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ARMS CONTROL IN NEW ZEALAND 1854-1861

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Arts in History at Massey University

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<u>ABBREVIATIONS</u>	4
<u>INTRODUCTION</u>	5
<u>CHAPTER ONE. STEMMING THE FLOOD, 1854-1857</u>	12
<u>THE INHERITED REGIME</u>	13
<u>THE PUKETAPU DISPUTE</u>	20
<u>THE NEW GOVERNOR</u>	28
<u>THE KAWAU ISLAND GUNPOWDER RAID</u>	31
<u>BOARD OF INQUIRY INTO NATIVE AFFAIRS</u>	36
<u>MOBILISING THE SETTLERS</u>	41
<u>CHAPTER TWO: THE 1857 PROCLAMATION AND ITS</u>	
<u>AFTERMATH</u>	47
<u>PARTIAL RELAXATION OF THE RESTRICTIONS</u>	49
<u>LICENSED FIREARMS SALES TO MĀORI</u>	60
<u>SALE OF ARMS SELECT COMMITTEE</u>	62
<u>THE HISTORIAN’S VIEW</u>	77
<u>GROWING CONCERNS IN TARANAKI</u>	81
<u>FEATHERSTON’S LETTER</u>	85
<u>DID THE TRADERS HAVE THE POLICY CHANGED?</u>	88
<u>CHAPTER THREE: THE 1860 ARMS ACT.</u>	92
<u>TIGHTENING THE OLD LAWS</u>	92
<u>UNSAFE CONVICTIONS?</u>	97
<u>KOHIMARAMA CONFERENCE</u>	101
<u>TURNING A NEW LEAF: 1860 ARMS BILL</u>	104
<u>THE 1860 ARMS ACT: THE LAWMAKERS BACKTRACK</u>	116

CHAPTER FOUR ARMS CONTROL THEMES..... 133

ARMS CONTROL AND THE ENGLISH TRADITION 133

RIGHT TO RESIST..... 144

WHO WERE PREPARED TO SEE MĀORI POSSESS ARMS? 150

FIREARMS FOR SPORT OR SELF-DEFENCE?..... 154

MĀORI RESPONSE 162

SECTION 71 AND MĀORI AUTONOMY..... 165

ARMS CONTROL AS PUBLIC POLICY: TILTING AT WINDMILLS 177

POSTSCRIPT..... 182

CONCLUSION..... 184

BIBLIOGRAPHY..... 204

Tables

TABLE 1: SHOWING QUANTITY OF GUNPOWDER, SHOT AND PERCUSSION CAPS
SOLD BETWEEN 25 JUNE 1857 AND 31 MARCH 1858, BY ETHNICITY OF
PURCHASER 76

TABLE 2. TOTAL CONVICTIONS BY ETHNICITY OF OFFENDER, RESIDENT
MAGISTRATE AND MAGISTRATE COURTS 1853-1861..... 127

TABLE 3. TOTAL CONVICTIONS BY ETHNICITY OF OFFENDER, RESIDENT
MAGISTRATE AND MAGISTRATE COURTS 1862-
1870.....128

Abbreviations

AJHR.....	Appendix to the Journals, House of Representatives
BINA.....	Board of Inquiry into Native Affairs (or Native Matters)
BPP.....	British Parliamentary Papers
C.....	Archives of the Customs Department
DNZB.....	Dictionary of New Zealand Biography
EC.....	Archives of the Executive Council
G.....	Archives of the Governor
IA.....	Archives of Internal Affairs Department
IUP.....	Irish University Press
J.....	Archives of the Justice Department
JPS.....	Journal of the Polynesian Society
Le.....	Archives of the Legislative Department
MA.....	Archives of the Māori Affairs Department
MP.....	Member of Parliament
NA.....	National Archives, New Zealand
NZPD.....	New Zealand Parliamentary Debate.
RDB.....	Raupatu Document Bank

Introduction.

This thesis examines the issue of arms control within the Colony of New Zealand between 1854 and 1861. It is an examination of the events and debates that preceded and precipitated the 1860 Arms Act. This thesis will show why the 1860 Arms Bill was introduced, and why the Bill, modified by Select Committee, was passed into law. The period covered was a significant period in New Zealand history. The settlers were granted representative government in 1854. That year also marked the outbreak of the Puketapu dispute in Taranaki, which was the beginning of a series of events, which would eventually lead to the outbreak of war between the Imperial troops and Māori in 1860. In March of 1860, troops were sent to occupy land at Waitara that had been offered for sale by one of the warring Taranaki Māori factions. By this act the Government would effectively enter into, and greatly extend the Puketapu dispute and the first Taranaki war would begin. The first Taranaki war was the beginning of a series of wars, which would dominate the decade and would prove to be the turning of the tide for Māori autonomy in this country. Within months of the outbreak of war, the 1860 Arms Bill, was presented to the House of Representatives and later enacted as the 1860 Arms Act. The new law would be used alongside earlier regulations to try to stop the supply of arms and ammunition to the Māori opponents to the Government and to the Māori population in general.

The thesis is divided into four chapters. The first chapter examines the period between August 1854, which marked the outbreak of the Puketapu dispute to mid 1857 immediately prior to the announcement of new regulations governing the importation or sale of firearms. From 1854 to 1857 the authorities would try to stop the trade in arms and ammunition to Māori using the regulations enacted between 1845 and 1847, during Governor Grey's first term as Governor. The start of the Puketapu dispute has been chosen as the beginning of the thesis in part because of the scarcity of evidence before this date. Although the arms regulations then in place had been enacted some years previously there is only very limited evidence extant for the arms regulations

prior to 1854. This was in part because of the nature of decision-making process prior to the establishment of the settler Parliament and partly because of the lack of incidents that would have generated a paper trail for the subject. The outbreak of fighting in Taranaki focused the attention of the authorities onto the perceived need to control the supply of arms and ammunition to Māori. It therefore generated correspondence and documents on the subject.

The second chapter of the thesis covers the period 1857-1859 and looks at the partial relaxation of the restrictions in 1857. This section examines the decision to partially relax the restrictions upon the sale of ammunition and the decision to allow the sale of a limited number of sporting firearms to Māori, subject to certain conditions. The reasoning behind these decisions will be examined, as will the effects of the partial relaxation. The settler and Māori reaction to the partial relaxation will also be discussed. The relaxation of the restrictions eventually provoked vocal opposition from some quarters. By 1860 there was a widespread concern that it had opened the door to the large scale Māori purchasing of gunpowder and other tools of war. From 1859 the regulations governing the sale and importation of arms and ammunition became increasingly restrictive.

Chapter three examines the period from 1860 to 1861, which saw the introduction of the 1860 Arms Bill, the subsequent amendments to the Bill, which were made when the Bill was referred to Select Committee and the passing of the amended Bill into law. This section will also investigate how the Arms Act 1860 was brought into operation.

Chapter four examines the issue of arms control as a part of “Native Policy”. This is an examination of some of the general themes which were evident throughout the period. Chapter four will discuss why the settlers wanted to restrict the sale of arms to Māori, at a time when other policy measures were used to try to increase the settlers access to, and familiarity with, arms. It will examine why the policy intentions for Māori were so different to that intended for the settlers.

The laws governing the sale of arms and ammunition were historically important, because arms and ammunition were the tools of the wars which dominated the 1860s and to a large extent determined the shape of the subsequent race relations in this country. This thesis is not an examination of the New Zealand wars, as the bulk of the fighting between Māori and settlers occurred outside of the period examined in this thesis. This thesis is an examination of the trade in the tools which would be put to use in these wars.

The firearms restrictions were one of a number of measures aimed mainly at Māori communities. While the firearms restrictions were primarily focused on policing arms sales among the settlers within the settler communities, the ultimate goal was always to stop the supply of arms and ammunition to Māori. The regulations attempted to do this by controlling the importation and transportation of arms and ammunition and also the sales among the settler in an effort to stop the arms being on-sold to Māori. The arms restrictions formed a key component of a broader “Native Policy”. Firearms restrictions were in fact aimed at the very heart of native policy. It was the ability of Māori to offer, and most importantly, to threaten, effective armed resistance to the authorities that was the key determining factor in native policy during this period. Had the arms control ordinances, by some miracle, been successful in fully or effectively disarming the Māori population then the Waitara could have been occupied by a handful of police, there would not have been any wars between Māori and settlers during the 1860s and the settler government would have gained effective control over the bulk of the Māori population far sooner than it did. The arms regulations are an important subject for research; not because of their effect, which would prove to be relatively limited, but because of what they reveal about the attitudes and goals of the settlers and the settler government. The arms restrictions were persisted with, despite the evidence of their ineffectiveness, because of the idea that they embodied: the idea of a settler society free from the threat of armed Māori communities which was so important to the settlers.

The arms restrictions introduced by George Grey were remarkably ineffective. The evidence presented in this thesis will show that the settlers nevertheless regarded them with some affection. The 1860 Arms Act would later prove to be no more effective. The submissions made at the 1860 Kohimarama conference and evidence provided to the 1856 Board of Inquiry into Native Affairs indicate that, among the Māori population, the restrictions were an identifiable cause of grievance. With a very few, albeit important exceptions, nearly every Māori opinion recorded on the restrictions was negative. The arms restrictions were one of the few restrictions to explicitly and overtly discriminate against Māori. The other most obvious example, the restrictions on alcohol, excited less opposition. Among the settlers, there was a general agreement that it would have been desirable if the Māori population could be disarmed. A large proportion of the settlers who made some comment on the issue argued along this line. Only a very few argued that Māori should be able to purchase firearms in the same manner as the settlers. During the period the debate centred on whether the restrictions in place should be persevered with, despite the widespread and obvious evasion of the regulations, or whether the restrictions should be relaxed for fear of bringing the whole legal and legislative system into contempt. The story of the introduction of the 1860 Arms Act is the story of the settler thesis, the idea that Māori should not be armed, conflicting with, and confronting the antithesis of the reality of an almost universally armed Māori population.

Few historians have examined the issue of arms restrictions in detail. James Belich makes some reference to the subject in his book on the New Zealand Wars.¹ Keith Sinclair in his *Origins of the Maori Wars* and Brian Dalton's *War and Politics in New Zealand*² both make significant passing comments, as does Alan Ward in his *A Show of Justice*. Alan Ward identifies the arms restrictions as a significant grievance for Māori:

¹ James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Penguin: Auckland 1988. pp. 103-104, 129.

A good deal of Maori resentment centred on the Arms Ordinance and Sale of Spirits Ordinance which Grey had enacted in 1845 and 1846. In the interests of suppressing rebellion and preventing social dislocation there was of course a strong case to be made for preventing Maori from obtaining arms and liquor, but the Ordinances applied to Maori only and the discrimination was greatly resented by them and widely defied.³

Angus Harrop examines some of the issues in his book *England and the Maori Wars*.⁴ The firearms researcher Chas Forsyth gives a brief overview of all of New Zealand's firearms regulations to 1984.⁵ The researcher David Kopel also provides a brief summary in his book *The Samurai, the Mountie and the Cowboy*, however his main focus is on the Twentieth Century regulations.⁶ Most of the historians who have made some comment on the arms restrictions during this period, have done so in passing. No historian has examined in detail the issue of arms control in the years immediately preceding the introduction of the 1860 Arms Act. The important themes that underpinned Native policy, of which arms restrictions were a part, have however been a significant subject for research. Alan Ward's theme of racial amalgamation, James Belich's theme of the Victorian interpretation of race conflict, and Keith Sinclair's theory on the origins of the New Zealand wars are all important to the issue of arms control.⁷

² B.J. Dalton, *War and Politics in New Zealand 1855-1870*, Sydney University Press: Sydney 1967; Keith Sinclair, *The Origins of the Maori Wars*, New Zealand University Press: Auckland 2nd ed. 1961 (photographic reprint 1974)

³ Alan Ward *A Show of Justice: Racial Amalgamation in Nineteenth Century New Zealand*, Auckland University Press: Auckland 1995 p. 87

⁴ Angus Harrop, *England and the Māori Wars*, New Zealand News: London 1937

⁵ Charles Forsyth *Firearms in New Zealand*, New Zealand Mountain Safety Council: Wellington 1985; Thomas Thorp also made a very brief comment on the 1845 Arms Ordinance and the 1860 Arms Act in his 1997 report on New Zealand arms regulations. Thomas Thorp *Review of Firearms Control in New Zealand: Report of an Independent Inquiry Commissioned by the Minister of Police*, Government Printer: Wellington 1997. pp.9-10.

⁶ David Kopel *The Samurai, the Mountie and the Cowboy: Should America Adopt the Gun Controls of Other Democracies?*, Prometheus Books: New York 1992. Ch. 6. Kopel compares the history of arms control in Japan, Great Britain, Canada, Australia, New Zealand, Jamaica, Switzerland and the United States of America.

⁷ Keith Sinclair, *The Origins of the Maori Wars*, New Zealand University Press: Auckland 2nd ed. 1961 (photographic reprint 1974).

The sources available for this period are at the same time both very rich and yet also marred by significant gaps. The period from 1854 to 1861 is the very dawn of public policy in this country. Responsible government was granted to the settlers at this time and the first settler Parliament sat at Auckland just months before the Puketapu dispute broke out in Taranaki. The correspondence files for many of the important government departments only begin part way through this period, and in many cases the original letters have been destroyed or mislaid.⁸ Parliament did not sit through the whole of 1857 and the bills introduced during 1860 were not published.⁹ Even the recording of the Parliamentary debates was well below later standards. The first volumes of Hansard were compiled retrospectively by Maurice Fitzgerald, using newspaper reports, the *Votes and Proceedings*, the *Journals* and the memories of the Members of Parliament who had attended the first sessions.¹⁰

On the other hand the resources for this period are also unusually rich in information. The 1858 Sale of Arms Select Committee, which was set up to investigate the controversial 1857 relaxation of arms restrictions appears to be the most comprehensive investigation into the subject of firearms sales to Māori undertaken at any stage in New Zealand's history. The 1856 Board of Inquiry into Native Affairs and the 1860 Kohimarama Conference held near Auckland both address the issue of the firearms regulations.¹¹ Both give a valuable insight of Māori opinion on Native policy, and offer significant "snapshots" of the state of Māori/Settler relations. The majority of the sources examined for this thesis are held at the National Archives, at the Alexander

⁸ This includes important inwards letters to the Customs and Native Affairs departments as well as Gore Browne papers.

⁹ Bills, New Zealand House of Representatives.

¹⁰ See preface Maurice Fitzgerald. *NZPD 1854-1855*. See also J.B. Ringer. *An Introduction to New Zealand Government*, Hazard Press: Christchurch 1991, p.165.

¹¹ A summary of the proceedings and the report of the Board of Inquiry was published in the *New Zealand Journals of the House of Representatives* 1856, Vol. II. B-3. The report and a more detailed account of the proceedings were published in the *British Parliamentary Papers*, Report of the Board of Inquiry into Native Affairs. Encl. in No. 100, Browne to Labouchere 23 July 1856, *BPP* 1854-1860 [2719] Vol. XLVI, pp.235-337. (IUP pp. 509-611). The Kohimarama Conference proceedings were also published in the *British Parliamentary Papers*. Native Conference at Kohimarama, Encl. Nos. 1-7 in No. 39 Browne to Duke of Newcastle. 28 August 1860. *BPP* 1861 [2798] Vol. XLI p. 97-120.

Turnbull Library and the various Government publications including: the *New Zealand Government Gazette*, the *Appendices to the Journals*, *Parliamentary Debates*, *Statutes* and the *British Parliamentary Papers*.¹²

¹² The British Parliamentary Papers relative to New Zealand are reprinted by Irish University Press.

Chapter One. Stemming the flood, 1854-1857

In the years which followed the New Zealand Company “purchase” in Taranaki, two factions of the Puketapu hapū emerged. One was willing to negotiate for the sale of further lands to the settlers, whilst the other was opposed to the sale of land in the area. In 1854, the rangatira, Rawiri Waiaua and several members of the land selling faction went to mark the boundary of a proposed sale of land outside of the settlement of New Plymouth. A confrontation erupted in which Rawiri and several members of his faction were killed or mortally wounded by the opponents of the sale of the land led by the opposing rangatira, Katatore. The resulting so called Puketapu feud would wax and wane from 1854 until the outbreak of war in Taranaki in 1860. The killing of Rawiri was the start of a train of events, which would eventually lead to war between Imperial and Colonial troops and Māori in Taranaki. Between 1854 and 1857 the colonial authorities attempted to use the various regulations governing the importation, sale or transportation of arms and ammunition, which had already been set in place some years earlier, to try and stop the supply of arms to the Māori in the Taranaki region, which was the scene of fighting between rival factions of the Puketapu hapū and to the Māori population in general. The attempts to enforce the restrictions proved to be unsuccessful.

The outbreak of feuding between factions of the Puketapu hapū in Taranaki, sparked concerns that the settlers might get caught up in the fighting. In other parts of the colony further incidents also threatened the peace. Near Auckland the killing of a Rotorua woman by the settler, Charles Marsden, threatened conflict between the woman’s Ngāti Whakaue relatives and the authorities. In 1856, Hauraki Māori, apparently as a protest against the arms restrictions plundered a large quantity of gunpowder from a gunpowder magazine located on Kawau Island. Feuding between rival factions also broke out at Ahuriri, near Napier. All of these incidents, the Puketapu feud in particular –by far the bloodiest and most protracted of the disturbances, would illustrate to the authorities the danger that an almost universally armed Māori population might

pose to the neighbouring settlers. The fact that such a large proportion of the Māori population possessed firearms, articles which by law they should not have been able to obtain, was the key to this threat. These events demonstrated that there were insufficient trained troops to cover all the potential dangers to the widely dispersed settlements within new colony. The incidents also illustrated to the worried Government observers that the state of military readiness of the settler population was woeful compared to the apparently almost universally armed and prepared Māori population. For the authorities there were two sides to the equation; the supply of arms and ammunition to Māori must be controlled, and the settlers must be mobilised with arms to defend themselves.

The inherited regime

In 1854, there were already three ordinances in place, which directly controlled the importation, storage and sale of arms or ammunition within the colony of New Zealand. All three had been in place for the better part of a decade, and all had been passed during Governor Grey's first term as Governor.¹³ The Arms Importation Ordinance was introduced by Governor Grey immediately upon his arrival in the colony and passed on 13 December 1845.¹⁴ This ordinance was enacted towards the end of the war between the Government, and its Māori allies, against Hone Heke and Kawiti in the northern North Island. A further two ordinances; the Arms Ordinance and the Gunpowder Ordinance, were both enacted after the end of the northern conflict, being passed in November 1846 and August 1847 respectively.¹⁵

¹³ George Grey's first term as Governor of New Zealand was 1845-1853.

