironically, this stringency was justified by the Colonial Office on the grounds that it reduced the dependent link between Britain and its colonies.²¹⁹

The Commencement of Mismanagement

Hobson received detailed instructions from Russell on the way in which the colonial government should run its affairs.²²⁰ This advice was typically thorough and prudent, but was seen by Hobson more as a rough guide rather than a binding set of rules.²²¹ The emphasis was on caution and restraint in private as well as public expenditure:

....Frugality is one of the indispensable bases of all good government and social welfare in such communities as those which have recently been formed in New Zealand. I refer not merely to a wise economy in public expenditure, but to simplicity and plainness of living in domestic circles.... Economy in public expenditure will be greatly facilitated by the observance of these rules.²²²

In these instructions, the influence of contemporary philosophies about colonial development can be clearly detected. The bureaucratic and financial excesses of British colonial administration at the turn of the nineteenth century, which Bentham had condemned,²²³ had given way, partly under the influence of his robust public criticisms,²²⁴ to a more financially responsible model.²²⁵ The emphasis was now on the prudent government of colonies, rather than viewing colonies chiefly as a potential source of income.²²⁶ Moreover, as Russell's instructions indicate, responsible management of the economy, and particularly of the colonial

219 J. Stephen, 4 December 1841, in P. Knaplund, p. 261.

220 Russell to W. Hobson, 9 December 1840, in *GBPP 1841*, Vol. 17.

221 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 166.

222 Russell to W. Hobson, 9 December 1840, in *GBPP 1841*, Vol. 17, p. 26.

223 L. Woodward, pp. 368-9; J. Bentham, *Emancipate Your Colonies!*, pp. 408-418.

224 J. Bentham, *Emancipate Your Colonies!*, pp. 408-418.

225 J. A. Roebuck, p. 17.

226 J. W. Cell, pp. 93-5.

Government's own circumstances, would avoid the potential for the Governor to become too distanced from those he presided over.

Had the British Government intended to expropriate wealth from New Zealand at this time, using Hobson as the official to coordinate this exploitation, it is highly unlikely that such severe degrees of prudence, as indicated in Russell's instructions,²²⁷ would have been recommended to Hobson. Russell's instructions are more in keeping with his desire that New Zealand be sensibly, and even cautiously, managed, with the Governor of the colony surviving in an economically disciplined environment as he guided the colony's economy to a more developed state. This approach was adopted partly because New Zealand was tilting towards becoming one of the 'white' settler colonies, and as a consequence there would be greater costs associated with development of infrastructure for towns, for example, without the sorts of revenue levels available to colonies where resource extraction was the principal reason for intervention.

Increasingly, Hobson had to devote more time to the colony's economy, and less to other fields of public affairs. Unfortunately, the neglect of certain areas of public affairs, particularly corruption and incompetence, served only to perpetuate the vicious cycle of economic decline and impeded the practice of intentional development.²²⁸ The situation was worsened by the colonial administration's over-dependence on a small tax base which lacked diversity and therefore contained the potential to reduce the Governor's freedom of policy-making²²⁹ through his being held a virtual hostage to various interest groups, especially the emerging 'local elite'. Even a decade or so later, the situation had hardly changed:²³⁰ 'The political and economic were inseparable. Settler populations-cum-entrepreneurs straddled with ease the cabinet, the court

²²⁷ Russell to W. Hobson, 9 December 1840, in *GBPP 1841*, Vol. 17, p. 26.

²²⁸ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 65.

²²⁹ E. J. Kelsey, *Rogernomics and the Treaty of Waitangi*, PhD Thesis, University of Auckland, 1991, pp. 121-122.

²³⁰ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 167.

bar and bench, the board room, and the land registry'.²³¹ This was another point at which the desire for development that had been formulated by the Colonial Office broke down when it came to the effective performance of the required functions necessary for achieving economic improvement.

One of the central problems with New Zealand's financial administration was that the British Government had not appointed anyone with specific skills in economic management. The system of colonial government delivered to New Zealand by the Colonial Office may have been inexpensive and simple, but these attributes did not necessarily equate with efficiency and effectiveness in the execution of the doctrine of intentional development. The responsibility of colonial trusteeship was a specialist one. The dilemma of New Zealand's situation was that the British Government had committed itself to carrying out a trusteeship role in the colony, but without providing the quality of personnel or the level of funding to allow the trusteeship administration to nurture the desired development in the colony. The emphasis that a developing state should be governed by the 'fittest persons' in it²³² hardly applied in New Zealand. Judging by the performance of the Hobson administration, especially in its economic management, this criterion did not seem to be applicable to the New Zealand Government in this period. This was an oversight by the Colonial Office in its execution of its doctrine of intentional development. It seems that too little consideration was given to the difficulty or magnitude of the task of actively guiding the economic development of the colony. This resulted in another impediment emerging to the successful performance of economic improvement in the colony.

While it would be erroneous to accuse Hobson of initially being extravagant, he was definitely misguided with public funds. A good case in point was Hobson's expenditure on Government House. The initial stated cost was £1,211, with an additional £627 for furniture,²³³ but these

²³¹ E. J. Kelsey, pp. 121-2.

²³² J. S. Mill, *Considerations on Representative Government*, p. 390.

²³³ Russell to W. Hobson, 9 December 1840, in *GBPP 1841*, Vol. 17, p. 42.

costs escalated in the following years. Even more excessive than this was the agreement Hobson made with Busby, whereby Hobson would rent Busby's two-bedroom house for a year for the cost of £200.²³⁴ To put this rental cost into context, a doctor's annual salary in New Zealand in 1841 was £150.²³⁵ These amounts are in stark contrast to the overall budget of just £4,005 which Hobson initially imagined would cover all the expenses of establishing his regime in New Zealand.²³⁶

This almost reckless disregard for the expenditure of public money was not that uncommon in some colonies, and resulted in the Colonial Office trying, whenever possible, to regulate what it rightly saw as wasteful disbursements.²³⁷ It is therefore not surprising that instructions to Hobson often urged him to manage public money frugally. For example, he was subtly, but none-the-less clearly, advised that 'At the commencement and for some years afterwards, we must be content with what is useful, plain, and solid, remitting to a future day what is merely ornamental'.²³⁸ Hobson later responded by arguing, completely unconvincingly, that he in fact needed a higher salary, and that he had been parsimonious with the money he had received so far.²³⁹ But despite Hobson's attempts to justify his spending and at the same time plead poverty, it was hard for him to hide the relatively conspicuous excesses of Government House from the settler population in New Zealand, most of whom were in various stages of impoverishment, and were 'disenchanted' with the autocratic management of the economy.²⁴⁰ This disparity between Hobson and the colonists became a wedge which had the effect of separating the Governor from those he governed, and did nothing to foster or strengthen public support for him. It also made Hobson's task of co-ordinating the economic development of the colony even more difficult. If a sector of the settler

234 F. Mathew, p. 32.

235 L. K. Gluckman, *Tangiwai, Medical History of New Zealand Prior to 1860*, Auckland, 1976, p. 66.

236 W. Hobson to the Under Secretary of State for the Colonial Department, 24 June 1839, in R. McNab, p. 745.

237 H. E. Egerton, pp. 363-4.

238 Russell to W. Hobson, 9 December 1840, in *GBPP 1841*, Vol. 17, p. 26.

239 W. Hobson to Stanley, 4 August 1841, in *GBPP 1843*, Vol. 33, pp. 1-9, 10.

240 L. Cox, p. 33.

community was losing confidence in the Governor, there was a risk that his ability to exercise trusteeship power would be downgraded. Mill produced an analysis for precisely this sort of emerging problem. He emphasised that the relationship between a state and its people was a vital ingredient for development to take place.²⁴¹ If, as in New Zealand's case, the state appeared to be 'dwarfing'²⁴² its inhabitants in any way, this could prevent the machinery of progress²⁴³ and improvement from working.

Although good government was possible without any expressed accountability to the people being governed.²⁴⁴ This belief was based on the premise that there would be responsible and effective government, which was not always the case in New Zealand. The mismanagement of the colony's economy was a problem for which settlers and Maori alike had no remedy available. As long as the despotic forms of trusteeship being exercised in New Zealand by incompetent administrators continued, the prospects for economic development were bleak.