¹⁴ Arms Importation Ordinance "An Ordinance to empower the Governor of New Zealand to regulate the Importation and Sale of Arms, Gunpowder, and other warlike Stores." 13 December 1845. Session VI No. I. Regulations proclaimed in *Gazette* 21 January 1846; Address to the Legislative Council, 12 December 1845. Encl in No. 15 Grey to Lord Stanley, 12 December 1845, *BPP* 1846-1847 [712] Vol. XXX p.23 (IUP p.363).

¹⁵ Arms Ordinance "An Ordinance to Regulate the Removal and the Making and Repairing of Arms, Gunpowder, and other Warlike Stores, within the Colony of New Zealand." 12 November 1846. Session VII. No.XVIII; Gunpowder Ordinance: "An Ordinance to prohibit

When the first restrictions were put in place firearms ownership among Māori was practically universal, with most communities having at least one musket per warrior before the Treaty of Waitangi was signed.¹⁶ The Māori economy had been geared up to engage with Pakeha during the “musket wars” primarily to acquire muskets. Keith Sinclair coined the term the “musket economy” because of the near absolute dominance of the musket out of all the desired European trade items.¹⁷ Dorothy Urlich argues that after 1810, firearms had become the most desired article of trade.¹⁸ According to Urlich, the value of barter articles which Māori were prepared to pay for muskets declined as the market became saturated.¹⁹ Angella Ballara has offered another view of the conflicts, which have been known as the “musket wars”. She argues that the motives for fighting were similar to that which existed before the arrival of firearms, and she argues that the death toll from these conflicts has often been greatly exaggerated.²⁰ Although she questions the label “musket wars” she does not dispute that muskets were important articles of trade. Muskets may have been simply new tools, but they were new tools in high demand. The demand for firearms had been a major factor in the very rapid social and economic changes prior to the signing of the Treaty of Waitangi.

Shortly after his arrival, Grey urged the “extreme urgency and necessity” of the Arms Importation ordinance in an address to the Legislative Council of 12 December 1845.²¹ The ordinance gave the power to the Governor to proclaim

the keeping of Gunpowder exceeding a certain Quantity.” 10 August 1847. Session VIII. No.II.

¹⁶ Urlich argues that the Bay of Islands reached saturation point in the late 1820s, and between 1820-1835 many of the North Island areas outside the Bay of Islands also reach saturation point. Urlich, “The Introduction and Diffusion of Firearms in New Zealand 1800-1840.” p.404. Ballara disputes this, arguing that muskets were not nearly as common as often thought. Ballara, pp. 401-402

¹⁷ Keith Sinclair, *A History of New Zealand* Pelican: Auckland, Revised Edition 1988. p.41.

¹⁸ Urlich, “The Introduction and Diffusion of Firearms in New Zealand 1800-1840.” pp. 399-400.

¹⁹ Dorothy Urlich, *The Distribution and Migrations of the North Island Maori Population about 1800-1840*, MA Thesis, University of Auckland 1969. pp.51-52. See also Ballara, p.400.

²⁰ Ballara, pp. 42-46 and 64.

²¹ Address to the Legislative Council, 12 December 1845. Encl in No. 15 Grey to Lord Stanley, 12 December 1845, in *BPP* 1846-1847[712] Vol. XXX. p.23.(IUP p.363)

restrictions governing the importation and the sale of arms and ammunition or other warlike stores by district or throughout the whole Colony. This ordinance imposed fines of up to £500 with the provision that up to half of the fine may be paid to as a reward any person or persons instrumental in gaining a conviction. Grey explained; “This Ordinance confers upon the Governor of New Zealand the power of regulating by proclamation everything relating to the importation and sale of warlike stores.”²² Grey stated that the restrictions would for the moment only prevent the importation of gunpowder or ammunition into Auckland, the most significant port to remain open in the northern North Island, but that a more comprehensive restriction of the importation of arms and ammunition was in preparation. Grey outlined to Lord Stanley his reasons for introducing the measure:

...our own forces have necessarily been disheartened by seeing that the rebels purchased through their friends openly in the shops of Auckland, and throughout the colony, whenever they pleased, the arms and ammunition which were immediately afterwards employed against our troops in the field.²³

Grey’s comments indicate that the main motivation for the ordinance was political, and symbolic. The officially proclaimed reason for the restrictions was the war in the northern North Island, and reference to the conflict was made in the preamble to the ordinance.²⁴ However the conflict had already ended by the time the restrictions were proclaimed. The notice proclaiming the regulations for the Arms Importation Ordinance of 21 January 1846, which enacted restrictions under the Arms Importation Ordinance to apply throughout the Colony, appeared in the same issue of the *New Zealand Government Gazette* as the proclamations ending the blockade of the rebels, removing

²² Grey to Lord Stanley, 13 December 1845, No. 16 *BPP* 1846-1847 [712] Vol. XXX p.24 (IUP p.364).

²³ *ibid.*

²⁴ “Whereas certain Tribes of the Native Race of New Zealand have taken up Arms against the Queen’s Sovereign Authority: –And whereas for the purpose of effectually subduing the present Insurrection, and of preventing the recurrence of an armed resistance to the authority of Her Majesty, and of securing the peace and good order of the Colony...” Arms Importation Ordinance "An Ordinance to empower the Governor of New Zealand to regulate the Importation and Sale of Arms, Gunpowder, and other warlike Stores." 13 December 1845. Session VI No. I.

martial law and pardoning those who had opposed the Government.²⁵ This suggests that the restrictions were aimed towards the future rather than as a direct response to the conflict with Hone Heke and Kawiti. Grey himself admitted that the restrictions would have little immediate effect on any potential Māori enemies, however he had very high hopes for the eventual benefits of his restrictions:

I understand that such large supplies of ammunition have been procured by the natives within the last six months, in exchange for Kauri gum, that a long period of time must elapse before the effect of the measures I am adopting will be perceptible, but I trust that their ultimate result will be a gradual disarming of a large portion of the native race, and the permanent establishment of peace and tranquillity throughout the country.²⁶

The measures attracted some contemporary opposition; the Chief Protector of Aborigines George Clarke was one who voiced some reservations about the restrictions:

I should have hesitated in so speedily adopting some of his Excellency's measures. "The Ammunition Bill," for instance. I think might have been deferred for a short period without incurring any risk of danger. I fear it made an unfavourable impression upon the minds of some of the loyal chiefs...²⁷

Grey responded by stating that the measure had been urged by Wake Nene and "some of the leading loyal chiefs". Grey argued that, in any case, he would have taken the same course:

I could conceive no more humiliating position than to be compelled from fear to sell to your enemies the very arms which were to be employed in the slaughter of your countrymen; and I would rather have died in Auckland at once than have allowed one ounce of powder or a single musket to have been sold to savages who intended to use them against British Forces.²⁸

²⁵ Proclamations of the Governor 21 January 1846 and 23 January 1846. *New Zealand Gazette* 24 January 1846. Vol. VI. No.2. pp. 5-8.

²⁶ Grey to Lord Stanley, 13 December 1845, No. 16 *BPP* 1846-1847 [712] Vol. XXX pp.24-25 (IUP pp.364-365)

²⁷ Chief Protector of Aborigines George Clarke to Lieutenant Governor George Grey 30 March 1846. Encl. in No.7. Grey to Lord Stanley, 12 June 1846. *BPP* 1846-1847 [837] Vol. XXX p. 19 (IUP p.567).

²⁸ Notes by George Grey in margin of *ibid*.

The previous Governor, Captain Robert Fitzroy, also voiced opposition to the restrictions. He argued that he had not sought to restrict the sale of arms and ammunition during his term as Governor because the Māori were already very well supplied. He also believed that, after the example shown by Hongi Hika, no “native freeman” would consent to being disarmed. Fitzroy argued that Māori disputes had become far less deadly when firearms had become widespread. He also suggested that any attempt to disarm the Māori population carried with it the risk of open hostility from that population.²⁹ Indeed, Hobson had not imposed a similar measure because of the fear that the law might provoke resentment among Māori.³⁰ Significantly, Fitzroy also implied that the arms restrictions were contrary to the Treaty of Waitangi.

The Arms Importation Ordinance was aimed at restricting the entry of arms, ammunition and related items into the Colony. Control over the movement, manufacture and repair of arms and ammunition already in the Colony required a further ordinance. This was provided by the Arms Ordinance 1846, which provided the means to restrict the movement of arms, gunpowder or other warlike stores within the colony of New Zealand.³¹ It also provided for the restriction of the manufacture and repair of firearms, gunpowder and related items.

The third ordinance to directly control either arms or ammunition was the Gunpowder Ordinance, which regulated the storage of gunpowder.³² This ordinance was passed on 10 August 1847, and banned the storage of more than fifty pounds weight of gunpowder by dealers and for those who were not

²⁹ Captain Robert Fitzroy, *Remarks on New Zealand, in February 1846*, (Original: London 1846), Hocken facsimile reprint No. 10: Dunedin 1969, pp.43-44.

³⁰ Alan Ward, *A Show of Justice: Racial Amalgamation in Nineteenth Century New Zealand*, Auckland University Press: Auckland 1995 p. 56. This was confirmed by the Legislative Councillors to Grey when he introduced the Arms Importation Act Grey to Lord Stanley, 13 December 1845, No. 16 *BPP* 1846-1847 [712] Vol. XXX p.25 (IUP p.365).

³¹ Arms Ordinance "An Ordinance to Regulate the Removal and the Making and Repairing of Arms, Gunpowder, and other Warlike Stores, within the Colony of New Zealand." 12 November 1846. Session VII. No.XVIII. Notified in *Gazette* 6 October 1847.

³² Gunpowder Ordinance: "An Ordinance to prohibit the keeping of Gunpowder exceeding a certain Quantity." 10 August 1847. Session VIII. No.II. Notified in *Gazette* 8 October 1846.

dealers, fifteen pounds weight of gunpowder outside of any public powder magazine, unless under a licence issued by the Governor.³³ Although, clearly the restriction on the possession of large quantities of gunpowder could be used to help control any potential illegal trade in arms and ammunition, it does not appear that this was the primary goal of the law. It is probable that the Gunpowder ordinance was based primarily on the more pressing danger to public safety; the danger posed by the storage of large quantities of gunpowder within built up areas. The relatively low penalty of £20 for offences under the Gunpowder Ordinance (compared to fines of up to £500 under the arms importation ordinance) tends to confirm that the primary purpose of the ordinance was as a public safety measure.³⁴ Similar restrictions were also used in England.³⁵ Some measure of arms control was also found in other related ordinances and regulations. The powers required for the policing of the ships arriving in the colony, which would have been a key part of any measures taken against smugglers, would be found within the customs regulations.

From the announcement of the first restrictions under the Arms Importation Ordinance, it was made clear that the law was not intended as a barrier to the settler possession of arms for their own defence:

³³ It appears that no licenses of this sort were issued as no record of licenses of this sort appear in the record. In the 1860 Arms Bill debate William Fox complained that the only way, that an outlying settler was able to avoid the restriction of one pound a day to a limit of fifteen pounds was to be sworn as a member of the volunteers. William Fox. Arms Bill Debate. 25 October 1860 *New Zealand Parliamentary Debates (NZPD)* pp.765-766

³⁴ Section 2. Gunpowder Ordinance: "An Ordinance to prohibit the keeping of Gunpowder exceeding a certain Quantity." 10 August 1847. Session VIII. No.II. When the restrictions were relaxed in Canterbury in 1857, the restrictions upon gunpowder storage were kept as a public safety measure.

³⁵ Sir William Blackstone, *Commentaries on the Laws of England*, "Adapted to the present state of the law" By Robert Malcolm Kerr, LL.D. London: John Murray, 1862. Vol. IV. p.182. The keeping of excessive quantities of gunpowder was prohibited by statute. See 12 Geo III c.61; 12 Geo III c.152; 14 & 15 Vict c. 67; 23&24 Vict. c. 139. (abbreviations per original) Vol. IV pp.181-182. The erecting of powder mills and the location of powder magazines near a town was also a nuisance under common law. In the original version of Blackstone reference is only made to the earlier statutes. See Sir William Blackstone, *Commentaries on the Laws of England*, (facsimile of 1783 edition, printed for W. Strahan, T. Cadell and D. Prince, London) New York: Garland Publishing, Inc. 1978. Vol. IV. p.168.

*Provided always, that nothing herein contained shall prevent any person coming into the Colony from Landing such Arms and Ammunitions as he may carry for personal defence, or for purposes of sporting...*³⁶

The first section of the Arms Ordinance stated it did not prevent “any person” from using or carrying their arms for sport for self-defence “as by Law he might before the passing of this Ordinance.”³⁷

After the early conflicts in Wanganui, the Hutt Valley and the Bay of Islands, the colony returned to a relative quiet. No new arms restrictions or regulations were announced until August 1851 when new regulations under the Arms Importation Ordinance were proclaimed.³⁸ It is unclear why new regulations were proclaimed at that time. However, an incident some months before the regulations were announced, was illustrative of the potential for further conflict between the Government and Māori. In April 1851, Major Kenny of the Fencibles (pensioner soldiers based at special military settlements near Auckland) stationed at Onehunga was ordered by George Grey to take as many men as possible and march them along the road to Auckland to await further orders. He was ordered to disarm any body of armed Māori, which may attempt to pass his position. Major Kenny was ordered to use force if necessary. The Fencibles based at Otahuhu, Panmure and Howick were also ordered to station themselves at strategic positions.³⁹ Clearly some sort of armed attack or disturbance was anticipated. However, soon after, Grey reported that the chiefs concerned had come to Auckland and offered apologies for their conduct.⁴⁰

³⁶ Proclamation of the Governor 21 January 1846. Arms Importation Ordinance. *New Zealand Gazette* 24 January 1846. Vol. VI. No. 2. p.5. Italics in original. Proclamation confirming Royal assent *New Zealand Gazette* 12 October 1846 Vol. VI No. 16.

³⁷ Arms Ordinance "An Ordinance to Regulate the Removal and the Making and Repairing of Arms, Gunpowder, and other Warlike Stores, within the Colony of New Zealand." 12 November 1846. Session VII. No.XVIII.

³⁸ Proclamation of the Colonial Secretary Alfred Domett, 20 August 1851 *New Munster Gazette*. 21 August 1851 Vol. IV No. 20 p.109.

³⁹ Orders, 17 April 1851, “Māori Disturbance” Sir George Grey to Major Kenny, Grey New Zealand Letters, K9 (1) Vol. 20 Auckland Public Library.

⁴⁰ The “Ngāti Paoa invasion” had occurred some months before this. Ward, p. 82

A few months later, whether in response to the scare or not is unclear, a new proclamation governing the importation of arms, ammunition and other warlike stores appeared in the *New Munster Gazette* on 20 August 1851.⁴¹ This proclamation stipulated that those who wished to land (or import) arms, gunpowder, shot or warlike stores had to first obtain a licence from the Colonial Secretary of the province or someone similarly authorised. Those who wanted to buy arms or ammunition for sporting purposes had to first obtain a licence from a Resident Magistrate. The Resident Magistrate of each district was to keep a register of sales.⁴² The regulations proclaimed in 1851 would govern arms sales and importation until 1857.

The Puketapu dispute

By 1854, the Arms Importation Ordinance had been in place for the better part of a decade. The regulations proclaimed in 1851 under this ordinance still governed the importation of arms and ammunition into the Colony. On 12 July 1854, the Acting Governor Robert Wynyard reported the colony to be quiet, though with some worrying signs for the future:

In all directions the country is now perfectly quiet, and the feeling existing between the two races is satisfactory; but at the same time there is an occasional disposition on the part of the natives to possess themselves with arms, and high sums have been offered to induce the white people to sell; a disposition that arises, I am informed, not from any ill feeling towards the Government or the Europeans, but in the hopes of enabling them to better resist annoyances from hostile tribes....⁴³

⁴¹ A search of the minutes of the Executive Council and of the British Parliamentary Papers did not reveal any further information about the 1851 proclamation. See archives of the Executive Council EC 1/1.

⁴² Proclamation of the Colonial Secretary Alfred Domett, 20 August 1851 *New Munster Gazette*. 21 August 1851 Vol. IV No. 20 p.109. In 1859 Governor Browne stated that the proclamation of 20 August 1851 governed the arms regulations until 1857. However no similar notice appeared in the *New Ulster Gazette*. The New Ulster Provincial Council never met. J.B. Ringer. *An Introduction to New Zealand Government* Christchurch: Hazard Press 1991, p.19. The regulations proclaimed in the *New Munster Gazette* appears to have operated over the whole colony after the two province system was abolished.

⁴³ Acting Governor Wynyard to Duke of Newcastle, 12 July 1854 No. 23 *BPP* 1854-1860 [2719] Vol. XLVI p.41 (IUP p. 315)

Wynyard's next despatch reported a very different situation. He revealed that a "serious native affray" had occurred near New Plymouth.⁴⁴ Documents enclosed with the despatch indicated that the important rangatira, Rawiri Waiaua and several other members of his party had been either killed, or mortally wounded by Katatore and his followers over a disputed area of land.⁴⁵ This was the beginning of the so-called Puketapu feud, which would rage across Taranaki until the outbreak of the first Taranaki war in 1860. The dispute centred on rival factions of the Puketapu hapū of Te Atiawa.⁴⁶ After the death of Rawiri, Ihaia Te Kirikumara took over as the most prominent of the land selling or "friendly native" rangatira.⁴⁷

From the outset of the hostilities, the Government sought to keep the settlers out of the conflict. This policy of at least nominal neutrality would remain in place until the beginning of the first Taranaki war in 1860. This policy was reported in Wynyard's first despatch reporting the dispute:

I have lost no time in communicating with the resident magistrate, and the superintendent of that province on the subject...to exert themselves to the utmost to keep the European population perfectly neutral...⁴⁸

The effect of the policy of neutrality upon the land selling faction of the feud was noted by the District Commissioner Cooper:

...so strictly has the policy of non-interference been carried out, that although the Hua natives [the "friendly native" faction] are known to be very indifferently armed, and almost destitute of ammunition, their application for assistance was steadily refused by the magistrates.⁴⁹

⁴⁴ Acting Governor Wynyard to the Duke of Newcastle, August 15 1854. No. 24 *BPP* 1854-1860 [2719] Vol. XLVI p. 41 (IUP p. 315)

⁴⁵ Rawiri Waiaua and Paora Te Kopi were mortally wounded. Four were killed outright.

⁴⁶ Puketapu is sometimes referred to as a tribe, rather than a hapū.