The Role of the British Treasury

Colonial Office expenditure on colonial administrations (increases in which Hobson was later to plead for) was under the ultimate control of the Treasury, who were following entirely different policy objectives, and did not evidently share in the doctrine of development that the Colonial Office had prepared for New Zealand. Even if the heads of the Colonial Office had been disposed towards granting Hobson all his requests for further funding, the Treasury would not have permitted the expenditure. This accounts for the Colonial Office's repeated instructions to its representatives in the colonies to restrict their spending wherever possible. The instructions along these lines issued to Hobson by Russell made clear

²⁴¹ J. S. Mill, *On Liberty*, p. 250.

²⁴² *Op. cit.*

²⁴³ *Op. cit.*

²⁴⁴ J. S. Mill, *Democracy and Government*, p. 181.

the attention Hobson needed to give to even the most minute details of the colony's financial administration:²⁴⁵

With a view to economy it will be necessary to establish and enforce a system of extreme punctuality and order in rendering and examining the accounts of all persons entrusted with the receipt and expenditure of the public money. You will, as far as possible, make the payment of the salary of every person dependent on his producing the proper certificate that his accounts up to date have been fully rendered, examined, and passed. This may not be altogether practicable, but you should aim at the nearest possible approach to such a regulation.²⁴⁶

A specific relationship had developed between the Colonial Office and the Treasury during the preceding decades which precluded any agreement with the Treasury on spending until policy in the Colonial Office had been precisely formulated, and any colonial expense made to appear inevitable.²⁴⁷ The character of the informal association between these two branches of the British bureaucracy arguably even became an influence in policy formation:²⁴⁸ 'It is hardly an exaggeration to say that the Treasury and the exigencies of the British budget have made as much colonial history as the Colonial Office itself'.²⁴⁹ This represented an attack on the doctrine of intentional development from a different angle, and a further corruption to the ideal of economic emancipation for the colony. The costs of performing the functions of development, if restricted in any way, could easily derail the whole process of a guided form of economic development in the colony. This would then allow the forces of immanent development to again influence the direction of development in the colony. Cowen and Shenton have argued that in this 'tug-of-war between immanent and intentional development, the potential for a colony to achieve economic and political self-determination was premised on the

²⁴⁵ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 169.

²⁴⁶ Russell to W. Hobson, 9 December 1840, in *GBPP 1841*, Vol. 17, p. 26.

²⁴⁷ T. Williams, p. 22.

²⁴⁸ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 170.

²⁴⁹ C. W. de Kieweit, *The Imperial Factor in South Africa*. Cambridge, 1937, p. 9.

capacity of trusteeship power to be applied to the colony's population.²⁵⁰ If, in New Zealand's case, this capacity was reduced through incompetence, then it followed that the Government's ability to guide development would be similarly impaired.

For the commencement of formal colonial rule in New Zealand, the Colonial Office had budgeted £6,000 for the salaries of officials, £6,000 for the costs of running the departments of Government, and £8,000 for buildings, giving a rough total of £20,000.²⁵¹ It was envisaged that after this initial expense, the colony would become self-funding through taxation, tariffs, and the sale of land (which the Crown had monopoly control over).²⁵² The vision of economically self-sustaining colonies may have been seductive to the Colonial Office and the British Treasury, but in the case of New Zealand, there was not even an infrastructure in place in New Zealand to allow the economic activity on a scale necessary for the Government to collect the expected tax revenue, assuming that the base for such revenue existed in the first place. This shows that the type of development the Colonial Office had anticipated New Zealand would experience did not take into account all the specifics of the existing state of the economy. The assumption that the intended development would overcome the many shortcomings of the economy proved to be an unrealistic one.

Corruption of the Ideal of Frugal Government Spending

By 1841, the New Zealand Government's expenditure was spinning out of control. Hobson had succumbed to the temptation to outlay money, regardless of the censures emanating from the Colonial Office and the precarious state of the domestic economic base, from which to pay for his growing extravagances. Estimates of expenditure for 1841 amounted to a

²⁵⁰ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, pp. 360-1.

²⁵¹ Normanby to W. Hobson, 14 August 1839, in *GBPP 1840*, Vol. 33, p. 41.

²⁵² *Op. cit.*; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 170.

staggering £51,000.²⁵³ To make matters worse, £15,000 was now due for land and buildings for Government offices in the Bay of Islands which Hobson had senselessly commissioned just prior to his decision to shift the capital to Auckland.²⁵⁴

As for the revenue the Government was expected to collect, problems were looming as well. Maori were now becoming more attune to the value of their land, as were the new arrivals of settlers, and as a consequence, the margins the Government made from the sale of Maori land to settlers were shrinking. This was the single biggest source of revenue for Hobson's administration,²⁵⁵ and he had not counted on the downward corrections to the values in the property market which were inevitable after an intense, speculation-based boom.²⁵⁶ It is ironic that one of the desired outcomes of the doctrine of intentional development – the integration of Maori into the European economic system – resulted in a decline in revenue for the colonial administration which was enacting this development.²⁵⁷

For a few months, Auckland had become a fertile ground for land speculators. Sections were quickly surveyed and subdivided out to be sold to arriving settlers. Profits of up to 300 per cent and over were not uncommon.²⁵⁸ In September 1841, 73 suburban allotments, making up 559 acres, were sold for £4,858 - an average of approximately £8 per acre, having been originally sold at auction for an average of £3 per acre,²⁵⁹ with some land going for as little as £1 per acre.²⁶⁰ Dieffenbach wrote of the growing absurdity of the speculation:²⁶¹

253 A. H. McLintock, *Crown Colony Government in New Zealand*, Wellington, 1958, p. 136.

254 F. Mathew, p. 116; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, pp. 170-1.

255 Op. cit.

256 E. Dieffenbach, *Travels in New Zealand*, Vol. 2, London, 1843, p. 11.

257 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 171.

258 E. Dieffenbach, p. 11.

259 *ibid.* p. 15.

260 T. Bunbury, *Reminiscences of a Veteran*, Vol. 3, London, 1861, p. 140.

261 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 171.

In the immediate neighbourhood of Auckland towns and villages, never destined to exist except on paper, started up like the creations of a fairy tale....It is amusing to skim over the weekly paper of Auckland, and read the names of about six or eight towns, villages, and even racecourses, none of them above three miles from the town of Auckland, which were put up for sale in the short space of a fortnight.²⁶²

Rather than moving to regulate this situation, it seemed that the colonial Government was actually exacerbating it by partaking in the speculation. Hobson's decision to move the Government to Auckland, notwithstanding the other issues involved, was done without any evident consideration of the financial implications. The consequences were unfortunately predictable:

Auckland was reduced to a state of bankruptcy: it lacked a sufficiency of land for the purpose of settlement. Misled by the opinions that the natives were dying so fast, that their lands would soon become Crown property for nothing, Captain Hobson did not care to purchase from them.²⁶³

Instead of buying land from Maori, as he was entitled to under the preemption clause of the Treaty, Hobson appropriated some land by stealth, or left land sales in the hands of private land companies which were generally driven solely by the motive of profit – often at the expense of the ethical basis of their purchases. The prerequisite of responsible colonial governments²⁶⁴ as a requirement for the economic improvement of a country was simply not being met in New Zealand under Hobson's administration. An almost continuous sequence of poor economic decisions confirmed the irresponsibility of Hobson's regime in this important area of government.

At the beginning of August 1841, Hobson sent a dispatch to the Colonial Office in which he confidently (but without foundation) asserted that

²⁶² E. Dieffenbach, p. 15.

²⁶³ J. Buller, *Forty Years in New Zealand*, London, 1878, p. 372.

²⁶⁴ J. Bentham, *Principles of International Law*, London, c. 1786-9, in J. Bowring (ed.), *The Works of Jeremy Bentham*, Vol. 2, New York, 1962, pp. 288-9.

Government revenue during the next twelve months would amount to £69,400, of which £50,000 would come from land sales.²⁶⁵ These were wild estimates. With such a budget prediction, Hobson hoped to win the confidence of the Colonial Office, but this was not to be. The British experience in neighbouring New South Wales had shown that the high expectations of revenue-gathering by the colonial administration did not necessarily translate into reality.²⁶⁶ A similar pattern of economic misjudgments applied to New Zealand. In January 1842, Hobson wrote a lament of the country's finances to the Colonial Office. His grandiose expectations had evaporated. He explained that the land revenue had been relatively unproductive, and that the monies collected from other sources had amounted to a paltry £1,300 for the whole year²⁶⁷ - less than ten per cent of the £19,400 he had anticipated.²⁶⁸

The outcome of the gulf that had developed between Colonial Office estimates of how New Zealand's economic activity would finance the country's Government, and the reality of New Zealand's faltering economy, was that Hobson was eventually forced to concede to the Colonial Secretary that New Zealand was on the verge of collapse.²⁶⁹ This also indicated the gap that had grown between the Colonial Office's desire for a specific sort of development in the colony, and the incompetent response by local officials at implementing this plan.²⁷⁰

By January 1842, Hobson's fears for the economy were beginning to materialise. The fall in land sales in particular had led Hobson to emphasise the '...utter impossibility...'²⁷¹ of continuing the Government of the country by January 1842. In the context of the theme of colonial trusteeship, this represented a disaster, in which all elements of the responsibility of the colonial administration were seriously eroded through

²⁶⁵ Treasury Minute, 10 March 1843, in *GBPP 1843*, Vol. 33, pp. 48-52.

²⁶⁶ M. Phillips, *A Colonial Autocracy*, London, 1909, p. 80.

²⁶⁷ Treasury Minute, 10 March 1843, in *GBPP 1843*, Vol. 33, pp. 48-52.

²⁶⁸ P. Moon, *Hobson: Governor of New Zealand, 1840 - 1842*, p. 172.

²⁶⁹ W. Hobson to Stanley, 4 August 1841, in *GBPP 1843*, Vol. 33, p. 1.

²⁷⁰ P. Moon, *Hobson: Governor of New Zealand, 1840 - 1842*, p. 172.

²⁷¹ W. Hobson to Stanley, 15 January 1842, in *GBPP 1843*, Vol. 33, p. 10.

incompetence and circumstances beyond the capacity of Hobson's administration to deal with.²⁷²

The problem of excessive Government expenditure had existed in embryonic form almost from the time Hobson set foot in New Zealand. Felton Mathew, the Surveyor General under Hobson, saw little future for the economy under his superior's stewardship:

It is really quite painful and annoying to see the way in which matters are managed, or rather mismanaged - no energy, no resolution, no arrangement, no fixed or settled purpose, but everything is done by fits and starts, without consideration; and resolutions are altered almost as soon as formed. Hobson is no more fit for the duty he has undertaken than I am to be Lord Chancellor, and I am quite sure that, even if he lives, he cannot carry on a Government six months without involving it in irretrievable confusion.²⁷³

Part of the overall problem for Hobson was that there were no means by which he could measure the size or output of the economy. The systems necessary to collect and collate this information did not exist in the colony. The size of the economy was not known by Hobson or his officials, and neither were they able to come to grips with the workings of the economy, notwithstanding the fact also that none of them had any previous experience in this area. The only fact that was clearly apparent was that the economy was in a serious decline, and could not continue in the same vein for too much longer.²⁷⁴ Such a situation was only possibly tenable if there was a prospect for substantial economic development in the colony in the near future. However, there is no evidence that any Colonial Office official at this time held out a hope that Hobson's economic management would make this sort of improvement materialise.

The occasional flickers of hope which emerged from Hobson were tempered by the qualification that the economy was still only in its

²⁷² P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 172.

²⁷³ F. Mathew, p. 73.

²⁷⁴ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 173.

formative stages and was therefore not ready to unleash its latent potential. A dispatch Hobson wrote at the close of 1841 is dressed with optimism, with an emphasis that economic success was tantalisingly close.²⁷⁵ He listed the products which were just beginning to be exported, such as pork, wood, and flax, as being the future sources of the colony's economic growth.²⁷⁶ However, for the present, Hobson emphasised the difficulties which accompanied the early stages of the colony's economic development, and the fact that without external support, the prospects for New Zealand were dire:

I need not here remind your lordship that a new colony has to struggle against every species of difficulty; that no trade actually takes place, except an interchange between the settlers, which impoverishes one portion just in the same degree as it enriches another; and that unless your lordship takes a favourable view of my suggestion, and creates an export trade...the colony must soon be stripped of its capital, and universal bankruptcy must follow.²⁷⁷

It is evident from this statement that Hobson's plan for the economic success of the colony was based on the development of a modern trade sector, rather than simply facilitating the entry of private companies into New Zealand to exploit the colony's resources. Connected with this issue was the fact that there was not a great demand by private companies to trade in the resources found in New Zealand. This made Hobson's proposed solution to the crisis in the economy – a solution based on improving the colony – the only alternative to colonial bankruptcy. The problem with the application of Free Trade as an economic solution to New Zealand's circumstances was that the levels of trade in this period were insufficient in themselves to generate sufficient revenue for the country. In addition, Hobson's repeated pleas for more money from Britain indicate that there was definitely a demand for more expenditure

275 W. Hobson to Principal Secretary of State for the Colonies, 4 December 1841, in *GBPP 1842*, vol. 28, pp. 179-80; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 174.

276 *Op. cit.*

277 Hobson to Principal Secretary of State for the Colonies, 4 December 1841, in *GBPP 1842*, vol. 28, p. 180

on New Zealand by the British Government, despite the fact that there were deficiencies in economic management occurring within the colony's Government. Even if this mismanagement were removed, New Zealand still would not be in a position to support itself financially in this period.

The main issue which therefore emerged in respect to New Zealand's development was not whether the British would continue to financially assist the colony, but would this assistance be sufficient to allow the colonial Government to nurture development in New Zealand. Without adequate financial support, the economy would revert to an immanent form of development. Even if there was increased trade and greater Maori involvement in the new economy, as long as the colonial government was unable to finance its scheme for the planned development of the colony, the risk of reversion to the processes immanent development in New Zealand remained.

Public Reaction and New Initiatives

Hobson's excesses were on a scale that the struggling settlers could not help but notice. The way in which public money was re-diverted and spent produced heated public responses:²⁷⁸

On account of the extravagant and reckless manner in which the Government was conducted under Captain Hobson, the estimates passed by his Council amounted upwards of £50,000 for the last year...the whole of which had been diverted by Captain Hobson from its original purpose, that of paying for the conveyance of emigrants to the Colony, and misspent upon maintaining the wretched system of Government which he had established in the Colony.²⁷⁹

Russell was not oblivious to New Zealand's problems, and did not limit his efforts to merely giving directives to Hobson. Russell wrote to the British Treasury in February 1841 to seek their advice on how New Zealand's financial difficulties might be contained. If the Colonial

²⁷⁸ P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 175.

²⁷⁹ S. M. D. Martin, *New Zealand in a Series of Letters*, p. 152.

Office's plans for New Zealand's development were to remain broadly intact, then the issue of adequately funding this development remained a priority. The Treasury responded by issuing its own set of instructions, which Russell, in turn, passed on directly to Hobson.²⁸⁰ There were 23 separate instructions in the Treasury paper - all of which aimed at infusing prudent budgetary practices into the government of New Zealand,²⁸¹ and that made no reference to the desire for development on which the Colonial Office had predicated its intervention in New Zealand. The problem was that it was too late to implement these recommendations - even if the will to do so had existed. The rapid expansion of the Government in New Zealand prohibited an immediate reduction in size of the sort necessary to avert financial ruin. Hobson risked provoking intense public hostility if he slowed down his programme of public expenditure. He therefore gambled on maintaining his standing within New Zealand, and on relying on the months of delay in communications between London and Auckland as a means of forestalling the implementation of the austere measures proposed by the British Treasury.²⁸²

On 10 May 1842, an official in the Colonial Office noted that Hobson had created additional divisions of his administration without any authority from London to do so.²⁸³ Hobson's administrative expansion was excused, in part, because the Governor was permitted some latitude as he was so far removed from his superiors. On 2 July, however, the issue of Hobson's extravagance was again raised in London, this time by James Stephen, who concluded rather pessimistically that it was too difficult for the Colonial Office to object to Hobson's estimates because of the distance separating the two, and that even if a warning was given to Hobson, the only response would probably be an elaborate defence of the spending

280 Russell to W. Hobson, 25 February 1841, in *GBPP 1841*, Vol. 17, p. 47.

281 British Treasury, Provisional Instructions to the Government of New Zealand', 19 February 1841 in *GBPP 1841*, Vol. 17, pp. 48-9.