⁴⁷ Ihaia Waiaua's faction will hereafter be referred to as the "friendly native" faction or the "friendly natives", which was a contemporary term used frequently at the time. See Steven Oliver "Ihaia Te Kirikumara" Dictionary of New Zealand Biography. <http://www.dnzb.govt.nz>

⁴⁸ Acting Governor Wynyard to the Duke of Newcastle, August 15 1854. No. 24 *BPP* 1854-1860 [2719] Vol. XLVI p. 41 (IUP p. 315)

⁴⁹ District Commissioner Cooper to Commissioner McClean, 8 August 1854, Encl. No. 1 in No. 24, Acting Governor Wynyard to the Duke of Newcastle, August 15 1854 *BPP* 1854-1860 [2719] Vol. XLVI p. 42 (IUP p. 316)

The restrictions upon the sale of arms and ammunition, combined with the policy of professed neutrality had an uneven effect on the combatants. The “friendly native” faction, living in close proximity to the settlers, had limited opportunity to obtain arms and ammunition illegally. This was in contrast to their opponents, who enjoyed wider support among the neighbouring Māori population and had better access to the best source of supply of the contraband, the coastal trader.

Soon after learning of the outbreak of the hostilities, Wynyard sent the Land Purchase Commissioner Donald McLean, (whom Wynyard believed held significant influence over the local Māori population) to Taranaki to try to calm the situation.⁵⁰ McLean had previously been involved in the purchase negotiations in the area.⁵¹ He reported that he had been asked for arms and ammunition, as well as the support of troops. McLean promised the “friendly native” faction that he would report their case to the Governor:

...but at the same time, that I could not conceal from them that the aid they demanded of arms, ammunition and troops, might entail a general war, in the prosecution of which, they might, from having solicited the intervention of Government, become by the opposition of tribes at present neutral, greater sufferers than if the quarrel was confined as at present to the parties more immediately concerned.⁵²

In November 1854 McLean recommended that a multi-tribal police force be established. McLean also recommended that the settlers be mobilised and armed as a militia and some arms be found for “friendly natives as are destitute of them, with an understanding that such arms would only be given out in the event of actually being required for service, and to be afterwards given into the

⁵⁰ Acting Governor Wynyard to the Duke of Newcastle, August 15 1854. No. 24 *BPP* 1854-1860 [2719] Vol. XLVI p. 41 (IUP p. 315).

⁵¹ Alan Ward, “Donald McLean”, *Dictionary of New Zealand Biography*.
<http://www.dnzb.govt.nz/dnzb/> 22 June 2004

⁵² Land Commissioner Donald McLean to the Colonial Secretary, 27 October 1854, Encl. in No. 32. Wynyard to Sir George Grey, 2 November 1854. *BPP* 1854-1860 [2719] Vol. XLVI p.59. (IUP p.333) ■

custody of the officer who may be in charge of them.”⁵³ However the Superintendent of the Province of New Plymouth, Charles Brown, argued against the establishment of a “native force” unless it was to be an ally of a European force.⁵⁴ McLean’s suggestions of the multi-tribal police force and the provision of arms to the land selling faction were not acted upon.

On 22 December 1854, notice was given in the *New Zealand Gazette* that it had been reported to the Government that arms and ammunition had been illegally imported and sold to Māori. The Acting Governor therefore announced that “the law forbidding such traffic will be enforced with the utmost vigour; and that whoever will give information which may lead to the conviction of the offenders will be liberally rewarded.”⁵⁵ On 16 January 1855 the warning was repeated and a copy of the Arms Importation Ordinance reproduced in the *New Zealand Gazette*.⁵⁶

In December 1854 the Native Secretary, C.L. Nugent was also sent to the area to investigate the feud. Nugent was asked to answer several key questions including: “How far has the law been in operation for preventing the supply of arms and ammunition to the natives of the district?” He was also instructed: “To impress upon the magistrate and the public the necessity for the vigilant administration of the law relating to the sale, &c. of arms.”⁵⁷

On 25 January 1855 Nugent reported back to the Colonial Secretary. He reported the supporters of Rawiri desired Government support: “The

⁵³ Land Commissioner McLean to the Colonial Secretary. 1 November 1854. *BPP* 1854-1860 [2719] Vol. XLVI p.112. (IUP p.386)

⁵⁴ Memorial from the Superintendent and Provincial Council of New Plymouth 15 March 1855. *BPP* 1854-1860 [2719] Vol. XLVI p.111. (IUP p.385) The Superintendent and Provincial Councillors complained that they were unable to control the small native police force, and argued that a native force would be more dangerous to the settlers than the enemy “except, indeed as allies of an European force.”

⁵⁵ Notice, Colonial Secretary’s Office. 22 December 1854. *New Zealand Gazette*, 30 December 1854. Vol. II No. 40. p.262

⁵⁶ Notice, Colonial Secretary’s Office. 16 January 1855. *New Zealand Gazette*, 18 January 1855. Vol. III No. 1.pp. 2-3

interference of the Government is vehemently called for by Rawiri's friends, who are the weaker, and who are loud in their demand for arms and ammunition, and also for troops...".⁵⁸ The Native Secretary noted that the opposing party, led by Katatore were equally keen to see that that the Government did not get involved in the dispute. Nugent found that the Arms regulations had been breached recently, with as many as twenty-five firearms being sold to local Māori. He believed that the high prices offered by local Māori provided the inducement to join in the illegal trade in arms, adding; "...I fear that the settlers do not look on such suicidal acts of individuals of their own body with sufficient disapprobation."⁵⁹ Nugent believed that the Māori in the area were well supplied with ammunition.

The situation in Taranaki was discussed by the Executive Council, which concluded:

As it appears that the natives in various parts of the country have been supplied with arms and ammunition, notwithstanding the provisions of the Arms Ordinance, the Council would recommend that a circular letter be addressed to every Resident Magistrate and Justice of the Peace in the Colony calling upon him to use his diligence to prevent and punish infringement of that Ordinance; so long as arms are put into the hands of the natives, it will be impossible to answer for the peace of the Country.⁶⁰

Wynyard also sought Australian help in stemming the supply of arms and ammunition to New Zealand. On 25 January 1855, he wrote to the Australian State Governors explaining that, owing to recent cases where ships had brought warlike stores into the Colony, the Government needed co-operation in restricting the trade. Wynyard sent copies of the New Zealand Arms

⁵⁷ Instructions [from the Acting Governor?] to the Native Secretary, 27 December 1854, Encl. No. 3. In, No. 37 Wynyard to Sir George Grey, 28 December 1854. *BPP* 1854-1860 [2719] Vol. XLVI p.64. (IUP p.338), p. 64.

⁵⁸ Report of the Native Secretary 25 January 1855, Encl. No. 1 in No. 43. Wynyard to Sir George Grey 5 February 1855 *BPP* 1854-1860 [2719] Vol. XLVI p.72. (IUP p.346)

⁵⁹ *ibid.* p. 72 (IUP p.347)

⁶⁰ Minutes of the Executive Council, 30 January 1855. EC 1/1 p. 325

Importation Ordinance for publication in the Australian Gazettes.⁶¹ On 11 October 1855, notification was published that the temporary restriction on the exportation of gunpowder and other warlike stores from New South Wales to New Zealand was extended until 31 December 1857.⁶² The Australian restrictions were brought to the attention of the New Zealand House of Representatives in September. The MP for Waimea, W. Travers, believed that the Australian authorities should be congratulated for their move.⁶³

In April 1855 Wynyard visited Taranaki. He reported the situation he encountered there to Sir George Grey:

I found, as the civil authorities described, excitement at the highest; the native mind inflamed to a great degree; the pahs in a state of defence; and the Maori population completely armed, not only when travelling on the roads or labouring in the fields, but even when bartering in the town.⁶⁴

Wynyard addressed an assembly of Taranaki Māori, apparently all of the ‘friendly’ faction. At this assembly, both Tamata Waka (no relation to the famous northern rangatira) and the leading man on the “friendly” side, “Iharaia” [Ihaia] stated that they had requested arms from the Europeans. Ihaia complained that he had been labelled as deranged for asking for firearms.⁶⁵ In response Wynyard told the meeting:

As regards the supply of arms, the Queen encourages no quarrels but with foreign foes. She sanctions no internal feuds amongst her children; these she assists to ploughs, horses, mills, &c., and only to the soldiers, and those employed as such, does she furnish powder, balls, and guns.⁶⁶

⁶¹ Wynyard to the Governor General New South Wales, (Similar sent to Van Diemens Land, Victoria, South Australia and Western Australia) 25 January 1855, Archives of the Governor, G 36/3 Governor Letterbook p.41

⁶² Notice Colonial Secretary’s Office 9 October 1855. *New Zealand Gazette* 11 October 1855 Vol. III No. 25 pp. 228-229.

⁶³ “Importation of Warlike Stores” 4 September 1855. *NZPD*. p. 525.

⁶⁴ Wynyard to Sir George Grey, 18 April 1855, No.50, *BPP* 1854-1860 [2719] Vol. XLVI p.99. (IUP p.373)

⁶⁵ Record of Proceedings at Taranaki, Encl. No.1 in No. 50. Wynyard to Sir George Grey, 18 April 1855, *BPP* 1854-1860 [2719] Vol. XLVI p.101. (IUP p.375)

⁶⁶ Record of Proceedings at Taranaki, Encl. No.1 in No. 50. Wynyard to Sir George Grey, 18 April 1855, *BPP* 1854-1860 [2719] Vol. XLVI p. 103 (IUP p. 377). One member of the land selling faction had previously seized a firearm from a local settler. At a meeting on 2 April the

Wynyard failed to bring attention to the fact that the settlers had few barriers to the purchasing of arms and ammunition.

The opposing faction in the dispute led by Katatore did not have the same problems with the supply of arms or ammunition. Charles Brown reported that the important rangatira, Wiremu Kingi, who was based at the Waitara River was supplying Katatore's faction with ammunition.⁶⁷ Soon after, the Resident Magistrate, Josiah Flight, reported that Wiremu Kingi and around sixty followers joined in the feud, bringing with them six barrels of gunpowder.⁶⁸ This marked a major escalation in the conflict.

William Turton, who was a missionary in the district, pointed out to Wynyard the unequal nature of the contest, with around 200 supporters of Arama Karaka (who was allied with Ihaia) only poorly supplied with arms and ammunition, facing 700 opponents led by Wiremu Kingi and Katatore, who were well supplied.⁶⁹ Ten days later Josiah Flight reported that Honi Ropiha had told him that his faction had nearly exhausted their ammunition:

As the chief and assessor has always shown himself a loyal friend of the Europeans, I attach some importance to his representations, yet cannot consider it would be politic to assist his party in supplying them with ammunition, until as friends of the Government it is deemed advisable for them to co-operate with the British Troops.⁷⁰

Governor brought up the issue of that firearm and demanded its return, which was assented to by the audience. p.105 (IUP p. 379)

⁶⁷ Charles Brown to Wynyard, 28 May 1855. Encl. No. 2 in No. 58. Wynyard to Sir George Grey 16 June 1855. *BPP* 1854-1860 [2719] Vol. XLVI, p.122. (IUP p.396)

⁶⁸ J. Flight to Private Secretary [to Wynyard] J.J. Travers, Auckland, 4 July 1855, Encl. No. 4 in No. 60, Wynyard to Sir George Grey, 28 July 1855 *BPP* 1854-1860 [2719] Vol. XLVI, pp. 129-130 (IUP pp. 403-404)

⁶⁹ W.W. Turton to Wynyard. 15 July 1855, Encl. No.2 in No. 61, Wynyard to Sir George Grey, 30 July 1855 *BPP* 1854-1860 [2719] Vol. XLVI, p. 133. (IUP p.407)

⁷⁰ J. Flight to Private Secretary [to Wynyard] J.J. Travers, Auckland, 25 July 1855, Encl. No. 2 in No. 63, Wynyard to Sir George Grey 6 August 1855 *BPP* 1854-1860 [2719] Vol. XLVI, p. 135.

Josiah Flight was evidently anticipating that Honi Ropiha's faction would be allied to the Government should conflict between the Government and the opposing faction break out.

The land selling faction in Taranaki may have been nearly destitute of arms and ammunition, however this was not the case with many other Māori communities. The legal flow of arms and ammunition into the colony continued, and some officials were suspicious that at least a proportion of the legal importations, were being illegally on-sold to Māori. A letter from the Collector of Customs was presented to the Executive Council on 19 July 1855. He claimed that almost every ship entering the Colony's ports carried with it large quantities of arms and ammunition. The Council, after allowing the Auckland gunsmith, Mr Evitt, to land his firearms, decided to recommend that a notice be given that no more licences to land firearms for sale should be given "unless under very special circumstances."⁷¹ The decision led to the publication of a notice, which appeared in the *New Zealand Government Gazette* of 31 July 1855:

His Excellency the Officer administering the Government directs it to be notified for general information, in consequence of the great increase lately in the quantity of Arms and Ammunition of various descriptions brought into the Colony, and the great danger there is of these articles falling into the hands of the Natives, that no license will be granted in future for the importation of Arms and Ammunition of any kind, except under very special circumstances.⁷²

This notice considerably tightened the firearms policy for the colony, and would have greatly reduced the number of arms available for the retail trade.

⁷¹ Minutes of the Executive Council, 19 July 1855. EC 1/1 pp.370-371.

⁷² Notice, Colonial Secretary's Office, 25 July 1854, *New Zealand Gazette*, 31 July 1855, Vol. III, No. 17 p.89.

The new Governor

Governor Thomas Gore Browne arrived in the colony, and took over the reins from Wynyard in September 1855.⁷³ The Acting Governor Wynyard, like Grey before him, had shown himself to be a keen supporter of the control of firearms within the colony. However his replacement would prove to be cast from a different mould. Browne quickly concluded that the arms restrictions were ineffective and questioned the wisdom of trying to enforce them. In an early despatch, Browne stated his impression of Māori popular opinion and the effectiveness of the arms restrictions:

It is evident that they [the Māori population] dislike a popular government in which for the present they can have no share, and they are dissatisfied with the law which prevents their purchasing spirits, arms and gunpowder. The effect, indeed, of this law is questionable, for I learn that both spirits and arms are smuggled in large quantities, and that the natives as a body are almost universally armed.⁷⁴

Later evidence such as that which would be presented to the Board of Inquiry into Native Affairs would support Browne's analysis. There was a high level of firearms ownership among Māori despite years of restrictions, which should have prevented Māori from purchasing any firearms.⁷⁵

Key to the effectiveness of any restrictions or regulations would be the diligence of those appointed the role of enforcing compliance. For the restrictions on arms and ammunition, there were two key roles: the policing of the importation of warlike stores and the policing of the domestic trade in these articles. The Customs Department controlled the importation of goods. The domestic trade in arms and ammunition was to be monitored by the police. At this time, the provincial governments controlled the police. These multiple jurisdictions led to problems with the co-ordination of the enforcement of regulations. Governor Browne, in any case, doubted the ability of the police to

⁷³ See B.J. Dalton, "Thomas Robert Gore Browne" *Dictionary of New Zealand Biography* <http://www.dnzb.govt.nz/dnzb>. Accessed June 2004.

⁷⁴ Browne to Sir William Molesworth, 14 February 1856 No. 80. *BPP* 1854-1860 [2719] Vol. XLVI, p. 178 (IUP p.452)

effectively control the illicit trade in arms or ammunition. By August 1856, the Governor had concluded:

The indifference or inefficiency of the police in preventing the sale of arms and spirits has long been a matter of notoriety; but being dependant on the provisional authorities, they fear to incur the enmity of persons engaged in those trades whose influence in local politics is considerable.⁷⁶

Browne argued: “If these laws are to be maintained they ought to be enforced, which is not the case at present.”⁷⁷ Possibly supporting Browne’s belief of the inefficiency of the police is the almost total absence of any correspondence or any other evidence of activity at the provincial government level on the subject of the policing of the arms ordinances. One of the few exceptions was a letter from Police Inspector Naughton to the Provincial Council of Auckland suggesting the employment of a Māori detective to investigate arms sales in the region. Naughton believed that Māori in the area were purchasing firearms from settlers and suggested employing a Māori police detective to obtain:

...such information as might lead to the conviction of the offenders. Should a trustworthy Native be found as I hope may be the case his service in this work would be of the greatest value. I beg to add that in these opinions the Native Secretary to whom I have spoken on the subject fully coincides.⁷⁸

The reply from the Superintendent’s Office authorised the employment of a “native to act as a detective policeman”.⁷⁹ However, an indication of the difficulties facing the policing of the regulations can be seen in Auckland Provincial Council correspondence of August of that year. Naughton reported that a relatively high cost of living combined with the relatively high wages paid to labourers meant that the police had difficulty in retaining and attracting

⁷⁵ See evidence of Board of Inquiry into Native Affairs 1856 Encl. in No. 100, Browne to Labouchere 23 July 1856, *BPP* 1854-1860 [2719] Vol. XLVI, pp.235-337. (IUP pp. 509-611). and evidence presented to the Sale of Arms Select Committee 1858. Le 1 1858/8.

⁷⁶ Governor Browne Memorandum, 29 August 1856, Encl. No. 1 in No. 107, Browne to Labouchere, 24 September 1856, *BPP* 1854-1860 [2719] Vol. XLVI, p.393 (IUP p.667)

⁷⁷ *ibid.*

⁷⁸ Inspector of Police, James Naughton to the Superintendent, Auckland Provincial Council. 21 June 1855. NZMS 595 Auckland Provincial Council Records 1853-1875 Session 4 Box 4 Folder 22, Auckland Public Library.

⁷⁹ W. Brown to Inspector of Police, Auckland, 22 June 1855. NZMS 595 Auckland Provincial Council Records 1853-1875 Session 4 Box 4 Folder 22, Auckland Public Library.

people suitable for the position. He enclosed a memorial addressed to the Auckland Provincial Council from sergeants, corporals and privates of the Auckland Armed Police Force. They complained of the low rate of pay they received, and of the high cost of their uniform. Naughton pointed out that only a very few policemen were available for active duty within the province, as many of the police were tied to specific duties, such as assisting officials and that several policemen were assigned to the outlying villages. As a result, only a very few police were available for general police work in the Auckland area.⁸⁰ An important factor in the inefficiency of the police in the policing of the arms restrictions, and indeed in the completion of their duties in general, was the low rate of pay offered to policemen. Richard Hill identifies this as a significant impediment to police effectiveness during this period.⁸¹

The Central Government also had limited funds available, and this undermined the ability to police the restrictions. In an effort to obtain convictions in the Hawkes Bay area, the Resident Magistrate, without prior authorisation, offered a £30 to £50 reward for information leading to a conviction. He was warned that, while the Government did not consider it wise to countermand his offer, he was not to make similar offers in the future without prior sanction “except in the greatest emergencies”. He was also instructed to limit the reward paid to £30.⁸²

An early test for Governor Browne was the Charles Marsden case. On 10 November 1855, Marsden killed a woman named Kerara of Ngāti Whakaue. The killing occurred near Auckland.⁸³ The Resident Magistrate in Rotorua, Thomas Smith, reported that the woman’s relatives had planned either to attack

⁸⁰ NZMS 595 Auckland Provincial Council Records 1853-1875 Session 4 Box 4 Folder 22, Auckland Public Library. See also Richard Hill, *Policing the Colonial Frontier: the Theory and Practice of Coercive Social and Racial Control in New Zealand 1767-1867*, Government Printer: Wellington 1986. p. 421

⁸¹ Richard Hill, pp.16, 421, 435, 438, 471, 533, 548, 633-634,

⁸² Under Secretary, Colonial Secretary’s Office to Resident Magistrate Napier. 15 October 1857. IA 4/270 (No. 133 1857/1520) pp.32-33.