282 P. Moon, *Hobson: Governor of New Zealand, 1840 - 1842*, pp. 176-7.

283 G. Gairdner, in J. S. Marais, p. 229.

arriving fifteen months later.²⁸⁴ In this case, even the Colonial Office, at its highest levels, was participating in the failure of British trusteeship – in the economic sphere at least – in New Zealand. Political expediency in London as well as in Auckland was tending to override the requirement for effective trusteeship, at least in the immediate future.

The imbalance in the colony's terms of trade also contributed to the strangling of the economy. In 1841 imports were valued at approximately £134,000, whereas exports were only around £18,000. The following year, the ratio worsened, with the cost of imports totalling £249,000, while exports achieved an annual return of a mere £24,000.²⁸⁵ Breaking down some of these costs into their component parts, it becomes apparent that the labour Hobson was budgeting on was exceptionally expensive. This was attributed to frequent labour shortages, yet Hobson chose to rely only on immigrant labour. The vast pool of potential Maori workers was bypassed without a blink from the Governor. Others, however, were not so blind to this missed opportunity:²⁸⁶

It has often occurred to me that the advantages which would accrue to a new colony by proper direction of the labour of a population of 114,890 souls [Dieffenbach's estimate of the Maori population of the North Island] has not been sufficiently considered.²⁸⁷

This reasoning was beyond the scope of Hobson's thinking. For Hobson, the economy in New Zealand was, in essence, the economy of the European settlers. Maori were seen as existing only on the periphery of that economy, and were not considered as a major economic force.²⁸⁸

284 J. Stephen, in J. S. Marais, p. 229; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 178.

285 J. Hight and H. D. Bamford, *The Constitutional History and Law of New Zealand*, Christchurch, 1914, p. 167; P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 178.

286 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 179.

287 E. Dieffenbach, p. 158.

288 P. Moon, *Hobson: Governor of New Zealand, 1840 – 1842*, p. 179.

Conclusion

It is evident that in the practice of development in New Zealand from 1840 to 1842, the ideals that were part of the doctrine of development for the colony became increasingly inaccessible as the colony's government grappled with an incapacity to extend its legal sovereignty into political sovereignty, and as it suffered from incompetence in its economic administration. These deficiencies represented forms of corruption, in which the practice of development '...failed to reproduce the original idea...' ²⁸⁹ that was conceived for a state.

However, although it has been argued that corruption is an inherent part of the processes of development,²⁹⁰ the sheer extent of the corruption that affected the processes of development in New Zealand between 1840 and 1842 suggests that the causes of this corruption were not to be found solely in the doctrine of development devised for the colony. Instead, the severe inability of local colonial administrators to execute their tasks competently, and the unsatisfactory and inadequate Colonial Office supervision these officials were placed under were the principal elements that led to the substantial scale of corruption of the development ideal that New Zealand experienced during this period.

The Application of British Justice

The nature of the introduction of British justice and law into New Zealand was a critical factor in the execution of British trusteeship in the colony through the imposition of British order as promised in the Treaty of Waitangi. The need for British law to prevail in the British colonies as a prerequisite for any sort of development to take place – especially development involving indigenous peoples – was a key tenet of British policy on New Zealand.²⁹¹ The perceived impossibility of two legal

²⁸⁹ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, pp. 9-10.

²⁹⁰ J. H. Newman, in *ibid.*, p. 94.

²⁹¹ Russell to W. Hobson, 25 December 1840, in *GBPP 1841*, Vol. 17, p. 23; Russell to W. Hobson, 28 January 1841, in *GBPP 1841*, Vol. 17, p. 52.

systems co-existing in a single state led to the demand that there be an assimilation of indigenous peoples into one legal system – that of the colonising power.²⁹²

Hobson had made efforts, especially through the Office of the Protector of Aborigines, to provide for the modernisation of Maori through their first becoming 'civilised'.²⁹³ This was extremely important because the trusteeship role of the Crown could not be properly exercised if Maori did not just accept but embrace the laws of the colonising power. However, there were various reasons why the introduction of British law and order in New Zealand was generally unsuccessful in the first few years following the signing of the Treaty of Waitangi. First, the Colonial Office wrongly judged that Hobson would be able to exercise prudent judgement in relation to the implementation of law and order in New Zealand on the basis that he was an official on site on the colony. Instead, however, he divested himself of part of his responsibilities in this area by putting too much faith in the ability of the Office of Protector of Aborigines to achieve the extension of British rule among Maori.

Other factors compounded what amounted to only a very limited application of British law and order to New Zealand in this period. Hobson had been denied sufficient resources to apply British law and order in the colony in a way that might otherwise have been possible. Despite repeated pleas to his superiors, he was not provided with a military force, and so was forced to move to a position where he became dependent on Maori consent for decisions which affected them. The root of this problem can be traced back to the lack of Colonial Office appreciation of the extent of assistance that was required to spread effective order to the colony.

²⁹² J. Mill, p. 5.

²⁹³ W. Hobson to Principal Secretary of State for the Colonies, 15 October 1840, in *GBPP 1841*, vol. 17, p. 113; see J. Bentham, UCLMC, 1818, Box 164, p. 39.

From the Maori perspective, their immanent development continued, providing a resilient alternative to the colonial form. Only occasionally during Hobson's rule did British justice apply to cases of dispute or crime among Maori. Generally, traditional Maori systems of law still prevailed in most Maori communities. Legal sovereignty had been proclaimed over the colony through the Treaty of Waitangi, and the Proclamations of Sovereignty of May 1840, but the absence of full Maori consent to this sovereignty, and the inability of the British to enforce their rule over the entire colony, meant that British political sovereignty over Maori had yet to be secured, and without this, the colonial administration lacked the means of implementing its plans for the development of New Zealand.

The Corruption of Economic Development

One of the biggest obstacles to economic growth in the colony during the period under review was an insufficient European population. Most Maori communities during the 1840s still maintained to their traditional tribal structures, and were not yet geared to restructuring their economic systems in a way that would enable them to efficiently trade with other countries, or even within New Zealand (it would be another decade before Maori trade within New Zealand became viable).²⁹⁴ With the entire settler population in New Zealand in the early 1840s numbering only around 2,000 to 3,000,²⁹⁵ there was an insufficient skills base to support a manufacturing sector in the way Australia's was developing at the same time.²⁹⁶ New Zealand's political independence, or at least its autonomy of action, was inhibited as long as its economy was unable to support an effective government. Economic improvement, even under a despotic government,²⁹⁷ was needed as a precursor to the eventual introduction of a more representative form of government, in which the colonial society

²⁹⁴ P. Monin, 'The Maori Economy of Hauraki', paper presented to the New Zealand Historical Association Conference, Auckland, 1994, p. 7.

²⁹⁵ G. C. F. Simkin, p. 117; A. Ward, *A Show of Justice: Racial Amalgamation in Nineteenth Century New Zealand*, p. 13; K. Sinclair, *The Origins of the Maori Wars*, p. 15.

²⁹⁶ P. J. Cain and A. G. Hopkins, p. 257.

²⁹⁷ J. S. Mill, *Considerations on Representative Government*, p. 401.

could directly participate. This was the ideal set down by social philosophers of the period and was also Colonial Office policy on New Zealand.²⁹⁸ Yet, such improvement seemed beyond the ability of the colonial administration to achieve. In the more than two years since the signing of the Treaty of Waitangi, Hobson's Government had failed to achieve any discernible economic benefits for the colonial economy amid a host of adverse economic indicators.

The management of the New Zealand economy in the period under review in this thesis is one of the areas which highlights and allows for the evaluation of the performance of New Zealand's colonial Government in terms of its trusteeship responsibilities and the implementation of the doctrine of intentional development that the Colonial Office had devised for New Zealand, and which commenced following the signing of the Treaty of Waitangi. The general failure of Hobson's administration in the economic management of the colony is mitigated to some extent by the failure of the Colonial Office, even at the highest levels, to realise that insufficient funding was being allocated to New Zealand to allow for its development and to overcome the deficiencies in economic management brought about by the person it had appointed to govern the country. Ultimately, the intrusion of political and financial considerations in England and New Zealand hindered the possibility of Hobson's Government being able to actively guide development over the fledgling economy of the colony. In particular, the shortage of funding for the New Zealand Government, exacerbated by Hobson's misguided spending, failed to allow the economy to be developed by Government policy to the extent that otherwise may have been possible. This in turn meant that where intentional development did not extend in the colony's economy, immanent economic development did. Thus, the entire basis of the Colonial Office's plan for the development and improvement of the country's economy was hampered.

²⁹⁸ Hobson, Proclamations of Sovereignty, 21 May 1840, in *GBPP 1841*, Vol. 17, pp. 32-4.; J. Stephen to A. Spearman, 13 June 1839, *GBPP 1840*, Vol. 33, pp. 32-3; J. S. Mill, *The Spirit of the Age*, pp. 170-8; see M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 65.

Generally speaking, the near-collapse of New Zealand's economy between 1840 and 1842 under Hobson's stewardship also represented a clear failure of British colonial trusteeship. The unintended extravagance of Hobson's regime denied it the capacity to exercise full trusteeship functions. The settler population in particular was becoming disenchanted with the Governor, and it would certainly have been difficult for them to perceive Hobson as being representative of the wisest citizens Britain possessed, who by virtue of his superior knowledge and judgement was appointed by the British Government to direct the economic development of the country on behalf of the rest of the members of the colonial society, as development philosophers of the period had recommended.

Overall, the evidence of the enactment of the doctrine of intentional development in the New Zealand economy after the conclusion of the Treaty of Waitangi is weak. Incompetence, adverse internal circumstances, and insufficient funding from Britain constrained the state's capacity to direct economic improvement in the colony between 1840 and 1842 and represented factors of corruption²⁹⁹ of the ideal of economic development leading to colonial independence.³⁰⁰

299 M. P. Cowen and R. W. Shenton, *Doctrines of Development*, pp. 9, 94-100.

300 J. Bentham, *Emancipate Your Colonies!*

7. CONCLUSION

This thesis has examined the way in which certain emergent development philosophies in the early nineteenth century influenced British colonial policy on New Zealand in the 1830s and 1840s, culminating in the annexation of the colony in 1840 and the ensuing rule of the Hobson administration until September 1842. Contemporary ideas relating to trusteeship, transition, and intentional development¹ in the 1830s and 1840s have been analysed in this work in the context of their influence on the lead-up to the initial period of Crown colony government in New Zealand, and the impact and legacies of the attempts at imposing a doctrine of development on the colony in the first few years after the conclusion of the Treaty of Waitangi.

The Formation of the Doctrine of Intentional Development

The belief that colonies peopled by ‘uncivilised’ populations were incapable of initiating and sustaining their own (European-defined) development lay at the heart of the philosophy of trusteeship and the emergence of a specific intent to develop certain colonies, including New Zealand. Both Bentham and Mill, two of the leading and most influential social philosophers of the period, saw that the solution to the apparent inability of indigenous peoples to develop in colonies was for the colonial power to exercise a fiduciary duty over these peoples so that their development could be guided by those who were already in a highly developed state.²

¹ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, pp. 25-7, 61-5, 117-8, 236-7.

² J. Bentham, UCLMC, 1795, Box 170, p. 182; J. S. Mill, *Considerations on Representative Government*, p. 567; M. P. Cowen and R. W. Shenton, ‘The Invention of Development’, p. 28.

These ideas about development were positivist in nature. They were based on the belief that the condition of societies could be ‘...modified by human effort’.³ Through the observation and testing of social trends, new insights could be obtained into the way in which societies could be shaped and improved in the future. This approach rejected the fatalistic views of Malthus, who believed that an immanent process of economic decline would eventually lead to the destruction of humanity.⁴ This unavoidable natural development of society was founded on forces that seemed beyond the power of humans to arrest.

However, the foundation of the principle of intentional development was a self-assured belief that so-called ‘civilised’ societies possessed the means to guide their own future, rather than simply let their future be determined by the immanent forces of development. It followed that in the case of colonial possessions, the (‘civilised’) colonial power would be able to actively guide the development of the colony, and of its indigenous people in particular, to achieve the sorts of goals that contemporary positivist philosophers had described: a utilitarian society, in which education and the arts flourished, in which order was maintained over the society, and in which the chaotic phase of economic and social transition was replaced by a stationary state,⁵ in which material progress would occur because people in the society would be motivated by the prospect of ‘intellectual and moral improvement...’.⁶ These ideas about development were to re-emerge from the Colonial Office, in New Zealand’s case, as a doctrine of intentional development that would be applied to the colony. In particular, there was an official British emphasis placed on civilising Maori;⁷ on securing legal and political sovereignty over New Zealand through the Treaty of Waitangi;⁸ on asserting British trusteeship over

³ J. S. Mill, *On Liberty*, p. 187.

⁴ T. Malthus, pp. 198-9.

⁵ J. S. Mill, *Principles of Political Economy*, pp. 752-7.

⁶ J. S. Mill, *Bentham*, p. 115.

⁷ Mainly through the Office of the Protector of Aborigines, see Normanby to W. Hobson, 15 August 1839, in *GBPP 1840*, Vol. 33, p. 45.

⁸ P. G. McHugh, ‘Constitutional Theory and Maori Claims’, pp. 33-4; W. Hobson, Proclamations of Sovereignty, 21 May 1840, in *GBPP 1841*, Vol. 17, pp. 32-4.

Maori;⁹ on reforming the legal system;¹⁰ and on colonial economic self-sufficiency, leading to eventual emancipation from the colonial power.¹¹

However, in practice, the imposition of a doctrine of intentional development would require, by implication, the negation of many aspects of the indigenous society in the colony, especially those elements which were perceived by the British as being a hindrance to the planned development that was envisaged. This was deemed to be justifiable, though, on the basis that the British would bring improvement and progress to the colony which otherwise may not have occurred.

Part of the attraction of the idea of intentional development as a potential doctrine for the Colonial Office was that the prescribed vision for the improved future was not based on any previous social model. Because there were allegedly no ideally suited historical precedents for the type of improved societies that some contemporary social philosophers envisaged, new models could be created. Criticism of the practicality of these new models was difficult because they had yet to be implemented. Therefore, adoption of these ideas by the Colonial Office was 'safe', in that critics would find it difficult to prove that the goals were unworkable or undesirable in practice.

As late as 1837 though, the so-called 'humanitarian' objections, mainly of the CMS, to further official British intervention in New Zealand were still being voiced in British Government circles, particularly in select committees. However, although the non-interventionists, including the soon-to-be-replaced Lord Glenelg, were fearful of the adverse effects of European contact on Maori, their arguments were losing ground. Increasingly, the view was emerging that intervention could be beneficial, if guided by the appropriate principles, and if it actively imposed a

⁹ W. Swainson, pp. 367-8 & 379.

¹⁰ *Ibid.*, pp. 94-5.

¹¹ Russell to W. Hobson, 9 December 1840, in *GBPP 1841*, Vol. 17, p. 26; J. Stephen to A. Spearman, 13 June 1839, *GBPP 1840*, Vol. 33, pp. 32-3.; J. Bentham, *Emancipate Your Colonies!*, p. 410.

particular pattern on the colony. The belief that defeated the non-interventionists was that assertive British intervention and trusteeship over its colonies was the best hope of promoting development in the Empire.

The argument forwarded by Normanby and Stephen, that British rule would assist in bringing 'civilisation' to Maori,¹² finally convinced even the CMS objectors of the merits of this policy.¹³ Such was the Colonial Office's commitment to the trusteeship principle, and the possibility of applying and implementing a doctrine of intentional development in the colony, that plans by the New Zealand Company to systematically colonise New Zealand were rejected (even though they would have saved the British Government money) on the basis that they might interfere with the monopoly trusteeship position that the British Government wished to exclusively assert in New Zealand, and that they might harm the prospects for the development and improvement of the colony. The British Government's opposition to the New Zealand Company's schemes can also be interpreted as an effort to control and regulate capitalist activity in New Zealand, based on the fear that unregulated business could lead to an unregulated social order, thereby adversely affecting the welfare of the colony's inhabitants.

Underlying Britain's commitment to trusteeship rule and intentional development for New Zealand was the fact that the colony was emerging as a 'white' settlement. This imposed an extra requirement for responsible government and for British law to apply to the inhabitants of the colony, on the basis that an increasing number of these inhabitants were British subjects.

Between 1836 and 1839, the idea of intentional development was digested by senior Colonial Office officials, and emerged as a fairly specific doctrine of intentional development for New Zealand by mid-1839. In the

¹² Normanby to W. Hobson, 15 August 1839, in *GBPP 1840*, Vol. 33, p. 45; J.

Stephen to W. Backhouse, 12 December 1838, in *GBPP 1840*, Vol. 33, pp. 3-4.