⁸³ Browne to Sir William Molesworth, 14 February 1856. No. 80. *BPP* 1854-1860 [2719] Vol. XLVI, p.178 (IUP p.452)

Auckland or pensioner settlements or attack or kill a traveller or out-settler. However, he said that they were persuaded to go to Auckland unarmed to witness the hearing.⁸⁴ The situation was calmed after Marsden was executed.

The Kawau Island gunpowder raid

A significant incident, which occurred in April 1856, was the theft of a large quantity of gunpowder from the Kawau Island powder magazine. The raiders were Māori from the Hauraki area. The Gunpowder Ordinance of 1847 prohibited the possession of large quantities of gunpowder outside of powder magazines. The primary motive for the ordinance was to protect settled areas from the danger of accidental explosions. As a result of the operation of the ordinance, gunpowder magazines had been set up around the Colony. One of these magazines was located on Kawau Island, which was remote from any significant settlement. This magazine stored gunpowder owned by the Kawau Mining Company.⁸⁵

The Kawau Island incident was significant because it led to changes in the operation of the Gunpowder Ordinance. In a direct response to the raid, the authorities would seek to protect the stores from theft as well as explosion. It is therefore arguable that the Kawau Island incident had the effect of bringing the Gunpowder Ordinance into the “arms control” policies. The raid also proved to be significant as it renewed the debate about Māori gaining possession of gunpowder and it also illustrated the capacity and ability of Māori communities to defy the authorities. It was later revealed that the raid was intended as a Māori protest against the arms restrictions. The raid therefore reveals the extent to which the restrictions were resented by at least some Māori communities. The gunpowder theft prompted the authorities to try to counter the perceived Māori threat and was to be one of the main motivating factors in

⁸⁴ Smith statement. 11 February 1856. Encl. No. 1 in No. 80. Browne to Sir William Molesworth, 14 February 1856. *BPP* 1854-1860 [2719] Vol. XLVI, p.178 (IUP p.452)

the proposed Native Offenders Bill, which if it had been enacted, would have given the Colonial Government the ability to blockade Māori ports or sections of the coastline. This would have prevented the importation of all goods, not just arms and ammunition into the selected Māori dominated areas.

On 9 May 1856, the MP for the suburbs of Auckland, Walter Brodie, asked the Colonial Secretary whether any steps had been taken to retake the 4,500lb of gunpowder stolen from Kawau, and whether any steps had been taken to relocate the similar quantity of powder stored at the North Shore powder magazine.⁸⁶ He was answered in the affirmative to both questions. In June, Brodie moved that the house take immediate steps to recover the powder.⁸⁷ He guaranteed that he personally could recover the gunpowder for the sum of £20. The Premier Edward Stafford replied that the situation was a delicate one, and that the situation risked a “rupture with the Natives”. Stafford asked Brodie to therefore withdraw the motion, a call echoed by Major Greenwood, MP for the pensioner settlements. Brodie then withdrew his motion as suggested.⁸⁸

Walter Brodie again raised the issue on 12 August, asking what steps the Government had taken to recover the gunpowder. He believed that the powder could have been recovered for the sum of £25. Stafford refused to answer the question, stating that; “he was not prepared to take the responsibility of the measures that had been adopted”.⁸⁹

On 27 June a return of the correspondence between the Pilot of Auckland or the Superintendent of Auckland and the General Government regarding the storage of gunpowder was ordered.⁹⁰ The return revealed that the Colonial Secretary had been warned as early as April 1851 that there was a large quantity of

⁸⁵ Browne to Labouchere 26 April 1856 No. 86. *BPP* 1854-1860 [2719] Vol. XLVI, p.199 (IUP p.473)

⁸⁶ Walter Brodie “Gunpowder Stolen by Natives” 9 May 1856 *NZPD*. pp.78-79.

⁸⁷ Motion of Walter Brodie “Gunpowder Stolen by Natives” 24 June 1856. *NZPD* p.229.

⁸⁸ Motion of Walter Brodie “Gunpowder Stolen by Natives” 24 June 1856. *NZPD* p.230.

⁸⁹ “Gunpowder Stolen by Natives” 12 August 1856. *NZPD*. p.354.

⁹⁰ The return was ordered on 27 June 1856 after motion by William Fox MP for Wanganui District. *NZPD*. p.236.

ammunition in the North Shore magazine that could easily be stolen.⁹¹ On behalf of the Governor, Colonial Secretary Andrew Sinclair replied to the Harbour Master: “I am instructed by His Excellency to inform you that the ammunition is for the present safe where it is, and that it can be removed at a few hours notice if danger arises.”⁹² The next letter in the file is of 4 April 1856, after the raid on Kawau Island. This was from a Mr. S. Grahame to the Colonial Secretary stating that he had more than 20 cases of fine sporting gunpowder in the North Shore public magazine “which if known to the Maories, would prove a great temptation”. He believed that there were 55 half barrels and 8 whole barrels of blasting powder stored in the magazine as well, and that the magazine was “quite unprotected.” Grahame asked that the Governor seek the permission of the Ordinance Department to have the powder stored in the Ordinance Magazine.⁹³

The Colonial Secretary, on behalf of the Governor, then wrote to the Major of Brigade asking for leave from the Officer Commanding the Troops to allow the storage of the North Shore gunpowder in the Ordinance Magazine. Sinclair argued that there was reason to fear that the North Shore powder might be raided.⁹⁴ However, the Deputy Ordinance Storekeeper reported that the Ordinance Magazine was already over capacity and the request was therefore declined by Captain George Wynyard.⁹⁵ When Colonel Wynyard considered the matter, he decided that the only place in which the powder could be stored was in an old dilapidated blockhouse on Britomart point, which was not weatherproof. He believed that if the gunpowder was stored there, any subsequent explosion would destroy the gun battery, gun sheds, powder

⁹¹ I.J. Burgess, Acting Harbour Master to the Colonial Secretary. 19 April 1851. Archives of the Legislative Department, National Archives. Le 1 1856/119

⁹² Colonial Secretary to Auckland Harbour Master, 24 April 1851. Le 1 1856/119

⁹³ S. Grahame to the Colonial Secretary, 4 April 1856. Le 1 1856/119.

⁹⁴ Colonial Secretary to Major of Brigade, 10 April 1856. Le 1 1856/119.

⁹⁵ Captain George Wynyard, acting Major of Brigade to the Colonial Secretary, 19 April 1856. Le 1 1856/119

magazine and every other Crown owned building at the location and result in a great loss of life.⁹⁶

Meanwhile, while efforts were being made to protect the North Shore gunpowder, moves were also being made to recover the plundered gunpowder. Browne writing to Merrivale on 15 October reported his confidence that the Kawau Island gunpowder issue would soon be concluded and that two schooners involved in the raid had already been surrendered. Browne claimed that the Premier, Edward Stafford, had urged that troops should have been sent to retrieve the gunpowder. He said that he had rejected this course, because of the risk of a more general war.⁹⁷

In November 1856 Browne reported the return of the gunpowder and the surrender and destruction of the vessels that had been used in the raid.

I attach great importance to this submission, as the theft was intended and declared to be an act of defiance to the Government, and the offenders had numerous assurances of support from persons of influence in several other tribes. I regret to say, also, that I have reason to believe they would have yielded long since, but for the evil counsel of persons not belonging to the native race.⁹⁸

Browne's report is significant, as it reveals that he believed that those involved in the raid had many offers of support from other iwi. The Governor would later reveal that he had been told that the raid had been intended as a protest against the arms restrictions.

⁹⁶ Colonel Robert Wynyard. Major J. Greenwood to the Colonial Secretary. 27 May 1856. Le 1 1856/119.

⁹⁷ Browne to Merrivale 15 October 1856. Sir Thomas Gore Browne Letterbook 1855-1862, ATL qMS-0284 p.46.

⁹⁸ Browne to Labouchere, 18 November 1856, No. 111. *BPP* 10 1860, p.407 (IUP p.645). The return of the gunpowder was reported in the *Southern Cross* .11 November 1856 Enclosure in No. 111. *BPP* 10 1860 p.408 (IUP p.646). Browne indicated that the "most powerful tribes" in New Zealand were sympathising with the raiders: Browne to Merrivale 15 October 1856. Sir Thomas Gore Browne Letterbook 1855-1862, Alexander Turnbull Library, ATL qMS-0284. Browne later indicated that some of the "most important tribes" assisted the raiders after the raid: Browne to Featherston 13 August 1859. Sir Thomas Gore Browne Letterbook 1855-1862, ATL qMS-0284

The Kawau Island incident illustrated some of the difficulties associated with the storage of gunpowder so that it was both safe and secure. The usual practise of storing gunpowder away from settlements avoided the risk posed to those settlements by fire or explosion. However the incident proved that storing the gunpowder in this fashion led to the risk that the gunpowder could then easily be stolen. Another solution such as placing guards around powder stores was expensive and put the guards at risk of being blown up. To avoid the risk of further thefts, it was decided to store the Auckland gunpowder in a purpose-designed magazine within the settlement, near the Albert military barracks.⁹⁹ This solution posed some risk to the town but it was argued that this would be considerably lessened if the store was properly designed.

In 1851, when the issue of unsecured ammunition was brought to the attention of the Colonial Secretary, the Gunpowder Ordinance served to protect areas of settlement from the risks involved in the storage of gunpowder. After the theft of the gunpowder at Kawau Island, the Gunpowder Ordinance assumed the additional purpose of keeping gunpowder out of the hands of Māori. The extent in which the theft of the gunpowder at Kawau had focused the authority's attention on the need for security for gunpowder is however debatable. Soon after the gunpowder was surrendered the Governor was arguing with his ministers about who would foot the bill for the costs of the protection of the returned gunpowder.¹⁰⁰

The Kawau Island incident prompted the settler government to propose a legislative change to deal with similar incidents in the future. This was the abortive Native Offenders Bill which would have provided the power to blockade Māori communities that had been deemed to be belligerent. This Bill addressed the perceived threat offered by Māori communities in a number of ways. A complete blockade of a port or a portion of the coast would be a more effective check upon arms smuggling. It also offered a means to collectively

⁹⁹ Captain George Wynyard to the Colonial Secretary. 21 April 1856. Le 1 1856/119

¹⁰⁰ Governor Browne Memorandum, 21 November 1856, G36/3 Governor Letterbook p.93.

punish communities, which acted against or harboured those who acted against the interest of the settlers.

Board of Inquiry into Native Affairs

The Board of Inquiry into Native Affairs 1856 offers an important snapshot of the state of settler and Māori relations. It also provides important evidence of the effectiveness of the arms restrictions then in place. The inquiry interviewed a number of informants, both Māori and settler, on a number of key issues, including Māori land tenure and issues of law and order. Browne also asked the Board to consider the issue of arms smuggling:

I learn that the law which prohibits the sale of gunpowder and spirits to natives is evaded constantly. I should be glad of an opinion from the Board as to the effects of this law, and their views in reference to it.¹⁰¹

As a result of this direction, many of the informants were asked if they believed the laws restricting the sale, of arms and gunpowder were evaded. According to the summary of the Inquiry published in the *British Parliamentary Papers*, almost all those asked this question agreed. Many of the informants were also asked: “Is it expedient that these laws should be repealed?” Opinion on this question was much more evenly split.¹⁰²

While a number of Māori gave evidence to the board, many of the Māori informants were not asked or for their opinion of the effectiveness or justice of the arms restrictions. Most of the Māori informants who did express an opinion on the arms restrictions expressed some dissatisfaction. According to the summary every Māori who responded to this question believed the laws should be repealed, although the response of the important witness Tamati Ngapora appears somewhat ambiguous in the text: “It was I who suggested to the Chief Justice to get the law passed, to prevent the natives from buying

¹⁰¹ Browne Memorandum, [June 1856?] Encl. 1 in No. 100, Browne to Labouchere 23 July 1856, *BPP* 1854-1860 [2719] Vol. XLVI, p.236. (IUP p.510)

¹⁰² Report of the Board of Inquiry into Native Affairs. Encl. in No. 100, Browne to Labouchere 23 July 1856, *BPP* 1854-1860 [2719] Vol. XLVI,p.248. (IUP p.522)

powder to kill each other with.”¹⁰³ Some of Tamati Ngapora’s evidence to the Board of Inquiry appears contradictory:

The law prohibiting the sale of gunpowder has had a good effect; the natives who respect Christianity respect also this law.
The natives are all well supplied with arms and powder by evading the law.
The law prohibiting the sale of gunpowder, I consider, might be repealed.¹⁰⁴

Tamati Ngapora is listed in the summary as one of those in favour of the repeal of the restrictions.¹⁰⁵ This stance is quite at variance to the one he would take at the Sale of Arms Select Committee and also appears at odds with other statements within the same interview. This ambiguity, or apparent contradiction may have been due to some confusion with the interpretation of his evidence.

With the exception of Tamati Ngapora most of the other Māori who gave opinion on the subject of the restrictions were in some way opposed to them. Ihaka Takanini gave qualified support for a partial relaxation: “Large casks of powder would be death to the natives, but every one should be allowed to get a little powder and shot to kill birds with.”¹⁰⁶

Although conflict with the settlers and the settler government was clearly looming, evidence of Māori opinion on this possibility is relatively scarce. Although almost certainly a subject of discussion among Māori communities, such ideas seldom found its way into the settler dominated written discourse. One of the few examples of Māori openly expressing the view that Māori planned to actively oppose the Government came from Te Hira, who had lived in the Rotorua area:

The people at Rotorua do not like the restriction on powder; one objection is, they have no powder for sporting purposes, and the other is, they have no powder to make

¹⁰³ Evidence of Tamati Ngapora. Board of Inquiry into Native Affairs. Encl. in No. 100, Browne to Labouchere 23 July 1856, *BPP* 1854-1860 [2719] Vol. XLVI, p.285 (IUP p.559)

¹⁰⁴ *ibid.* p.286.

¹⁰⁵ Report of the Board of Inquiry into Native Affairs [Hereafter: BINA]. p.257

¹⁰⁶ Evidence of Ihaka Takanini of Pukaki, BINA p.277.

war with the Europeans. There is a desire in the minds of the natives to sweep away the Europeans, should they be unjustly treated....the natives consider that the law was established to prevent them from getting powder to defend themselves.¹⁰⁷

Te Hira believed that if Charles Marsden (who had killed a Ngāti Whakaue woman) had not been executed, the Ngāti Whakaue would have joined with other tribes and attacked the settlers to avenge their relative's death. According to Te Hira, Māori in the Rotorua area were finding difficulty in purchasing new supplies of gunpowder, although he believed that they had plenty of an old stock. At the time of the inquiry, members of Ngāti Whakaue were taking canoes into the Thames area with the intention of bartering them for gunpowder.¹⁰⁸ This indicates that the effectively land locked Ngāti Whakaue, based around the inland lakes of the Rotorua area, were denied access to the coastal traders and were forced to deal with Māori sellers of gunpowder.

According to several of the settler respondents to the inquiry, the restrictions had the effect of encouraging the purchasing of the prohibited articles. A number of settler respondents wanted the restrictions kept, while at the same time admitting that they were ineffective. John Webster from the Hokianga, for instance believed that good resulted from the prohibition on spirits and arms, despite his statement that the desire for spirits and the purchases of arms had both increased.¹⁰⁹ William Searancke who was based in the Waikato, believed that the restrictions encouraged the sale of gunpowder and spirits and believed that if the restrictions were lifted, the items would not be sold in larger quantities. However he still believed that a "proper restraint" should be in place over the sale of arms and ammunition. He did not elaborate what he

¹⁰⁷ Evidence of Te Hira Taiwhanga, of Kaikohe. BINA. p.286.

¹⁰⁸ *ibid.* The Rev. Spencer from Tarawera also reported the suspicion that the arms restrictions had been put in place to give the settlers the only means of offence and defence. Evidence of the Rev. Spencer [Tarawera] Le 1 1858/8. The Rev. Chapman from Maketu reported similar sentiments. Le 1 1858/8.

¹⁰⁹ See the evidence of Joshua Thorpe, Thames district, Captain Bolger believed this was the case with alcohol, Searancke from the Waikato John Webster of the Hokianga. However the Rev. Burrows denied that the restrictions on arms promoted their purchase. (p.266)

considered a “proper restraint” to be and he did not suggest any way of preventing the trade in gunpowder and spirits.¹¹⁰

Captain Porter from Tamaki favoured the repeal of the restrictions on arms and spirits. He believed that, if this was done, the Māori would soon become traders in arms and ammunition, something, which he evidently believed might have been a good thing. Porter believed that Māori wanted firearms to protect their lands:

I wish to observe, when on this subject, the sale of gunpowder, I believe that if this question of their lands was finally settled, the necessity for the sale of gunpowder would be at an end. The natives hoard up arms and powder on account of their jealousy of their lands; and if the land question is set at rest, their confidence will be restored and we have nothing to fear.¹¹¹

Porter went on to argue that Māori should be offered every right and privilege given to the settlers:

I would make the natives British subjects in every respect: I would let them elect their own members for the House of Representatives as well as for the Provincial Council, and let them enjoy every privilege we do ourselves.¹¹²

John Webster reported that the Māori: “say we are foolish in not letting them have powder to shoot game.”¹¹³ A settler by the name of Black from the Bay of Plenty suggested those who he described as “respectable natives” should be allowed to purchase gunpowder and shot for sporting use. He added “I would not allow them to buy guns except with the permission of the governor or superintendent under peculiar circumstances.”¹¹⁴

In its report the Board of Inquiry offered some comments on Native policy, several of which related to the restrictions on arms and ammunition:

¹¹⁰ Evidence of Searancke [Waikato], BINA, p.264.

¹¹¹ Evidence of Captain Porter [Tamaki], BINA p. 269.

¹¹² *ibid.*

¹¹³ Evidence of John Webster, Hokianga, BINA. p. 265.

¹¹⁴ Evidence of Mr Black Matata, Bay of Plenty, BINA. p. 270. This may be the Thomas Black who was later convicted under the Arms Importation Ordinance. He and the MP Walter Daldy were implicated in the illegal trade in arms.

The existence of deadly feuds between the tribes furnishes a sufficient reason for the continuance of the prohibition, and makes it desirable that the Government should forbid, if it can not prevent, their being supplied with arms and ammunition to be used for their mutual destruction.¹¹⁵

The Board noted that there was opposition to the restrictions on the sale of arms and ammunition among Māori and that there was a suspicion that the restrictions were aimed at “depriving them of the means of defence in the event of hostilities taking place between the races.” However, the report asserted that the restrictions were ultimately seen as justified:

That such a precaution is perfectly fair and justifiable is, however, fully admitted by them; and while the acts of the Government are such as to keep up a general feeling of confidence in the native mind, no ill effects are likely to result from the carrying out of the law.¹¹⁶

The Board of Inquiry also offered some key recommendations for changes to Native policy. The board recommended that the restrictions upon the sale of arms and ammunition should be more strictly enforced. However it also concluded:

...the prohibition should not be so strictly interpreted as to preclude the Chiefs and respectable men of the loyal tribes from purchasing powder and shot in small quantities, for sporting purposes, upon proper application to the authorities for permission to do so, on the same terms as Europeans.

Ultimately the Board believed that the Government had the right to restrict the supply of alcohol and arms to Māori. It asserted that the Māori population did not question this right:

It is believed that the natives generally do not look upon either of these laws as oppressive or unjust, nor that they are disposed to question the right of the Government to lay such restrictions as it may think desirable upon the English people, and upon the commodities brought here by us; but with this right of control they also

¹¹⁵ Report of the Board of Inquiry on Native Matters, 9 July 1856, Encl. in No. 100, Browne to Labouchere 23 July 1856, *BPP* 1854-1860 [2719] Vol. XLVI, p.243 (IUP p. 517)

¹¹⁶ Report of the Board of Inquiry on Native Matters, 9 July 1856, Encl. in No. 100, Browne to Labouchere 23 July 1856, *BPP* 1854-1860 [2719] Vol. XLVI, p.243 (IUP p.517)

associate a responsibility resting with the Government, for whatever consequences may result to them from our occupation and colonization of the country.¹¹⁷

These assertions were bold, as no Māori witnesses appear to have been directly asked whether they believed that the government had the right to restrict the articles of trade, and the evidence presented indicates that some of the Māori witnesses did indeed question this assumed right. Belich argues that the main reason Māori wanted settlers in the first place was to have the benefit of trade.¹¹⁸ Of all the articles of trade brought by the settlers, the musket had always topped the list of the most desired items. Later, the 1860 Kohimarama conference would confirm that many Māori questioned the right of the government to restrict the sale of arms and ammunition to Māori.

The record of Māori opinion about the restrictions outside of that put before the Board of Inquiry is relatively sparse. However, where Māori opinion was recorded or noted, it was generally negative towards the restrictions. The issue of the repeal of the restrictions upon arms and spirits was proposed for discussion at a significant meeting at Taupo called by Te Heu Heu to discuss proposals for a new Māori parliament late in 1856.¹¹⁹ In February 1856, the Colonial Secretary, Andrew Sinclair, reported to Browne that “well disposed natives” living near Auckland had asked for arms and ammunition from the government to enable them to offer assistance in the upholding the rule of the authorities prior to the execution of Charles Marsden.¹²⁰

Mobilising the Settlers

If the arms restrictions had the aim of disarming, or at the very least limiting the supply of arms to Māori, the policy was the very opposite of that directed at the

¹¹⁷ *ibid*

¹¹⁸ James Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, Penguin: Auckland 1988, p. 19

¹¹⁹ District Commissioner Cooper to Native Secretary McLean 29 November 1856 Enclosure No. 1 in No. 116. Browne to Labouchere 17 December 1856 *BPP* 1854-1860 [2719] Vol. XLVI, pp 420-21 (IUP pp.694-95)

¹²⁰ Colonial Secretary Andrew Sinclair to Browne, 11 February 1856, *BPP* 1854-1860 [2719] Vol. XLVI, p. 182 (IUP p.456)

settlers which amounted to a conscious effort to arm the settler population. Despite the imposition of new regulations aimed at restricting the importation of arms and ammunition when the tensions in Taranaki were escalating, the right of settlers to carry and possess arms for their own defence was not restricted. Not only did the government allow the settlers to relatively freely acquire and possess arms for their own defence, it also made provision to provide settlers with government owned firearms and sought to compel them to mobilise with arms.

When Nugent investigated the outbreak of the Puketapu conflict, he reported a serious lack of Government arms available to the New Plymouth settlers, with 90 old flintlocks, 33 percussion carbines and only 3 rifles. Fifty pikes supplemented the paltry arsenal. Nugent believed that there were about 350 settlers capable of bearing arms, however “the greater part of whom are utterly unacquainted with the use of arms.”¹²¹ On 30 January 1855, the Executive Council resolved that the Resident Magistrate in New Plymouth be authorised to erect a stockade and to prepare the available firearms in the settlement with an eye to mobilising those settlers best able to use them. The Council recommended that 30-40 police armed with double-barrelled carbines, bayonets and revolvers could form a core around which armed settlers could give useful support.¹²²

On 21 April 1855, the Acting Governor called for settlers from New Plymouth to form volunteer corps to support the troops.¹²³ In October 1855, the New Plymouth settlers were mobilised under a proclamation made under the authority of the Militia Ordinance of 1845, which provided for the arming and

¹²¹ Native Secretary C.L. Nugent to Colonial Secretary 25 January 1855. Enclosure No. 1 in No. 43. Wynyard to Sir George Grey. 5 February 1855. *BPP*. 10 p.73 (IUP p. 311).

¹²² Minutes of the Executive Council. 30 January 1855. EC 1/1 pp.344-346. The Executive Council reasoned that if men already familiar with the use of arms were selected it would be possible to avoid the open training with arms. It was feared that if the settlers trained openly it might antagonise the local Māori.

¹²³ Notice Superintendent's Office, 21 April 1855. *Taranaki Provincial Gazette*, 21 April 1855. Vol. III No. 7 . p.143.

organisation of the settler population.¹²⁴ Māori were specifically exempted from the provisions of that ordinance. This was implied in the preamble of the ordinance:

Whereas it is expedient that the European population of New Zealand should be trained in the use of arms, so as to form an effective military force for the defence of the lives and property of Her Majesty's subjects within the colony:¹²⁵

It was only considered “expedient” that the European population of New Zealand should be trained in the use of arms. The section of the ordinance, which set out who was liable to serve in the militia was equally clear:

Every man except hereinafter excepted between the ages of eighteen years and sixty years, being a British subject and not an aboriginal native, who shall reside within the Colony, shall be liable to serve in such Militia: Provided that Judges of the Supreme Court, all Members of the Legislative Council, all Clergymen Priests Ministers of Religion and Catechists, shall be exempt from serving in any such Militia.¹²⁶

Māori could be mobilised and armed under different terms to that of the settler population. The Native Force Ordinance of 1847 provided the basis for a Native force, which would be subject to the Mutiny Act.¹²⁷ The members of a Native force would be recruited on quite different terms to the settlers. Unlike the settlers, the Māori communities were not subject to any law to compel mobilisation. The Native Force Ordinance was not intended as a measure to arm the whole, or a large section of the Māori population, but rather it offered a framework to allow for the organisation of Māori specifically allied to the Government.

Conflict between the rival Māori factions in Taranaki prompted an examination of the preparedness of the settler population. The situation on the ground was

¹²⁴ Proclamation of the Governor 29 October 1855, *Taranaki Provincial Gazette*, 3 November 1855. Vol. III No. 19. p.170.

¹²⁵ Preamble, Militia Ordinance, “An Ordinance for raising a Militia within the Colony”, Session V. No. I, 1845, *New Zealand Statutes 1841-1853*. pp.186-189.

¹²⁶ *ibid.* p. 187.

¹²⁷ Native Force Ordinance 1847 “An Ordinance to provide for the Government and Discipline of Troops to be raised in the Colony of New Zealand” Session VIII No. I. *New Zealand Statutes 1841-1853*. p.246.

the very opposite of that intended by the Government. Clearly in the minds of those who held authority, armed Māori were considered undesirable, while armed settlers were considered something desirable. However the evidence indicated that the settlers were relatively poorly armed.¹²⁸ On the other hand, the laws, which were supposed to prevent the sale of arms and ammunition, were being evaded and the Māori population was on the whole very well armed. Browne believed that the European population of New Plymouth and Auckland numbered sixteen thousand, of which around four thousand might be capable of bearing arms. In contrast, he believed that the North Island Māori population numbered seventy seven thousand, of which forty nine thousand might be able to bear arms.¹²⁹ Although not spelt out, clearly this estimate must have included a large number of Māori women, and clearly assumed a much higher and probably greatly exaggerated potential mobilisation rate for the Māori population. Browne appeared pessimistic that a settler militia could offer credible opposition to an attacking Māori force. He repeated this view in September 1856, stating:

I do not, however, hesitate to say that Auckland exists on the forbearance of a race of savages, and I consider this a perilous state. The natives are all, or nearly all, armed. I doubt if one European in twenty has a gun or knows the use of it.¹³⁰

¹²⁸ See Native Secretary C.L. Nugent to Colonial Secretary 25 January 1855. Enclosure No. 1 in No. 43. Wynyard to Sir George Grey. 5 February 1855. *BPP*. 10 p.73 (IUP p. 311); Governor Gore Browne Minute 25 September 1856. Enclosure 4 in No. 109. Browne to Labouchere 18 October 1856 *BPP* 1854-1860 [2719] Vol. XLVI, p.401 (IUP p.675); Minutes of the Executive Council 2 December 1857 EC 1/2 p. 158.

¹²⁹ Browne to Labouchere, 15 April 1856, No. 84, *BPP* 1854-1860 [2719] Vol. XLVI p. 195 (IUP p.469) Browne later revised his estimate of the number of Māori capable of bearing arms from 49,000 to 30,000. A.J. Harrop, *England and the Maori Wars*, New Zealand News: London 1937. p.35.

¹³⁰ Governor Browne Minute 25 September 1856. Enclosure 4 in No. 109. Browne to Labouchere 18 October 1856 *BPP* 1854-1860 [2719] Vol. XLVI, p.401 (IUP p.675). Browne recommended the mobilisation of the militia and building protections from the sea, in case the American whalers should side with the Māori. McLean voiced similar concerns: "should any case occur of unprovoked violence on the part of the Europeans, resulting in the death or severe injury of one or more natives, it would no doubt be resented in such a manner as would probably bring on a collision which might end in the destruction of the town of Auckland, or of any other settlement in the vicinity of a population so numerous, high-spirited and jealous as the aborigines of New Zealand." Chief Commissioner Donald McLean Memorandum. 27 September 1856. Enclosure No. 3 in No. 109. Browne to Labouchere 18 October 1856 *BPP* 1854-1860 [2719] Vol. XLVI, p.401 (IUP p.675)

Clearly Browne was not happy that Māori forbearance was part of the equation. His attitude reflects the growing divide between the future expectations of the settlers and Māori. Māori expected to remain in the vicinity of the settlements in order to trade with them. This had been the main reason they had wanted the settlements in the first place. The settlers on the other hand, were uneasy at the fact that ongoing Māori consent and forbearance was required. The fact that the Māori level of firearms ownership was so much higher than that of the settlers was a key element in this fear.

Under the regulations, settlers were allowed to possess arms for their own defence as a matter of right. Arms policy had a clear element of racially based discrimination. What motivated this disparity? Were the restrictions primarily to protect the Māori population from itself, or to protect the settlers from the Māori? The arms restrictions were sometimes linked to the restrictions on alcohol. Clearly such restrictions were primarily based upon a belief that these restrictions were for the benefit of Māori. This conclusion was clearly that taken by the Board of Inquiry on Native Affairs:

There cannot be anything more desirable than to bring, to two races under exactly similar laws, but it is not altogether practicable at present, every step of the Government, however, should laws this ultimate object in view. At present their governancy and guidance must partake of the parental authority, rather than as being based entirely upon a strict adherence to the requirements of the British laws, the nice distinctions of which they do not at present comprehend.¹³¹

The restrictions upon arms and alcohol illustrated a fundamental difference in the intended outcomes for settler and Māori. The settlers were to have a part to play in the new Government, through exercising the right to elect representatives and fulfilling the duty of supporting the collective defence of the community. Government was in theory to operate in the interests of the Māori. However Māori were not to participate in the new Government, having neither the rights, nor the obligations of the settlers.

¹³¹ Report of the Board of Inquiry on Native Matters, *BPP* 1854-1860 [2719] Vol. XLVI, p. 245.

By the end of 1856 it had been demonstrated that the restrictions upon the sale of arms and ammunition had been ineffective. The new Governor had quickly reached the conclusion that the restrictions were ineffective and unpopular with Māori. The restrictions, already marginalized, were to be further undermined by a decision made by the Canterbury Province in 1857.

Chapter Two: The 1857 proclamation and its aftermath

Governor Browne had quickly reached the conclusion that the laws restricting the sale of arms and ammunition to Māori were ineffective. Although, he may have been tempted to relax the restrictions, he did not take this course until the restrictions were fatally undermined by a decision made unilaterally by the Canterbury Province. The ultimate motivation for the restrictions had always been the aim of preventing the supply of arms and ammunition to Māori. Armed Māori were a real threat to the North Island settlements. These fears were not shared by the South Island settlements, where the Māori population was small and where the Canterbury settlers considered the arms restrictions a nuisance. The provincial government system allowed the Canterbury Provincial Council to decide for itself the merits of the arms restrictions, and in 1857 the Council decided to effectively open the door on ammunition sales within the province. This decision would prompt the Governor and his ministers to allow a similar relaxation throughout the Colony.

The immediate response to the outbreak of hostilities in Taranaki was to investigate to see whether the restrictions on the sale or importation of arms and ammunition could be more vigorously enforced. Both Wynyard and Native Secretary Nugent concluded that the restrictions were being evaded. Evidence presented to the Board of Inquiry into Native Affairs indicated that the firearms restrictions had not resulted in a disarmed Māori population, and in fact that the Māori population had a very high level of firearms ownership. Wynyard's proclamation of July 1855 re-emphasised the need for tight regulation of the importation of arms and ammunition. However he was just the interim head, and his successor Thomas Gore Browne was relatively unimpressed by the effectiveness of the restrictions:

The law which prohibits the sale of arms, gunpowder, and spirits appears to have been so entirely evaded that they are generally well armed, which is not the case with Europeans.¹³²

Governor Browne was sceptical of the effectiveness and even the expediency of the law. He also noted that the Māori population was generally unhappy about the restrictions.¹³³

Premier Edward Stafford argued for more vigorous policing of the restrictions in a memorandum of 9 February 1857. He reported that; “there is every reason to believe” that a large quantity of arms and ammunition had recently been landed near Auckland.¹³⁴ He pointed out that the government had no power to intervene and he asked that “one or two” steam warships be stationed in the Colony to prevent future occurrences. Stafford pointed out the difficulty of policing the long coastline of New Zealand and the difficulty in trying to prevent the trade in arms and ammunition. Besides the danger of a well-armed Māori population, Stafford argued that the evasion of the law was undermining any respect for British authority:

...not only are the Natives supplied with articles hurtful to themselves; but they are at the same time encouraged, by the impunity and regularity with which traffic can at present be maintained, to set at defiance laws which they are led to believe are unjust towards them, and which they daily perceive Her Majesty Government is powerless to enforce.¹³⁵

He believed that the traders were encouraging the Māori to distrust the government, and “instil into their minds the belief that the establishment of Her Majesty’s Government is oppressive to their liberties, and in opposition to their interests.” Stafford argued for the control of the supply of arms and ammunition in the interests of both settlers and Māori. He also argued that the withdrawal of the ships, which could be used to police the ordinances, undermined the authority of the government and increased the difficulty of

¹³² Browne to Sir William Molesworth 4 March 1856, No. 82 *BPP* 1854-1860 [2719] Vol. XLVI, p.192 (IUP p.466)

¹³³ Browne to Sir William Molesworth 14 February 1856, No. 80, *BPP* 1854-1860 [2719] Vol. XLVI, p. 178 (IUP p.452)

¹³⁴ Stafford Memorandum 9 February 1857. *AJHR* 1858, A-3A p.2.

governing the Colony.¹³⁶ His stated belief that the trade could be stopped with one or two steamers appears dubious. Although steamers would have perhaps dented any idea of invulnerability for the traders, it is clear that one or even two steamers could not have hoped to effectively police many times that number of visiting ships over such a very large coastline. However, it was equally true that without ships to police the coast, the Government could literally do nothing.

In a memorandum of 6 May 1857, Stafford complained about the threatened withdrawal of troops and pointed to the risks faced by the young colony:

...it may be asked, if the Government had been deprived of the prestige of its physical power, what would have been the result of the murder committed by Marsden on the Native woman Kaerara; of the outrages perpetrated by Natives on the family and property of the settler Mr. Sutton; of the stealing of two tons of gunpowder from the Island of Kawau; of the Native disturbance at New Plymouth; and of many other occurrences of minor importance?¹³⁷

Clearly he was concerned at the relative power of the settlers compared to the Māori population. The basis of this fear was the military power of Māori communities.

Partial relaxation of the restrictions

In 1857 a change in the regulations governing the sale of arms and ammunition was announced. The new regulations were in effect a partial relaxation of the earlier restrictions, and would eventually be a cause of considerable controversy. The new regulations would dominate the arms control debate for years to come. A key element in the decision to partially relax the restrictions on arms and ammunition in 1857 was the provincial government system then in place. Enabling acts divested certain powers from the Central Government and placed these powers in the hands of the Provincial Governments. These enabling acts were enacted at the provincial level so the powers held by

¹³⁵ *ibid.*

¹³⁶ *ibid.*

provincial governments varied from province to province. The Auckland Province for instance had control over the Gunpowder Ordinance, while the Canterbury Province had power over the Arms Importation Ordinance and Arms Ordinance as well as the Gunpowder Ordinance. Browne criticised the powers held by the provincial authorities and sent copies of the enabling acts from the Canterbury, Nelson and Auckland Provinces to Sir William Molesworth to illustrate his point.¹³⁸

The arms restrictions announced by the Canterbury province on 10 September 1855, were a local measure made under the authority of the Empowering Ordinance. The proclamation cancelled all current licences to sell, import, manufacture or repair arms, ammunition or other warlike stores, and provided a new regime for licences. Applications were to be made to the Resident Magistrate and licences were to be issued by the Superintendent, upon the recommendation of the Resident Magistrate. The Canterbury regulations allowed for the licensing of the sale of arms or ammunition and the restriction of the quantity sold:

(6). It shall not be lawful for any person to sell any arms, gunpowder, or other warlike stores, unless he shall possess a license under the hand of the Superintendent authorizing him to sell arms and ammunition, nor unless the person purchasing any such arms or ammunition, shall produce a license to purchase, at Lyttelton, Akaroa, and Kaiapoi from the Resident Magistrates of those places respectively, and at Christchurch from the Provincial Secretary.