¹³ D. Coates, *The New Zealanders and Their Lands*, London, 1844, p. 48.

absence of an overall strategy for the expansion and management of the Empire, there was room for the type of government to be applied to colonies to be considered on an individual basis. In New Zealand's case, the failure of the Residency from 1833 led to the Colonial Office devising a specific response to the issue of governing New Zealand. Economic or strategic considerations were not sufficiently compelling to justify further intervention, but issues of law and order, and of the possibility of bringing progress and improvement to the colony were. In 1837 Hobson had visited New Zealand and proposed a plan whereby partial annexation of certain territories in the colony would be carried out on the basis that there was some economic benefit to be derived from such a scheme. However, the Colonial Office rejected this plan, preferring instead to predicate its formal intervention on more philosophically sound motives.

Moreover, as Busby's presence plunged further into political impotence, the processes of immanent development in the colony proceeded almost unaffected by the official British presence in the colony. In a vacuum of intentional development directed by the state, the intrusions of groups such as the New Zealand Company threatened to base the future development on the colony solely on the capacity of certain Europeans to profit from dealing in Maori land. The New Zealand Company had no specific plan for dealing with Maori development, and instead, relegated the 'Maori problem' to the background of their thoughts on colonising New Zealand. This policy of virtually ignoring Maori was completely at odds with the Colonial Office's doctrine of developing and civilising Maori. By the beginning of 1839, it was evident that one of these views would have to prevail over the other.

The involvement of missionaries, particularly the CMS missionaries, served the interests of the Colonial Office's doctrine of intentional development insofar as both bodies were committed to transforming Maori society into a more 'civilised' model – the missionaries because this would assist with the process of converting Maori to Christianity, and the Colonial Office because it was consistent with their ideas about how

the colony should be improved. The convergence of missionary and official ideas about transforming Maori society took place in the select committees of the late 1830s, where both groups aired their views and found common ground on the future development of Maori.

As reports suggested that the colony was descending into chaos during the late 1830s, the need to impose order as a means of preventing the disorder of a society without a government, and as a foundation to enable state-directed progress to take place, became more pressing. It culminated with Normanby's instructions to Hobson in August 1839,¹⁴ in which details were provided not just on the cession of Maori sovereignty to the Crown, but also on the manner in which Maori would be guided into incorporation in the new state, and how development was to proceed, based on the imposition of British-based law and order in the colony. Normanby's instructions were effectively a broad plan for development for the colonists and for Maori.

Maori consent was to be obtained, as a form of consent to the trusteeship power,¹⁵ for the British to commence their formal rule over the colony. Maori sovereignty was recognised by the British, but only insofar as this recognition was necessary as a prerequisite for having a treaty between two sovereign states. On all other levels, British sovereign power was deemed to be constitutionally superior to that exercised by Maori,¹⁶ and so the former would displace the latter. Incorporated in this process would be a transition from the immanent processes of development that guided the colony up until that time, to a process of intentional development, founded on a specific doctrine of development, for the colony.

¹⁴ Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 37-45.

¹⁵ Mill later stressed the importance of popular consent for a government, J. S. Mill, *Autobiography*, pp. 206-7.

¹⁶ Normanby to W. Hobson, 14, 15 August 1839, in *GBPP 1840*, Vol. 33, pp. 37-45.

The Treaty of Waitangi

The implementation of British trusteeship rule in New Zealand, and the exercise of its doctrine of intentional development, required the consent of Maori if were to have any chance of success. Of course, implicit in the installation of a trusteeship administration in the colony were presumptions, of the sort articulated by Mill and Bentham, of the racial inferiority of indigenous peoples in the colonies. However, despite these presumptions, British trusteeship rule in New Zealand could not simply be arbitrarily enforced on Maori. Maori consent to such rule was critical, because if any undue coercion was involved in attaining this trusteeship rule, then this would outweigh the benefits of this rule, according to the principles laid down by Mill dealing with coercion in law-governed communities, and its detrimental effect on the transition to utilitarianism. The Treaty of Waitangi therefore became both the device and the symbol which demonstrated, as far as the British were concerned, that there was Maori consent to British trusteeship rule in the colony over Maori. The element of consent was also important for the British because it legitimised Britain's claim to have obtained sovereign authority over the colony, and implicitly confirmed the status of Maori as a sovereign group, by virtue of the fact that they demonstrated the sovereign capacity to sign the Treaty.

The absence of any British coercion of Maori signatories to the Treaty was also a vital element in its subsequent role in the colony's development. Not only did it comply with Normanby's instructions that there be free and intelligent consent obtained from the Maori signatories,¹⁷ it also established a pattern in which the revolution of authority that took place in the colony following the conclusion of the Treaty was one based on Maori consent rather than the arbitrary assertion of British rule.

¹⁷ Op. cit.

The Treaty of Waitangi also serves as a punctuation point which identifies the transition of the type of development that would predominate in New Zealand. Prior to 1840, even though there had been a Resident appointed to New Zealand, the nature of development in the colony was not directed by any single person or policy. The official British presence in the colony at this time was one of several factors that merely influenced the processes of immanent development. With the signing of the Treaty of Waitangi, the British signalled that a new form of development would apply to the colony. It would be intentional, and the British would use their newly-acquired sovereign powers to enact their prescribed goals for the colony. Thus, the Treaty of Waitangi became the fundamental device in the direction of subsequent development in the colony, reflecting as it did an ideology of development that the Colonial Office had formulated for New Zealand.

From this time on, Maori were no longer to be abandoned to their own, unguided development, but were to be deliberately guided to a model of improvement which the British believed was best for them. The partial mandate that Hobson received from Maori for the Treaty gave him the confidence he needed to unilaterally proclaim British sovereignty over the entire country in May 1840.¹⁸ Despite substantial differences in the translation of the document, the British used the Treaty as the basis for their right to enact their doctrine of intentional development for the colony. Yet, in the period under review in this thesis, the British administration failed to reconcile the legal sovereignty they believed they had secured through the Treaty with the political sovereignty they would require in order to effectively assert British rule throughout the colony.¹⁹

Finally, the absence of any provisions in the Treaty which restricted trade, or attempted to establish a monopolistic trade relationship between New Zealand and Britain, distinguished the Treaty of Waitangi from many

¹⁸ W. Hobson, Proclamations of Sovereignty, 21 May 1840, in *GBPP 1841*, Vol. 17, pp. 32-4.

¹⁹ P. G. McHugh, 'Constitutional Theory and Maori Claims', pp. 33-4

other previous British treaties. This Free Trade spirit in the Treaty of Waitangi indicates both the relative unimportance of New Zealand to Britain from an economic perspective, and the belief that Free Trade could be useful in assisting with the colony becoming less financially dependent on Britain for its administration.

Implementing the Doctrine of Intentional Development

The signing of the Treaty of Waitangi heralded the point where the British intent to develop New Zealand would have to be translated into a practice of development. There are two major areas where the practice of the doctrine of intentional development can be assessed in New Zealand's context in the first few years following the signing of the Treaty of Waitangi. These are the areas of economic development, and the imposition of the British justice system in the colony. Both of these realms of development were affected in New Zealand by the element of corruption – as defined by Newman²⁰ – in which the ideal of development was undone, or even reversed by inadequate practice.²¹

The successful introduction of British law into New Zealand was one of the principal prerequisites for British order and progress to be effected in the colony. James Mill had strongly argued against the idea of two separate legal systems operating in a single society,²² and so the ascendancy of the British system in New Zealand necessarily implied the decline of the indigenous Maori regime of law and justice. However, moving to this transitory phase required Maori to give their consent to be subjected to British law. The Treaty of Waitangi, in itself, proved insufficient to achieve this in practice, and so Hobson formed the Office of Protector of Aborigines, which had the nominal function of 'protecting' Maori from the adverse effects of European colonisation, but

²⁰ J. H. Newman, in M. P. Cowen and R. W. Shenton, *Doctrines of Development*, pp. 9-10, 94-100.

²¹ *Ibid.*, pp. 94-5.

²² J. Mill. p. 5.

which also – perhaps contradictorily – wished to ‘civilise’ Maori and assist with their transition to become a modernised people.

The Office of Protector of Aborigines was also a problem for the colonial administration in New Zealand insofar as the Governor effectively abdicated part of his role in the intentional development of Maori society by passing on this function to the Protector of Aborigines. As the Office was staffed predominantly by missionaries, this meant that the missionary intent to develop Maori, which ended at achieving civilisation for Maori for the purposes of converting them to Christianity, was the overriding goal.