(7). Licenses authorizing the sale, making and repairing of arms, and licenses to sell ammunition, will be issued for three months, on condition that not more than one pound weight of gunpowder, five hundred percussion caps, and ten pounds weight of shot, be sold to any one person during that period; and that none of these articles be sold an any aboriginal native.¹³⁹

¹³⁷ Memorandum by Edward Stafford 6 May 1857. *AJHR* 1858 A-3, p.3.

¹³⁸ Transfer of Powers Act (Province of Auckland) Session I No. 8. 1854. Encl. No. 1 in No. 81 Empowering Ordinance (Province of Canterbury) Session II No.2. 1854. Encl. No. 2 in No. 81 Empowering Act (Province of Nelson) Session 1 No. 2. 1854 Encl. No. 3 in No. 81, Browne to Sir William Molesworth 14 February 1856. *BPP* 1854-1860 [2719] Vol. XLVI, pp. 188-191 (IUP pp.462-465) The 1853 Canterbury Empowering Ordinance had been disallowed but was replaced by another the following year. See Canterbury Ordinances 1853-1864. See also proclamation *Canterbury Provincial Gazette* 21 March 1854.

¹³⁹ Proclamation of the Superintendent, Province of Canterbury, *Canterbury Provincial Gazette*, 10 September 1855. Vol. II. 11 September 1855. No. XIX. p.113.

Importers were not to land more than 50 pounds weight of gunpowder unless it was placed in a public magazine, and those who were not dealers were not to have in their possession more than 15 pounds weight of gunpowder. The restrictions were not to prevent “any person coming into the Colony, from landing one gun and one brace of pistols for purposes of sporting or self-defence”, nor were the restrictions to apply to armed forces.

The Canterbury Superintendent, James Fitzgerald, announced the new regulations only a few months after Wynyard’s proclamation of 25 July 1855, which was a colony-wide announcement urging greater vigilance and the enforcement of the arms controls and a proclamation suspending the issuing of licences to import arms and ammunition “except under very special circumstances”.¹⁴⁰ The regulations were a response to these strict controls and effectively sidestepped the intentions of Wynyard’s proclamation, by allowing for the issuing of licences under locally administered regulations.

On 17 February 1857, the provincial regulations were relaxed.¹⁴¹ Clauses 6 and 7 of the regulations proclaimed on 10 September 1855 were removed and instead licences would be issued for the period of one year under the following conditions:

...every person holding a license for the sale of ammunition resident with the towns of Christchurch, Lyttelton, Akaroa, and Kaiapoi shall make a return on the first day of every week to be left with the Clerk to the Resident Magistrate’s Court, setting forth the quantity of gunpowder then lying in his store, and every such person failing to make such return shall forfeit his license.¹⁴²

The restrictions over the retail sale of gunpowder had effectively been removed and would be purchasers could buy as much as the limit set by the Gunpowder

¹⁴⁰ Notice, Colonial Secretary’s Office, 25 July 1854, *New Zealand Gazette*, 31 July 1855, Vol. III, No. 17 p.89 Proclamation of the Superintendent, Province of Canterbury, 18 June 1856. On 18 June 1856, the regulations were modified to the extent, that during the absence of the Superintendent, the Provincial Secretary was authorised to act in his place. *Canterbury Provincial Gazette*. Vol. III. June 21 1856. No. XIII. pp. 50-51.

¹⁴¹ Proclamation of the Superintendent, Province of Canterbury, 17 Feb 1857. *Canterbury Provincial Gazette*. Vol. IV 23. February 1857. No. V. p.22.

¹⁴² Ibid.

Ordinance allowed. Most importantly, the removal of section 7 lifted the prohibition on selling to Māori. Although only a small number of Māori lived in this region, it is nevertheless significant, given that the purpose of the colonial arms restrictions had been to limit the sale of arms and ammunition to Māori. The removal of Section 7 meant that there was now no legal impediment stopping Canterbury Māori from purchasing gunpowder.

Evidence for the reasoning behind the Canterbury Province's policy on arms was revealed over a year later when the matter was considered by the Sale of Arms Select Committee.¹⁴³ Resident Magistrate John Hall, who was authorised to grant licences for the Christchurch area, was interviewed by Select Committee and argued that there were only around 600 Māori (or less than one percent of the total Māori population) in the Province in 1858 and this Māori population offered little threat:

I do not believe that the slightest danger to the Peace of the Province would result from the Natives in the Province of Canterbury being allowed to purchase arms and ammunition; nor do I believe that such a permission in the Province of Canterbury would have any sensible effect upon Natives in other Provinces.¹⁴⁴

Resident Magistrate Hall said that there was very little communication between Canterbury Māori and Māori outside of the province, and even then only as far as Kaikoura and Otago. He believed that the restrictions were a considerable source of annoyance for the settlers and interfered in fair trade.¹⁴⁵ Hall believed that some settlers in his area were evading the regulations.

Some indication of the enormous difference between the arms issues in the Northern North Island and those in the South may be seen in the sales figures

¹⁴³ John Hall was authorised to grant licenses by the Proclamation of the Governor, 25 June 1857, *Canterbury Provincial Gazette* 5 September 1857 Vol. IV No.XXIII. pp. 115-117.

¹⁴⁴ Evidence of John Hall Resident Magistrate for the Province of Canterbury. LE 1 1858/8. Hall said that most of the Māori population resided at Kaiapoi, near Timaru and on Banks Peninsula. John Hall gave similar evidence to the House of Representatives as MP for Christchurch see *NZPD* 1 June 1858 p.477. Hall described the restrictions as an "intolerable nuisance" to the settlers in the South Island.

¹⁴⁵ Hall believed there was little or no communication with the Nelson or Wellington Māori. Le 1 1858/8. See also *NZPD* 1 June 1858. p. 477

for gunpowder. After the partial relaxation of the restrictions, from 25 June 1857 to 31 March 1858, 7,848 lbs of gunpowder were sold to Māori in the North Island. For the South Island, the total was a single pound sold at Lyttelton; the only officially recorded sale to a Māori in the whole of the Province of Canterbury.¹⁴⁶ The issue of the sale of arms and ammunition to Māori in the Canterbury Province, where Māori were only a small minority of the total population, was a world away from the situation in the North Island.

By 1857, the new Governor had already repeatedly stated his doubts about the policy of the strict restriction of sales of arms and ammunition to Māori. However, it was the decision by the Canterbury Province to relax the restrictions which forced the Governor's hand. Browne wrote to Gairdner reporting the decision made by the Canterbury Province would force a change in the colonial arms restrictions:

Sir George Grey took great pains to prevent the Maories from getting arms & ammunition & we have been continuing his policy. I doubt very much whether it was wise or successful, but the Super[intenden]t of Canterbury settles the question by this proclamation without consulting anyone. Arms and ammunition will now be imported into Canterbury and sent over to this Island in boats unless we also take off the restrictions...¹⁴⁷

Browne blamed the situation upon the provincial system, which had allowed the Canterbury Superintendent to act unilaterally. In April 1857, Browne proposed a relaxation of the restrictions. After suggesting that Europeans living in Māori areas (the so-called Pakeha-Māori), ought to be licensed, Browne suggested a relaxation of the arms restrictions to allow the sale of sporting ammunition to Māori “by licensed persons, who should be required to make a return of the quantities sold and the persons purchasing it, with their

¹⁴⁶ Return showing the quantity of Ammunition sold in New Zealand between the 25th June 1857 and 31st March 1858, Return to an Order of the Honorable the House of Representatives. No. 77. Le 1 1858/231. However some caution is required in interpreting the sales figures for the South Island, there being a considerable divergence with the total sales figures compared to the North Island.

¹⁴⁷ Browne to Gairdner 28 March 1857. Sir Thomas Gore Browne Letterbook 1855-1862, ATL qMS-0284 p.79

place of residence.” Further to this, the Governor suggested the enrolment of a “Native militia” which was not to be mobilised:

...unless unforeseen circumstances should arise, but framed on the model of our own Militia, all composing it being Natives with exception of the Lieutenant-Colonel. Men Belonging to the Militia might be permitted to have registered arms of whatever description they like.¹⁴⁸

Browne’s suggestions were remarkable, not only suggesting that Māori might be allowed sporting ammunition, but also, for those enrolled in the militia, the latest in military firearms, with only the provision of registration of those arms to keep some degree of control for the Government. Stafford, on behalf of the Ministers replied, stating, that they agreed with the principle of equality before the law, though they opposed the formation of a Native Constabulary. Stafford deferred any comment on the issue of the supply of arms and ammunition and the formation of a “Native Militia” to a promised separate memorandum.¹⁴⁹

Browne then addressed the Executive Council on the subject of the sale of arms and ammunition:

Considering that the sale of arms and gunpowder has been rendered legal in the province of Canterbury by a proclamation of the Superintendent without consultation with the Governor or his advisors, the Governor wishes the advice of the Executive Council as to whether it would not be wise to cancel the restrictions in the arms and gunpowder ordinances which for the future it will be impossible to enforce.¹⁵⁰

The Executive Council considered the Governor's memorandum on 10 June. The Council agreed that the regulations encouraged contempt for the law and were impossible to enforce. It was therefore agreed that a proclamation allowing the relaxation of the sale of shot and gunpowder for sporting use

¹⁴⁸ Browne Memorandum by the Governor. 28 April 1857, *AJHR* 1860 F-3. pp. 113-114. Browne suggested that licenses for Europeans living in Māori areas should be required subject to renewal every two years.

¹⁴⁹ Minute by Ministers. Encl. 5 in No.1. 6 May 1857. *AJHR* 1860 F-3. pp. 114-117.

¹⁵⁰ Memorandum for the Executive Council Governor Browne. No date. Stafford Papers MS 28 Folder 2

should be prepared “for the further consideration of the council.”¹⁵¹ This proclamation was duly laid before the Executive Council on 24 June when it was decided that it would be approved and issued.¹⁵²

The proclamation of 25 June 1857 forbade the importation of arms ammunition or other warlike stores except where a licence for that purpose had first been obtained. Those who wished to import arms had to first obtain a licence and pay a fee of 2s 6d. The importation of arms was to be subject to any terms or conditions put on the license. The proclamation gave authority to issue a “general license” for the fee of £2. The holder of a general licence could sell gunpowder, shot or caps (but not arms) relatively free from restriction. Those issued with a general licence were to provide quarterly returns to the issuer of the licences of the district of all gunpowder, shot or caps sold. Individuals authorised to issue a “general license” were also authorised to issue a “special license” which authorised “one importation, landing, sale, or other disposal of gunpowder, shot or caps to be particularly described in every such license.” A fee of five shillings was charged for the special licence. The “general license” was intended for dealers and importers, the “special license” was for the use of private individuals.¹⁵³

The right of new settlers to possess firearms for their own defence was again expressly recognised in the regulations:

Provided always, that nothing herein contained shall prevent any person coming into the Colony from landing such arms and ammunition as he may carry for personal defence, or for the purposes of sporting...¹⁵⁴

The proclamation also stipulated that anyone wanting to transport more than two pounds weight of arms, ammunition or other warlike stores within the

¹⁵¹ Answer to the Governor's Memorandum, Minutes of the Executive Council, 10 June 1857, EC 1/2 pp. 144-145.

¹⁵² Minutes of the Executive Council 24 June 1857 EC 1/2 p.146.

¹⁵³ Proclamation of the Governor 25 June 1857, *New Zealand Gazette* 26 June 1857. No. 17 pp. 99-100

¹⁵⁴ *ibid.*

colony must first obtain a licence under the Arms Ordinance 1846 from a Justice of the Peace. It reiterated that licences under the Arms Ordinance 1846 were still required to repair or make arms, ammunition or other warlike stores. Thirteen Licensing Officers authorised to grant licences were published on 14 July 1857.¹⁵⁵ Another ten were announced in the *Gazette* of 27 July 1857.¹⁵⁶

The introduction of the new regulations was a surprise to some settlers. On 8 August 1857, a Mr Jenkins, who had been licensed to sell arms and ammunition on 3 June 1857, wrote to the J.P. Major Speedy of Waiuku and to the Colonial Secretary. He had found that settlers in his area were openly selling arms and ammunition to Māori. These settlers claimed that there were new regulations governing the sale of arms and ammunition. Mr Jenkins wanted to know what was going on and what the new regulations were. Speedy was equally at a loss to know what was going on and so he too wrote to the Colonial Secretary.¹⁵⁷ Both Jenkins and Speedy were directed to the proclamation dated 26 June 1857. Major Speedy was informed that all licences issued prior to this date were now void.¹⁵⁸

Resident Magistrate Francis Fenton reported the arrival of the news of the relaxation in the Waikato. He found that the Waikato Māori in his area were keen to obtain arms and ammunition:

Heard the Maories talking about the relaxation of the powder laws. Says one "It's only for us I suppose: King's people wont get any." "Of course," said the other, "do you think the pakeha are fools?"¹⁵⁹

¹⁵⁵ Notice, Colonial Secretary's Office 14 July 1857. *New Zealand Gazette* 14 July 1857 No. 18. p.108. The Licensing Officers were for New Plymouth, Nelson, Collingwood, Wairau, Wellington, Whanganui, Napier, Hamilton, Lyttelton, Christchurch, Akaroa, Dunedin and Invercargill. The appointment of each officer was to take effect when the proclamation of 25 June 1857 came into operation within each of the provinces.

¹⁵⁶ Notice, Colonial Secretary's Office 24 July 1857. *New Zealand Gazette* 27 July 1857 No.19 p.113. The Licensing Officers were for Auckland, Wangarie [Whangarei], Bay of Islands, Mongonui, Onehunga, Howick, Whaingaroa, Kawhia, Waikato District (F. Fenton) and Turanga [Tauranga]. These ten appointments were to take effect on 1 August 1857.

¹⁵⁷ Major Speedy to the Colonial Secretary, 12 August 1857. IA 1 1857/1226, Jenkins to Colonial Secretary 8 August 1857 IA 1 1857/1204.

¹⁵⁸ Minutes on Major Speedy to the Colonial Secretary, 12 August 1857. IA 1 1857/1226.

¹⁵⁹ Fenton Journal. 8 August 1857. *AJHR*, 1860, E-1C. p.22

Fenton added his opinion that it would be unwise to draw a distinction between those who were giving their allegiance to the Queen or the Māori King. He soon after reported the arrival of papers (evidently sent by the Government) concerning the issue of gunpowder:

Te Kereihi says that one Maori should be appoint[e]d in each of the *loyal* districts, to sell powder to persons whom he knew would not make bad use of it. I told him that anything which looked like a practical exclusion of the king party from the privilege would excite bitter feelings of suspicion and jealousy against him and the loyal natives. He said that would exist in any case, and that it was folly to give them power to carry their threats into execution. When I told him that they could get as much as they liked by secret purchase, he said “Yes, that is true.”¹⁶⁰

Fenton received a letter asking that Wiremu Te Wheoro be allowed to purchase gunpowder, shot and percussion caps for the Māori in his area.¹⁶¹ However, he told Te Wheoro that he could not give an answer to the proposal.¹⁶² The suggestion that the Kingitanga were organising themselves as a rival authority was a cause of concern. Francis Fenton reported:

I heard some people saying to-day that the king party were organizing policemen and soldiers to repress disorder, but the conversation dropped when they saw I was listening, and I asked no questions.¹⁶³

In November of 1857 Browne reported a conversation with the “advisor of the Chief Potatau”, who had relayed the King’s desire that the Māori should adopt the laws and customs of the English as much as is possible:

On the other hand, he complained that our laws were not suited to them at present, that the English could not enforce them in Native districts, and that the Natives wanted some authority to put stop to wars and violence among themselves. He complained much that, contrary to the earnest wish of all respectable Maories, the English insisted on selling spirituous liquors, as well as guns and gunpowder...¹⁶⁴

¹⁶⁰ Italics in original. Fenton Journal. 24 August 1857. *AJHR*, 1860, E-1C. p.29.

¹⁶¹ The council at Paetai and from Kereihi and Paora to the Governor and Fenton, 19 August 1857, *AJHR* 1860 E-1C.

¹⁶² Fenton Journal. 20 August 1857. *AJHR*, 1860, E-1C. p. 28.

¹⁶³ Fenton Journal. March 8 1858. *AJHR*, 1860, E-1C. p. 33.

¹⁶⁴ Browne to Labouchere, 9 November 1857, No. 95. *AJHR* 1860 F-3. pp. 126-127. Browne was referring to Tamati Ngapora.

As Parliament did not sit through the whole of 1857, the most obvious venue for debate of the partial relaxation was not available. However, the measure did not escape some notable opposition. Prominent member of the Executive Council and Commander of the Forces, Colonel Robert Wynyard, lost no time in voicing his opinion, laying before the Executive Council a Memorandum outlining his views on the subject:

As the system of smuggling gunpowder to the Maoris is so extensively carried on, through the connivance and instrumentality of white people who can set the existing laws at defiance with impunity, relaxing the Ordinance so far as to sanction the general *sale of powder for sporting purposes*, under well considered regulations, *may* be advisable, if only as a means of checking the underhand traffic now carrying on.

I do not, however, think it would be advisable at present to disturb the arrangements for the *sale or repair of arms*, being satisfied the *Natives would lose no time in replacing the inefficient arms in possession by the very best* money could produce in the market; while the Europeans, far inferior in numbers, would remain helplessly careless and ignorant of any and every means for their defence, relying, as they ever have done, on the Government for protection.¹⁶⁵

The Executive discussed Wynyard's letter but postponed further discussion. However, the discussion, if it did resume, was not recorded.

Wynyard wrote to the Adjutant-General Horse Guards on 4 September, enclosing a copy of the memorandum he had laid before the Executive Council and reporting his opposition to the relaxation. He argued that the measure “opens the door” on the sales of arms and ammunition to Māori, “of which I cannot but feel they are too well supplied already”. Wynyard expressed disapproval of the decision:

I beg to disclaim all idea of questioning, in any way whatever, the wisdom of the course pursued on this occasion by his Excellency's' Advisors. All I wish is, to let it be known to my own immediate superiors, should any untoward event take place, that

¹⁶⁵ Italics in original. Minutes of the Executive Council 2 December 1857 EC 1/2 p. 158. According to the record, Colonel Robert Wynyard was present at the Executive Council when the issue of the relaxation was decided. EC 1/2 pp. 144-146. However according to Veritas, Wynyard obtained leave to absent himself from the discussion. Veritas, *Origin of the New Zealand War; and Who are Responsible for the Payment of all Expences Arising Therefrom*. Strangeways and Walden: London. 1864 (ATL Pam 1864 VER 533a). No resumption of the discussion about the relaxation appears in the Minutes of the Executive Council prior to the departure of Wynyard from the colony.

the Proclamation was not in any way supported by me, either in my capacity of Commander of the forces, or as senior member of the Executive Council.¹⁶⁶

Wynyard wrote to the Governor on 26 November 1857 and repeated his concerns about the partial relaxation arguing:

...that the sale of arms and ammunition is now carried on to such an extent, that the Natives have other objects in view than merely sporting, or even the adjustment of internal disputes among themselves. Hardly a Native leaves town but he is supplied with a new single or double barrel gun. Powder is purchased, I am informed, not by the pound, but by the cask; and lead, for making bullets, has been bought up in equal quantities; besides which, the supply of arms furnished in the interior is enormous.