The fact that the early attempts to develop Maori society and incorporate it into the realm of British influence in the colony generally failed to achieve full control over Maori throughout the country meant that those beyond the reach of British rule could continue in their patterns of development without the interference of an external power. Consequently, for at least the first few decades of colonial rule in New Zealand, the failure by the British to extend their law and order over the entire country meant that the British capacity to implement its plans for the intentional development of the colony could not be fully enacted.

Overall, the performance of Hobson’s administration in the economic field can fairly be described as inadequate in terms of the doctrine of intentional development he was supposed to be adhering to. However, not all the inadequacies in the attempts to guide the economic development of the colony were due to Hobson’s mismanagement. There was insufficient financial support from the British Government which had the effect of stifling the economic options for the colonial government, and this combined with a lack of economic management skills among Hobson and his officials. Furthermore, there was no effective means by which the colonial government could measure the size or performance of the economy, to which was added the problem of Hobson’s expenditure of the state’s funds on his own requirements becoming lavish.

While the wish for New Zealand to experience progress and improvement may have been an ideological tenet of British policy relating to the colony, the comparatively low priority afforded to New Zealand by Colonial Office officials meant that effective economic trusteeship, and the ensuing economic development in the colony, was almost certainly unattainable in the period under review. The consequence of this was that the processes of immanent development that dominated New Zealand up until 1840 were not completely overcome by the Crown's plans for intentional development for New Zealand during 1840 to 1842.

The Failure of Trusteeship and Intentional Development in New Zealand

The ideological intention, stemming from the Colonial Office and British Government, for British intentional development to be carried out in New Zealand, collided with more practical considerations and decisions which debilitated the efforts to enact British trusteeship over the colony. As a consequence, British trusteeship in New Zealand was not nearly as successful as it potentially might have been. Substantial under-funding of the colony by the Colonial Office prevented the Hobson Government from devoting sufficient resources to achieve Maori assimilation into settler society, and to foster the type of development in the colony that British officials had envisaged was possible for the colony. In addition, inexperienced colonial officials in this period, including the Governor, could not match the rigorous requirements inherent in exercising a trusteeship role in New Zealand.

Yet, the implementation of the doctrine of intentional development in New Zealand was not a complete failure. The corruption of the ideal manifested itself more as a restraint on the overall processes of development rather than a reversal of the envisaged development for the colony. British law may not have immediately been applied to all the inhabitants of the colony, but it was spreading, gradually. In the period between 1840 and 1842, British law succeeded in making some inroads

into a few Maori communities – a transitional process that was all the more significant in this timeframe for the absence of any accompanying social upheaval, which was almost incidentally avoided by the process of gradualism in the execution of any form of social transition. However, this gradual approach to guiding change also enabled the forces of immanent development, particularly in the areas of the economy and the British justice system, to linger long after Britain had proclaimed sovereignty over the country. This acted as a corrective to the more ambitious exertions of the colonial administration in New Zealand in the early 1840s to convert the intent to develop into the practice of intentional development.

If there was to be an accusation of failure levelled at the doctrine of development designed for New Zealand, it would be that the doctrine was not adequately supported by the appointment of competent colonial administrators to the colony. Corruption of the development deal – which was an accepted part of the process of development²³ – was unavoidable. However, of more relevance is the extent of this corruption, and the fact that some of the worst excesses of the Hobson administration – which severely detracted from the processes of development set down for the colony – were avoidable had more able people been placed in charge of managing the colony. The incomplete introduction of British trusteeship in New Zealand between 1840 and 1842 led to the widespread destruction of previous patterns of immanent development in the colony without the security of the full implementation of the doctrines of development in the country. This may, in some way, explain the continued volatility and socio-economic stress the country experienced throughout the remainder of the century.

²³ J. H. Newman, in M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 94.

Significance

The various threads of significance contained in this thesis can be grouped into two broad categories: the historical significance, particularly in connection with the Treaty of Waitangi; and the significance of this work from a development studies perspective. The fact that these two threads run through a variety of disciplines, including development studies, economics, politics, and history enables the entire work to provide a fresh perspective on events leading up to and immediately following Britain's formal annexation of the colony in 1840. In addition, it also makes an important contribution to that current body of development studies writings that traces the origins and practice of development to the nineteenth century.

The Historical Significance

The historical significance in this thesis centres on the Treaty of Waitangi. Chapter five details the deficit in current scholarship in relation to British Government policies and ideology in the 1830s which lead to the formation of the agreement. So much of the present literature relating to the Treaty is the product of the exhaustive workings of the Waitangi Tribunal. The Tribunal, which exists as a permanent commission of enquiry, has been charged with the dual responsibility of resolving grievances arising from breaches of the Treaty, and in order to define its terms of reference for this function, establishing the meaning and intent of the Treaty. These two functions, which have tended to be carried out simultaneously, have resulted in the interpretation of the Treaty's meaning and intent being overshadowed by the need to resolve grievances arising from its breaches, and has subtly restricted Treaty scholarship to the period from the document's signing onward.

In contrast to the thousands of pages of analysis generated by historians and other academics on behalf of the Tribunal, there is a relative paucity of material on the pre-1840 period, and the forces, ideas, and policies of that time that were responsible for the Treaty coming into being. In

particular, there has been effectively no study done on the philosophies that influenced British Government policies on New Zealand prior to 1840. One of the major contributions this thesis makes is in addressing this deficit, and providing not only a historical but also a development studies perspective of the background to the Treaty of Waitangi, and the period covering the first two years of its existence. In doing this, the focus of the Treaty is relocated away from its present function – as an agreement against which subsequent breaches are assessed – to a document which helped to implement a specific doctrine for development for the country.

The Significance to Development Studies

From a development studies perspective, there are a number of areas in which this thesis makes a contribution to the discipline. The first is that of the employment of the distinction made by Cowen and Shenton between immanent and intentional forms of development.²⁴ Utilising this dichotomy in forms of development has allowed for the use of the philosophies of Bentham and Mill in a specifically development studies setting. Thus, this thesis adds to the small but growing corpus of works²⁵ which incorporate nineteenth-century social, political, and economic philosophies as bases for development in the period.

As a consequence of embracing this approach, this thesis breaks new ground in three particular areas. First, it employs the philosophies of Bentham and Mill in relation to the evolution of British colonial policy on New Zealand in the period under review. This connection between contemporary ideas about development and official British involvement in New Zealand up until to 1840 have not been examined prior to this work. Consequently, this thesis makes a contribution to the collection of works

²⁴ M. P. Cowen and R. W. Shenton, *Doctrines of Development*, p. 132.

²⁵ H. L. R. Wright, *State Practice and Rural Smallholder Production: Late Colonialism and the Agrarian Doctrine in the Papua New Guinea, 1942-1969*; P. McMichael, *Development and Social Change: A Global Perspective*; G. Rist, *The History of Development*; J. Overton, 'Development in Chaos?'

which look to the nineteenth century in seeking the origins of development thought and practice.

Allied to this approach is the fact that in this thesis, the years leading up to and immediately following the signing of the Treaty of Waitangi are now viewed specifically through a development studies lens. As a result, new insights are offered into the motives, basis, and meaning of the Treaty, and especially, its intended purpose in the broader scheme Britain devised and applied to the colony in this period.

Finally, this thesis progresses the utilisation of the distinction between immanent and intentional development, and the tenet of trusteeship as components in Bentham and Mill's ideas relating to development. These concepts also assist in the articulation and contextualisation of certain tensions that emerged as Britain put its doctrine of development into practice in the colony. As a consequence of adopting this approach, this thesis is located among the works of those writers who cite nineteenth century examples of the implementation of development thinking, using New Zealand around 1840 as a case study to support this position.

Areas for Further Research

The relationship between emergent development philosophies in England in the early nineteenth century, and the reasons and character of formal British intervention in New Zealand in the early years of the 1840s, is an area that has received practically no attention or consideration in previous studies of this period of New Zealand's history. Consequently, there are several avenues in which further research could be pursued in this area.

First, analysis could be conducted into the varying emphases placed by the Colonial Office on the trusteeship principle, as it related to New Zealand, in the remaining decades of the nineteenth century. In particular,

consideration could be given to the waning support in Britain for the type of intentional development it had conceived for New Zealand.