He then waited for an expected return of arms and ammunition sales in the *Gazette*. When this did not eventuate, he wrote to the Adjutant-General again and enclosed his letter to the Governor of 26 November 1857.¹⁶⁷

The Canterbury Province largely moved back into line with the rest of the Colony in December 1857. The Canterbury run-holders could buy the gunpowder they wanted under the newly relaxed regulations so the main motivation for a different regime had been removed. A proclamation of 29 December 1857 declared the previous proclamations to be void “except in so far as the same supersede any regulations previously in force”.¹⁶⁸ Instead it was announced that the proclamation of the Governor of 25 June 1857 had partly superseded the local regulations and would now govern the trade in arms and ammunition in the area. The making or repair of firearms, however, was to be governed by local regulations that stipulated yearly licensing. Persons so licensed could make or repair firearms for the settler population without restriction. However, they could not make or repair firearms for Māori without the express authorisation of a Resident Magistrate. Licensed gunsmiths were to provide quarterly returns of the arms repaired or made during the period. There was therefore still a departure from the rest of the colony in the area of repair of

¹⁶⁶ Wynyard to The Adjutant-General, Horse Guards, 4 September 1857, Encl. 1 in No. 29 G.Grey to Duke of Newcastle. 20 February 1862. *AJHR* 1862 E-No.1 p.62.

¹⁶⁷ Wynyard to The Adjutant-General, Horse Guards, 7 January 1858. Encl. 1 in No. 29 G.Grey to Duke of Newcastle. 20 February 1862. *AJHR* 1862 E-No.1 pp.62-63

¹⁶⁸ The previous proclamations were 10 September 1855, 18 June 1856 and 17 February 1857.

firearms, for the rest of the colony was to be still governed by the provisions stipulated under the Arms Ordinance.¹⁶⁹

Licensed firearms sales to Māori

Soon after the general relaxation, a circular from the Colonial Secretary's Office outlined how applications made by Māori for arms were to be processed. The instructions stipulated that all applications for fowling pieces were to be sent to the Colonial Treasurer and that applications for anything other than a fowling piece were to be definitely refused without approval by the Governor.¹⁷⁰ McLean also advised the officers of the Native Department that Māori would be allowed to purchase sporting firearms under certain conditions:

I see no objections to allowing the purchase of fowling pieces by the Natives, under the restrictions contained in the authorities, as at present issued to persons to grant licenses.

I believe that the time has now arrived for the removing, to some extent, the restrictions imposed by law upon the sale of firearms: care being of course taken to prevent the Natives of any district in a state of war from obtaining them.¹⁷¹

Nearly a year after this memorandum, McLean confirmed to the 1858 Sale of Arms Select Committee that Māori in the areas of Ahuriri and Taranaki had not been allowed to purchase arms, because of the feuding in those areas.¹⁷²

¹⁶⁹ Proclamation of the Superintendent, Province of Canterbury, 29 December 1857. Vol. IV. No. XLIV. pp. 197-199. See also Proclamation of the Governor 25 June 1857, *New Zealand Gazette* 26 June 1857. No. 17 p. 100. The colony wide proclamation stated that the Governor had no power to dispense with the provisions of the Arms Ordinance. It is interesting to note that the Superintendent of the Canterbury Province was not similarly bound.

¹⁷⁰ Circular Colonial Secretary's Office 14 August 1857. Enclosure in No. 65 Browne to Lytton. 22 August 1859. CO 209/151. NA Micro. Z-491

¹⁷¹ Donald McLean Memorandum 19 August 1857 MA 1 1859/22. A minute in the margin [by Clarke?] asked whether an absolute prohibition in Ahuriri and New Plymouth should remain in place. McLean replied: "certainly". A further minute [signed GB[?]: Gore Browne] urged that care should be taken to ensure that "too many guns are not sold" and those that were sold "do not get into unfriendly hands".

¹⁷² Evidence of Donald McLean, Le 1 1858/8. This was also confirmed by the "Return showing the quantity of Ammunition sold in New Zealand between the 25th June 1857 and 31st March 1858", Return to an Order of the Honorable the House of Representatives. No. 77. Le 1 1858/231. This shows that although a little over 200lbs of gunpowder was legally sold to

Initially, applications for firearms made by Māori were to be forwarded by Resident Magistrates of New Plymouth and Auckland to the Colonial Treasurer.¹⁷³ However, letters sent to the Resident Magistrates of New Plymouth and Auckland in October of 1857 informed them that, as a consequence of the “considerable inconvenience” of requiring the involvement of various departments when an application for the sale of fowling pieces to Māori had been made, in future all applications would be made directly to the Assistant Native Secretary (in Auckland the application could also be made to the Native Secretary).¹⁷⁴ By July 1858, the Colonial Treasurer was confirmed in the role of licensing sales in the Auckland area.¹⁷⁵

In December 1857, McLean reconsidered the policy. He stated that the restriction had been relaxed because of the widespread smuggling and the effect that this smuggling was having on Māori: “The clandestine manner in which their purchases were made tended to induce the habits of concealment and disregard of law, most injurious to the native character.”¹⁷⁶ McLean reported that the intention had been to allow the Māori to purchase moderate quantities of arms and ammunition for sporting purposes, but that after several months of trial “there appears reason to believe that the natives are availing themselves of the opportunity to supply themselves with arms and ammunition for offensive and defensive purposes.” He therefore recommended an immediate suspension of the sale of large quantities of ammunition by either revoking the June proclamation or by withholding licences to dealers. McLean further

Māori within the Province of New Plymouth, no firearms were legally sold to Māori within that province.

¹⁷³ Colonial Secretary to Resident Magistrate, New Plymouth 14 August 1857 IA 4/270 (Circular No. 98 1857/1105) p. 4; Colonial Secretary to Resident Magistrate, Auckland 12 August 1857, IA 4/270 (No. 97 1857/1214) p.3.

¹⁷⁴ Colonial Secretary to the Resident Magistrate Auckland 12 October 1857 IA 4/270 (No. 131) p.30; Colonial Secretary to the Resident Magistrate New Plymouth 12 October 1857, IA 4/270 (No. 134) p.33. Notice of the Treasury 12 October 1857. *New Zealand Gazette* 13 October 1857. No.27. p.161.

¹⁷⁵ On 5 July 1858 a circular notified Resident Magistrates in the Auckland Province that the power to issue licenses for the importation of arms into Auckland had been given solely to the Colonial Treasurer. 5 July 1858 IA 4/270 (No. 122) pp.49-50

¹⁷⁶ Native Secretary Donald McLean, Memorandum. 1 December 1857. MA 4/2 Outwards Letterbook. Micro 6541 Roll 1.

recommended that licences to sell 10lbs shot, 1lb sporting powder and 500 percussion caps “might be granted by special authority”. The Native Secretary stated that from 10 August to 1 December 1857, a total of 227 fowling pieces had been sold to Māori.¹⁷⁷ Applicants outside of Auckland and New Plymouth were notified on 30 December that applications for the sale of arms to Māori were to be made through the local Resident Magistrate.¹⁷⁸

After the partial relaxation of 1857, a licensing regime for limited sales of arms to Māori purchasers had been established, with the regulations administered by Resident Magistrates with officers from the Native Department and the Colonial Treasurer also playing a role. The terms under which Māori were allowed firearms were quite different to that offered to settlers. Māori were to be allowed to purchase firearms only for the purpose of sport and they could not purchase arms for their own defence. The suggestion that Māori might be buying arms for defensive purposes led to a tightening of the regulations.

Sale of Arms Select Committee

Although Parliament did not sit through the whole of 1857, concerns about the relaxation were eventually expressed in the House of Representatives. On 1 June 1858, Captain Haultain moved that a return of the quantity of arms and ammunition sold to Māori since the relaxation be laid before the House.¹⁷⁹ Stafford questioned the value of compiling the return, arguing that there was no information, which could be used to compare the sales before the relaxation, as the only people who could supply that information would face legal liability if they came forward. Haultain argued that, although the restrictions had been ineffective in some areas, he believed that it had been effective in others, especially in the interior of the colony. The MP for the pensioner settlements, John Williamson, argued that the relaxation had caused anxiety among the out

¹⁷⁷ Ibid.

¹⁷⁸ Notice of the Treasury 30 December 1857. *New Zealand Gazette* 31 December 1857. No.36. p.210. The notice read “all applications elsewhere than at Auckland”, so presumably included New Plymouth.

¹⁷⁹ “Sale of Arms to Natives” 1 June 1858. *NZPD*. pp.477-478.

settlers and had deprived these settlers of the hire of potential Māori labourers who were now instead, wandering about shooting ducks for sport.¹⁸⁰

On 8 June 1858, on a motion of Walter Brodie, the House of Representatives referred the issue of the sale of arms and ammunition to a select committee.¹⁸¹ The Select Committee investigation, which included replies to questionnaires and oral evidence given directly to the committee, reported its findings in July 1858. The informants who provided the evidence were less diverse than that who had informed the previous Board of Inquiry into Native Affairs. Most of the questionnaires were sent to missionaries and only two Māori were interviewed. In addition, some resident magistrates, a few old settlers and the Native Secretary were among the informants. Altogether a total of 37 informants gave evidence to the Select Committee. The 1858 Sale of Arms Select Committee offers an insight into how the restrictions affected the various Māori communities within the Colony, and an insight into the Māori response to the regulations.

The replies offered to the Select Committee were diverse in the extreme. In many cases, informants from similar parts of the colony contradicted each other on the same issue. However, a large proportion of the informants who answered the questions reported that the laws had been evaded prior to the partial relaxation. A reply made by several of the informants, including some of those who thought the partial relaxation unwise, was that if the government were to re-impose the restrictions without an obvious cause, it would cause suspicion among the Māori population. A common belief that Māori did not want to be discriminated against also was evident. If the aim of the restrictions was to disarm the Māori population, the key point of the evidence presented to the Select Committee was that the restrictions were on the whole ineffective. However, another key point was that there were regional variations in the effect

¹⁸⁰ *ibid.* p.478.

¹⁸¹ Motion of Walter Brodie, 8 June 1858. *NZPD* p. 497. Captain Haultain moved that papers of evidence on the subject should be laid upon the table of the House of Representatives on 1 June 1858. *NZPD.* p.474.

of the regulations. The evidence indicates that the arms restrictions were especially ineffective in the north of the North Island.

According to the Rev. R. Burrows, American whalers kept Northland Māori well supplied with arms and ammunition.¹⁸² McLean agreed with Burrows that this was the case in the Northern North Island, and that there was little the Government could do to stop the trade.¹⁸³ A Mr. Bolger who was the Hokianga Harbour Master believed that smuggling had been widespread before the restrictions had been lifted. One party of 'inland natives' had told him that they had obtained two tons of gunpowder by smuggling. Bolger reported that Māori from outside of the district had travelled to the area to purchase gunpowder, sometimes waiting weeks at a time to trade with the vessels. He did not state from how far these outsiders had travelled, though he indicated that he believed that the Māori in his area would not trade with the inland Māori living south of Auckland. He himself had seen between 14 and 15 boats following the ships in order to trade for gunpowder. Bolger held that the imposition of the restrictions by George Grey had completely stopped the trade in arms and ammunition by resident traders, who had once been the principal source of supply. However he argued that the trade had then shifted to the ships visiting the area. Bolger maintained that arms and ammunition remained the principal items of trade after the restrictions were imposed and that there was little demand for alcohol or tobacco. He reported that all but the poorest Māori owned firearms and that around £6 might be paid for a double-barrelled fowling piece and £4-5 per cask of gunpowder. Bolger believed that there was little that could be done to prevent the trade. Even if a steamship was available, it would have been difficult to stop the purchases because the deals were negotiated in port but the contraband was then landed outside of the ports.¹⁸⁴

¹⁸² Evidence of the Rev. R. Burrows, [Bay of Islands] Le 1 1858/8

¹⁸³ Evidence of Donald McLean, [Native Secretary] Le 1 1858/8

¹⁸⁴ Evidence of Mr. Bolger. [Harbour Master Hokianga] Le 1 1858/8 Bolger believed that all of the storekeepers traded in arms prior to the first restrictions in 1846.

William Williams agreed that the Māori in the Bay of Islands were well supplied with arms and ammunition, which they had obtained from whalers. He believed that the Māori were dissatisfied with the restrictions. A Mr Hobbs, who resided in the Hokianga, offered a contrary view. He believed that the Māori in his area were not well supplied and that the law restricting the repair of firearms had rendered many useless. However, he also stated that 90 stand of arms had arrived from Sydney around three months previously.¹⁸⁵ James Clendon believed that the Māori of his area, who were Ngā Puhī, were not well supplied. He understood that American whalers supplied the area, but that the main supply was from Auckland. He argued that the restrictions would not lead to the eventual disarming of the Māori because of smuggling and because of home manufacture of gunpowder.¹⁸⁶

The former British Resident James Busby, offered a rare eyewitness account of an illegal transaction. He recounted that he was returning to his house from Kororareka, when his attention was brought to three boats following a ship into the open water:

I took my spy glass and saw the ship heave to, far enough out to be beyond British jurisdiction. I watched the boats go alongside, and afterwards I returned. I watched the people land without disguise. I saw nothing at that time, but I learned afterwards that 19 Barrels of Gunpowder and 11 Guns were landed.¹⁸⁷

This incident illustrated the ultimate futility of the restrictions. Māori purchasers were able to conduct their transactions outside of the jurisdiction of the settler authorities. Even if the transactions could be detected, there was nothing the settler authorities could legally do to prevent the sales. Busby believed that the Māori in this area were well supplied: “The Natives will spare no price they can afford to get the best that can be had”. He reported that he knew of a skilled Māori gunsmith in his area who was constantly employed.

¹⁸⁵ Evidence of Mr. Hobbs. [Hokianga] Le 1 1858/8.

¹⁸⁶ Evidence of the James R. Clendon. [Resident Magistrate Russell] Le 1 1858/8

¹⁸⁷ Evidence of James Busby, [Bay of Islands] Le 1 1858/8. Busby stated that he had always considered Grey’s restrictions as an “exceedingly unwise step”.

Busby argued that no measure of the Government could prevent the trade in arms and ammunition.¹⁸⁸

The Rev. J. Whitely, from the Taranaki area, also reported that he knew of canoes meeting vessels outside of harbours.¹⁸⁹ Trading offshore entailed some risks. The Rev. Robert Burrows reported that he had heard of one incident where a Māori man asked an American whaler if he was prepared to sell arms and ammunition. The whaler replied that he was not willing to sell there and then, but if the purchaser followed him out to sea he would trade. When the purchaser returned home however, he found that the gunpowder he had purchased proved “to be of very little use”.

The Rev. J. Hamlin believed that the Ngāti Kahungunu in his area of Wairoa were only poorly supplied with arms and ammunition and were apprehensive of attack by other tribes. He reported that they wanted arms and ammunition to defend themselves, and he observed that Māori were buying arms “as fast as they could” after the partial relaxation. He maintained that they were unhappy about British authority and were overbearing towards local settlers. Hamlin heard some talk of acquiring arms and ammunition off the French and Americans. The main sources of supply were ship-wrecks, American whalers, resident traders (although uncommon in his area) and other Māori. He noted that Māori traders in arms and ammunition were charging little more than other traders.¹⁹⁰

James Preece of the Thames district, reported that the Māori in his area, Ngāti Whātua, had often applied for the relaxation of the restrictions and had regarded the restrictions as a grievance. He said that they were prepared to pay very high prices for arms and that the only effect of the restrictions had been to

¹⁸⁸ *ibid.*

¹⁸⁹ Evidence of the Rev. J. Whitely [Taranaki] Le 1 1858/8

¹⁹⁰ Evidence of the Rev. J. Hamlin [Wairoa] Le 1 1858/8. Hamlin believed that the restrictions might have eventually disarmed the Māori population and wanted them gradually re-imposed. The Rev. I. Wilson believed that re-imposition would create discontent at first but that there would be no long term serious consequences. Similar with C.O.Davis.

drive up prices. Preece reported that in his area, gunpowder was stored in raised houses. He also reported “There are usually one or more men in each tribe who repair arms: if they are unable so to do they take them to the County Blacksmiths to repair them.” Māori in his area were also manufacturing their own gunpowder. Preece said that he knew of 5 or 6 Māori gunpowder makers and that he had heard that the quality of this gunpowder was good. He reported that charcoal made from the roots and gum of the flax plant was being used. He told the Committee that supplies were obtained from whalers visiting the east coast and brought to the Thames area in Māori owned vessels captained by Europeans. He also believed that illegal sales occurred in Auckland and that this contraband was smuggled into the area. McCaskill, also from Thames, believed that local Māori were well supplied by both trading vessels and resident traders.¹⁹¹ He thought that the supply was equal to the demand, although the high prices demanded may have restricted the sales somewhat.