Allied to this is the shift in motivations in Colonial Office policy generally in the remainder of the nineteenth century. In roughly the first half of the century there was the considerable influence of emergent development philosophies of the period on Colonial Office policy. However, by the later half of the century, the emphasis in British policy had shifted to the capitalist basis as almost the sole justification for possessing colonies. The intent to develop colonies for motives other than the financial benefit that the colonising power could derive from them slipped from view soon after Britain's initial period of formal intervention in New Zealand. The research path that could be followed here would involve examining the role of indigenous rebellion against attempts at development foisted on indigenous peoples by the British. The land wars in New Zealand in the 1860s and the Indian Rebellion in the late 1850s could be evaluated both as a rejection of British efforts at exercising trusteeship rule, and as a factor leading to a change in British policy on developing colonies.

The competence and character of successive New Zealand Governors during the nineteenth century could be assessed as a corollary to the practice of effective colonial trusteeship rule in New Zealand. The philosophies of trusteeship and development could be measured against the varying capacities of New Zealand's colonial administrations to implement them. The frugality of the Colonial Office, which was forced on it by the British Treasury, put an excessive burden on New Zealand's nineteenth-century colonial administrations to make the colony self-funding. This emphasis on economic autarky had the effect, even during Hobson's regime, of overriding the considerations of development that had been the guiding principles that justified formal British involvement in New Zealand.

Ironically, towards the end of the nineteenth century, the doctrine of intentional development that Britain had devised for some of its colonies, and which in New Zealand's case had not been as effectively implemented as it could have, began to be applied to Britain itself.²⁶ There is scope for investigation into the extent to which the British Government took into account its experiences in directing development in the colonies as a guide for how it could enact development 'at home'.

²⁶ M. P. Cowan and R. W. Shenton, *Doctrines of Development*, pp. 252-3.

APPENDIX ONE

The Declaration of Independence

1. We, the hereditary chiefs and heads of the tribes of the Northern parts of New Zealand, being assembled at Waitangi, in the Bay of Islands, on this 28th day of October, 1835, declare the Independence of our country, which is hereby constituted and declared to be an Independent State, under the designation of The United Tribes of New Zealand.
2. All sovereign power and authority within the territory of the United Tribes of New Zealand is hereby declared to reside entirely and exclusively in the hereditary chiefs and heads of tribes in their collective capacity, who also declare that they will not permit any legislative authority separate from themselves in their collective capacity to exist, nor any function of government to be exercised within the said territories, unless by persons appointed by them, and acting under the authority of laws regularly enacted by them in Congress assembled.
3. The hereditary chiefs and heads of tribes agree to meet in Congress at Waitangi in the autumn of each year, for the purpose of framing laws for the dispensation of justice, the preservation of peace and good order, and the regulation of trade; and they cordially invite the Southern tribes to lay aside their private animosities and to consult the safety and welfare of our common country, by joining the Confederation of the United Tribes.
4. They also agree to send a copy of this Declaration to His Majesty the King of England, to thank him for his acknowledgement of his flag; and in return for the friendship and protection they have shown, and are prepared to show, to such of his subjects as have settled in their country, or resorted to its shores for the purposes of trade, they entreat that he will continue to be the parent of their infant state, and that he will become its Protector from all attempts upon its independence.

Agreed to unanimously on this 28th day of October, 1835, in the presence of His Britannic Majesty's Resident.¹

¹ *Facsimiles of the Declaration of Independence and the Treaty of Waitangi*, Wellington, 1976.

(Maori Text)

1. KO MATOU, ko nga Tino Rangatira o nga iwi o Nu Tirenii i raro mai o Hauraki kua oti nei te huihui i Waitangi i Tokerau i te ra 28 o Oketopa 1835, ka wakaputa i te Rangatiratanga o to matou wenua a ka meatia ka wakaputaia e matou he Wenua Rangatira, kia huaina, Ko te Wakaminenga o nga Hapu o Nu Tireni.

2. Ko te Kingitanga ko te mana i te wenua o te wakaminenga o Nu Tireni ka meatia nei kei nga Tino Rangatira anake i to matou huihuinga, a ka mea hoki e kore e tukua e matou te wakarite ture ki te tahi hunga ke atu, me te tahi Kawanatanga hoki kia meatia i te wenua o te wakawakarite ana ki te ritenga o o matou ture e meatia nei matou i to matou huihuinga.

3. Ko matou ko nga tino Rangatira ka mea nei kia kia huihui ki te runanga ki Waitangi a te Ngahuru i tenei tau i tenei tau ki te wakarite ture kia tika te hokohoko, a ka mea ki nga tauwi o runga kia wakarerea te wawai, kia mahara ai ki te wakaoranga o to matou wenua, a kia uru ratou ki te wakaminenga o Nu Tireni.

4. Ka mea matou kia tuhituhia he pukapuka ki te ritenga o tenei o to matou wakaputanga nei ki te Kingi o Ingarani hei kawatu i to matou aroha nana hoki i wakaae ki te Kara mo matou. A no te mea ka atawai matou, ka tiaki i nga pakeha e noho nei i uta, e rere mai ana i te hokohoko, koia ka mea ai matou ki te Kingi kia waiho hei matua ki a matou i to matou Tamarikitanga kei wakakahoretia to matou Rangatiratanga.

KUA WHAKAAETIA katoatia e matou i tenei ra i te 28 Oketopa, 1835, ki te aroaro o te Reireneti o te Kingi o Ingarani.

APPENDIX TWO

The Treaty of Waitangi

(English text)²

Her Majesty Victoria Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favor the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration from both Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's sovereign authority over the whole or any part of those islands - Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary laws and institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Article the First

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

Article the Second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof 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; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption

² C. Orange, Appendix 2.

over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat them in that behalf.

Article the Third

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

(Maori text)³

Ko Wikitoria te Kuini o Ingarani i tana mahara atawai ki nga Rangatira me nga Hapu O Nu Tirani i tana hiahia hoki kia tohungia ki a ratou rangatiratanga me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira - hei kai wakarite ki nga Tangata maori o Nu Tirani - kia wakaaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te wenua nei me nga motu - na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kua ai nga kino e puta mai ki te tangata maori ki te Pakeha o noho ture kore ana.

Na kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana I te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aiane amua atu ki te Kuini, e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

Ko te tuatahi

Ko nga Rangatira o te Wakaminenga, me nga Rangatira katoa, hoki, kihai i uru ki taua Wakaminenga, ka tuku rawa atu ki te Kuini o Ingarangi ake tonu atu te Kawanatanga katoa o o ratou wenua.

Ko te tuarua

Ko te Kuini o Ingarangi ka wakarite ka wakaae ki nga Rangatira, ki nga Hapu, ki nga tangata katoa o Nu Tirani, te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu, ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te wenua, ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Ko te tuatoru

Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini. Ka tiakina e te Kuini o Ingarangi nga tangata maori katoa o Nu Tirani. Ka tukua ki a ratou nga tikanga katoa rite tahi ke ana mea ki nga tangata o Ingarangi.

³ C. Orange, Appendix 2.

(Maori translation into English)⁴

Victoria, the Queen of England, in her gracious remembrance of the Chiefs and Tribes of New Zealand, and through her desire to preserve to them their chieftanship and their land, and to preserve peace and quietness to them, has thought it right to send them a gentleman to be her representative to the natives of New Zealand. Let the native chiefs in all parts of the land and in the islands consent to the Queen's Government. Now, because there are numbers of the people living in this land, and more will be coming, the Queen wishes to appoint a Government, that there may be no cause of strife between the Natives and the Pakeha, who are now without law: It has therefore pleased the Queen to appoint me, WILLIAM HOBSON, a Captain in the Royal Navy, Governor of all parts of New Zealand which shall be ceded now and at a future period to the Queen. She offers to the Chiefs of the Assembly of the Tribes of New Zealand and to the other Chiefs, the following laws:-

The First

The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government over the land.

The Second

The Queen of England agrees to protect the Chiefs, the Subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. But on the other hand, the Chiefs of the Confederation and all the Chiefs will sell land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.

The Third

For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties of citizenship as the people of England.

⁴ Articles one, two, and three of this translation are by Professor Sir Hugh Kawharu; a translation given to the Court of Appeal in 1987, in *New Zealand Maori Council v Attorney-General*, [1987] 1, New Zealand Law report 641; The introductory clause is from J. N. Coleman, *A Memoir of the Rev. Richard Davis*, London, 1865, pp. 455-456.

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