The Rev. I. Wilson reported that the Ngāti Awa and Ngāti Hauā in his area were only poorly supplied with arms and ammunition and, that prior to the partial relaxation, they had difficulty in obtaining supplies. He argued that the possession of arms fostered a sense of independence:

...nothing makes them so independent of British Authority as the possession of arms. They feel their independence as an armed people. There is [sic] nothing so much humiliates a native as to disarm him.¹⁹²

The Rev. Charles Baker maintained that American whalers and European smugglers were the main source of supply for the Ngāti Porou.¹⁹³ He noted that the Ngāti Porou were well supplied with arms and ammunition. Baker observed that the gunpowder was stored in “whatas”. The Rev. G. Kissling also thought that the Ngāti Porou in his area were well supplied with arms and

¹⁹¹ Evidence of Mr. McCaskill [Thames] LE 1 1858/8

¹⁹² Evidence of the Rev. I. Wilson. [Bay of Plenty] Le 1 1858/8

¹⁹³ Evidence of the Rev. Charles Baker [East Cape] LE 1 1858/8

ammunition although he denied that they were at present purchasing large quantities.¹⁹⁴

Bishop Pompallier opposed the restrictions, which he argued led to Māori who obeyed the law being left at the mercy of those who did not:

Experience shows that when all the tribes are equally armed, they respect better each other, and, if they quarrel, their warfare is not so bloody as when they fight without firearms; the show of force prevents the use of it.¹⁹⁵

The Select Committee interviewed only two Māori, Tamati Ngapora and the rangatira known as “Ihaka” or “Isaac”. Ihaka was asked if the restrictions could be effectively enforced, would it lead to peace between “all the people Maories & Europeans”. Ihaka denied that it would: “...it would not prevent wars amongst ourselves we should revert to our old weapons –do you think that life could not be taken with native weapons!” He was asked “Is not a father right to keep edged tools from his children who would only hurt themselves with them?” Ihaka argued that Māori should not be treated like children:

For a young child of course the parent would take edged tools from him because he would not have understanding enough to know the harm such edged tools would do him: but a boy being capable of understanding the nature of weapons he would not take them from him –but tell him of the danger of using them. If he cut himself with them afterwards it would be his own fault.¹⁹⁶

An issue which arose in the Select Committee investigation, was the apparent support for the restrictions by prominent supporters of the Kingitanga movement. Indeed, it was suggested that the spokesman for the movement, Tamati Ngapora, had first suggested the idea of the restrictions. The idea of specifically disarming the Kingitanga Māori was raised by the Select Committee. The Rev. A. Purchas was asked several questions in addition to those in the questionnaire:

¹⁹⁴ Evidence of the Rev. G. Kissling [East Cape] LE 1 1858/8

¹⁹⁵ The Rev. J. Whitely also argued that the warfare was deadlier prior to the arrival of firearms. Evidence of the Rev. J. Whitely Le 1 1858/8 Ihaka also believed this to be the case, comparing the conquest by Ngāti Whātua, in which all were killed compared to the attack on the Pa near St. Johns College at Onehunga by Hongi Hika when many escaped.

Q: (Mr Weld) Is Te Whero & his tribe well provided with arms and ammunition?

A: I believe his tribe are well provided

Q: Is Potatau Te Whero Whero willing that he & his tribe should be disarmed & be prevented from obtaining arms and ammunition?

A: I don't think any Natives would be willing to give up their arms but I believe Te Whero Whero is sincere in wishing the restrictions to apply as much to himself as to the others.

Purchas believed that the chiefs were pleased with the arms restrictions, but that the young men were not and the chiefs were powerless to stop the smuggling. He believed that the idea of the restrictions was first put forward by Te Whero Whero and Tamati Ngapora and they had been pleased that their request had been acted upon.¹⁹⁷ Purchas said that Te Whero Whero and Tamati Ngapora were very annoyed at the relaxation and he accompanied them when they went to the Governor to protest. He argued that the restrictions should be made “as stringent as they possibly could be”, though he admitted that the illegal trade could not be stopped altogether.

The spokesman for the Kingitanga, Tamati Ngapora, told the Committee that he believed that the law restricting the sale of arms and ammunition to Māori was a good law: “Because I’ve seen the evils arising from the natives obtaining arms and ammunition”. When asked about the evils of the possession of arms and ammunition, he replied:

The evil done on the first introduction of firearms was shewn by Hongi’s first attack on this part of the Country when tribes without arms were greatly slaughtered. In the present day an evil disposed man, possessed of arms is able to put his evil intentions into execution, which without them he would not. It also gives a coward equal power with a brave man.

Tamati Ngapora said that his own tribe was not well armed and that they would not seek to obtain arms and ammunition illegally if the restrictions were re-imposed. He believed that more would be killed in wars fought with Māori weapons than in conflicts between Māori armed with firearms. On the whole,

¹⁹⁶ Evidence of Ihaka. Le 1 1858/8

¹⁹⁷ Evidence of the Rev. A. Purchas [Waikato] Le 1 1858/8

Tamati Ngapora believed that the restrictions had been effective, especially in the interior, where the purchase of 3 or 4 at one time was thought to be a “great number”. He believed that the lifting of the restrictions had been unwise: “The expediency of imposing the restrictions was suggested by natives to the Government and the removal was the act of the Government alone.”¹⁹⁸

The Native Secretary Donald McLean also believed that Te Whero Whero was opposed to the relaxation of the firearms restrictions and was opposed to the shipping of firearms up the Waikato River.¹⁹⁹ When pressed on this point, McLean said that he understood that those Māori who had called for the arms restrictions had assumed that the Government could have absolutely prevented the trade in arms and ammunition.²⁰⁰

Burrows reported that Te Whero Whero “and some other chiefs of Waikato regretted that the restrictions had been in any way relaxed”. Despite these reports there were suggestions of the large scale importation of arms and ammunition into the Kingite territory. In August 1857, Fenton had recorded that he had heard that a “Mr. S” had taken a ton of gunpowder up to his home within the Kingite territory. However Fenton himself did not believe the report.²⁰¹ The Rev. A. Purchas maintained that for some time after the restrictions were imposed no firearms were purchased in the area, but when an attack by other tribes was expected, large quantities were obtained.²⁰²

Charles Davis thought that Māori made gunpowder was not of good quality, however “better powder” was made at Rangiawhia in the Waikato. He argued that smuggling would continue because of the inconvenience experienced by many would-be purchasers having to travel to Auckland and then having to

¹⁹⁸ Evidence of Tamiti Ngapora [Ngāti Mahuta; Mangarei (Mangare)] Le 1 1858/8

¹⁹⁹ Evidence of Donald McLean, Le 1 1858/8. Colonel Haultain later repeated this belief during the later 1860 Arms Bill debate. Colonel Haultain, Arms Bill Debate 9 October 1860, *NZPD* p.639.

²⁰⁰ Evidence of Donald McLean, Le 1 1858/8

²⁰¹ Fenton Journal. 17 August 1857. *AJHR*, 1860, E-1C. p.26.

²⁰² Evidence of the Rev. A Purchas. Le 1 1858/8

wait two or three days for a licence. Davis held that the Kingites showed the “greatest indifference” about the partial relaxation, and it was the supposedly “loyal” Māori who were buying arms and ammunition in quantity.²⁰³ Francis Fenton told the Sale of Arms Select Committee that he thought that there was some objection to the relaxation by Waikato Māori.²⁰⁴

The opposition of the Kingitanga to firearms was reported repeatedly by a number of informants. Why would the Waikato supporters of the King be opposed to the sale of arms and ammunition? Opposition to the sale of alcohol was also expressed. Several hundred Waikato Maori sent four petitions asking that alcohol be banned in their area.²⁰⁵ Tamati Ngapora had previously argued that the status of the rangatira had been undermined because the authority over slaves had been diminished.²⁰⁶ It is arguable that Tamati Ngapora objected to the effect that the widespread possession of muskets combined with the abolition of slavery was having on Māori communities. Another explanation perhaps, is that there was some concern to emphasise that the emergent Kingitanga movement did not wish to threaten the authorities or the settlements. In any case, the objections to the possession of muskets expressed by some important members of the Kingitanga movement should be seen in the light of the fact that a large proportion of the people in that movement possessed arms and would soon be using those arms to defend themselves and their territory from the Government.

The evidence presented by Donald McLean to the Select Committee offered an insight into the administration of some of the arms regulations by the Native Department. He stated that for all the provinces, 752 firearms had been sold to

²⁰³ Evidence of C.O. Davis. Le 1 1858/8

²⁰⁴ Evidence of Francis Fenton [Waikato] LE 1 1858/8

²⁰⁵ Keith Sinclair, *The Origins of the Maori Wars*, New Zealand University Press: Auckland 2nd ed. 1961 (photographic reprint 1974). p.106. See also *Journals of the House of Representatives* 1856 B-1.

²⁰⁶ Tamati Ngapora to the Governor 19 February 1848. Encl. in No. 7 Governor Grey to Earl Grey. 3 April 1848. *BPP* 1847-1850 [1120] pp.18-19. Tamati Ngapora complained “Formerly, brave (dexterous in battle) people were considered in the light of chiefs, but now they are considered as nothing.”

Māori; 311 of these were double barrelled guns and 441 single barrelled. McLean admitted far more firearms than this would have been sold outside of the law. McLean indicated that not one of the legally sold firearms should have been a rifle. He argued that the restrictions had reduced both Māori versus Māori and Māori versus settler violence. However, this appears to be somewhat contradicted by his belief that large quantities of arms and ammunition were smuggled by those evading the law. When asked if he believed that the restrictions would have eventually disarmed the Māori population, McLean answered: “I think not”. He maintained that some individuals were selling arms, but that the largest quantities were smuggled by vessels that supplied the Northland, Bay of Plenty and East Coast areas. McLean argued that the initial suspicion aroused by the measures had eased over time. He asserted that the Māori had become reconciled to the restrictions. However, he did not think that it would be wise to suddenly re-impose tighter restrictions, though he argued for localised restrictions in some areas.²⁰⁷

The restrictions arguably did impact upon the Māori population as a whole, largely because of the high prices demanded for arms on the black market. Indeed, the main driving force in the extensive black market in arms and ammunition was the very high prices Māori purchasers were prepared to pay. Payments were made by way of barter or with cash, in both cases often at a very high profit for the trader. There were many reports of high prices being paid, including a cart and two bullocks swapped for “a few pounds of powder.”²⁰⁸ The Rev. J. Whitely reported that he had heard of £100 being paid for 100lb powder, and £40 for one gun.²⁰⁹ The sum of £70 was paid for a Minié rifle.²¹⁰ By comparison a single Minié rifle legally imported (which could not be legally on-sold to a Māori purchaser) into Hokianga in 1854 was valued at £7 10s.²¹¹

²⁰⁷ Evidence of Donald McLean, Le 1 1858/8

²⁰⁸ Evidence of Charles Brown [Taranaki] LE 1 1858/8

²⁰⁹ Evidence of the Rev. J. Whitely, Le 1 1858/8

²¹⁰ Evidence of James Preece [Thames] Le 1 1858/8

²¹¹ *Statistics of New Zealand*, New Zealand Government, Auckland 1856. Table 12. The contract price, which the government later paid for Enfield rifles was £3 15s each.

The long term storage of ammunition was an important issue, as gunpowder is easily ruined by water or dampness. The Rev. J. Whitely reported that Māori stored gunpowder in “tapu’d” houses, “patakas” or “timangas”, and “in their chests and boxes in their dwelling houses”. H.H. Turton reported that gunpowder was stored in casks wrapped tightly with old mats and then wrapped in punga bark and tied up with muka rope then suspended in pataka or kumara pits.²¹² The most commonly reported method of storage was in underground pits, similar to that used for the Kumara tubers. This method offered a stable environment with even temperature and humidity. Gunpowder stored in this fashion was reported to be still good after twenty years of storage.²¹³ Māori manufacture of gunpowder was reported in many areas. The quality of this gunpowder varied a great deal. Ihaka reported to the Select Committee that the gunpowder he knew of produced so much fouling that the musket had to be cleaned with each shot.²¹⁴ In at least one case, a Māori man was sent to England to learn the manufacture of powder.²¹⁵ Donald McLean believed that Māori were manufacturing an inferior type of gunpowder, but that the quality was likely to improve if instructed by Europeans.

The Committee interviewed the Auckland gunsmith Evitt. He reported that, prior to the partial relaxation, he could only repair firearms for Māori with a written authority from the Governor. After the relaxation he was able to repair firearms for Māori without this authorisation. He told the Committee that initially there was great demand for his services, but that this demand had since reduced. At the time of his interview, Evitt reported that his customers were about equal numbers of both settlers and Māori. He reported that he had stocked rifles for around 9 or 10 months, but that he was not allowed to sell rifles to Māori. Evitt believed that Māori were able to repair firearms in “an ordinary manner”. He said that he knew of a number of people who made a

²¹² Evidence of the Rev H.H. Turton [Taranaki] LE 1 1858/8

²¹³ *ibid.*

²¹⁴ Evidence of Ihaka Le 1 1858/8.

²¹⁵ Evidence of the Rev H.H. Turton, LE 1 1858/8

living from selling arms and ammunition illegally. Evitt did not know of any large scale illegal smuggling.²¹⁶

Some of the informants argued that the restrictions were leading many to hold the law in contempt. The Rev. H.H. Turton from Taranaki believed that the restrictions bred contempt for the law. He also argued that the restrictions encouraged the trade in the most effective arms.²¹⁷ With the partial relaxation, he held that Māori were content buying “miserable fowling pieces”. He argued that with relatively relaxed restrictions the Māori could be kept “effectively disarmed and yet kept in humour at the same time.” Turton offered an interesting suggestion. Since he argued Māori were paying exorbitant prices for their tupara (purchased for £9-£10 off traders who had paid only 20-30 shillings) of inferior quality which often burst, he suggested that the Government inspect all firearms sold to Māori, lest the owner of the burst firearm seek vengeance, or the buyers collectively seek a better class of firearms than the tupara.²¹⁸

The Rev. J. Whitely, also from Taranaki, was of the opinion that the worst aspect of the restrictions was that the evasion of the law bred contempt for the law. He believed that this was most evident in New Plymouth where the “friendly natives” were denied arms and ammunition. He argued that the example of a Government unable to prevent the sale of arms and ammunition by settlers undermined the respect for the law. He also believed that this was equally the case with the law regarding the sale of spirits. When asked whether the possession of arms and ammunition made subjection to British law more difficult, Whitely replied:

When these arms are obtained in violation of that law I should say that such would be the natural tendency; and as the probability now is that every exertion will be made for a long time to come to obtain arms illegally, if they cannot be had otherwise, and

²¹⁶ Evidence of Evitt. [Auckland gunsmith] Le 1 1858/8

²¹⁷ Charles Brown, who had until shortly before the Select Committee hearings been the Superintendent of the province also believed that the restrictions had encouraged Māori to seek out a better class of firearm.

²¹⁸ Evidence of the Rev. H.H. Turton. LE 1 1858/8

as it is also probable that they would succeed as they have done heretofore, I think the possession of arms and ammunition under such circumstances would decidedly increase the difficulty referred to. But if by “increased facilities” be meant the removal of the restrictions so that the natives could acquire arms without any violation of laws then I should say the difficulty of bringing them under British law would be far less in the latter case than in the former.

Whitley reasoned that the need to evade the authorities and deal with those Pakeha who were breaking the law was breeding contempt for the law.²¹⁹

The late Superintendent of New Plymouth, Charles Brown, reported that a considerable quantity of gunpowder dating from the musket wars was stored within his province, though some Māori within the area were very poorly supplied with ammunition. Brown was opposed to the strict enforcement of arms restrictions. However, he suggested that the Government should try to keep accurate records of the sales of arms and ammunition, so that potential troubles –either between Māori, or between Māori and the Government, could be avoided. The Committee agreed with this idea and it was one of the recommendations of the Committee report. When Brown was Superintendent he had been asked for permission to obtain arms and ammunition by Māori, who pointed out that the Māori who evaded the law were well armed. Brown argued that the laws must be consistent –he used the terms “childish and vacillating policy” to describe the enforcement of the arms restrictions. He believed that the restrictions created distrust and encouraged the hoarding of ammunition supplies and the evasion of the law. When asked what he believed had been the effect of the laws, Charles Brown relied “Rather one of disobedience to our laws.”

The chairman, Walter Daldy presented the report outlining the Select Committee’s recommendations to Parliament in July 1858. He announced that after receiving the evidence of “thirty-seven witnesses, of every shade of opinion, which evidence your Committee have found of the most conflicting nature,” the Committee had come to the conclusion that it would not be judicious at present to try to re-impose the previous restrictions. The

Committee also concluded that it would not be wise to relax the regulations further. Essentially the Committee had come to the conclusion it would be better to maintain the status quo. There was however one recommendation; “it is desirable a distinctive Duty should be imposed on Arms and Ammunition, to enable the Government to obtain a more complete record of the same.”²²⁰

The evidence presented to the Committee by the Native Secretary indicated that the legal sales of arms to Māori were at a very low level. The 1857 proclamation had kept a relatively strict control on the sale of arms. However the return of ammunition sales to Māori indicated a different story. The return of the quantity of warlike stores sold to Māori requested by Captain Haultain is presented in the summary below.²²¹

Table 1: Showing quantity of gunpowder, shot and percussion caps sold between 25 June 1857 and 31 March 1858, by ethnicity of purchaser.

Gunpowder		
Māori	Settlers Dealers	Settlers (not dealers)
4,698.5lb	2,069.5lb	1,453.5lb
Shot		
Māori	Settlers Dealers	Settlers (not dealers)
6,258.5lb	4,336lb	4,253lb
Percussion Caps		
Māori	Settlers Dealers	Settlers (not dealers)
158,800	52,500	101,525

Clearly the quantity of ammunition bought by Māori was a significant proportion of the total. The relaxation had seen Māori purchasing of legal ammunition rise from nil to over fifty percent of legal gunpowder sales.

²¹⁹ Evidence of the Rev. J. Whitely, Le 1 1858/8

²²⁰ Journal of the House of Representatives, 30 July 1858. p. 144.

²²¹ Return showing the quantity of Ammunition sold in New Zealand between the 25th June 1857 and 31st March 1858, Return to an Order of the Honorable the House of Representatives. No. 77. LE 1 1858/231. Table includes figures from the return for East Coast and Poverty Bay.

Anyone who was opposed to the arming of Māori under any circumstances would have been appalled at these figures. However, the evidence provided to the Sale of Arms Select Committee showed that legal sales of firearms to Māori remained at a very low level and that illegal smuggling continued despite the relaxation.

The historian's view

Of all the events relating to the arms restrictions, it is the partial relaxation of the restrictions in 1857 that has excited the most comment from historians, who have in many instances echoed the cry of disapproval voiced by a number of influential settler politicians. Alfred Saunders, who had arrived in Nelson in 1842, recalled the relaxation many years later:

...of the many false steps taken by Governor Browne and his advisors in Maori legislation and administration, none was so important, so incomprehensible, so costly, and so disastrous to both races as the removal of the wise restrictions imposed upon the sale of arms and ammunition to Maoris by Sir George Grey's proclamation...²²²

Saunders believed the value of the purchases to be “over fifty thousand pounds” of both arms and ammunition. He believed that these arms and ammunition were soon afterwards used in the destruction of the members of both races. Saunders quoted the commercial report of the *New Zealander* of 21 November 1857, which had identified the trade in arms and ammunition as the only trade of interest to the Māori since the relaxation of the Arms Importation Ordinance.²²³

A contemporary observation was offered by Arthur S. Thomson, who believed that the Government was deceived as to the extent of the trade. He wrote that gun-shops were set up after the relaxation in a number of settlements and that within six months several thousand firearms and a great deal of gunpowder had been sold. Thomson noted that the duty on firearms was increased after the

²²² Alfred Saunders, *History of New Zealand 1642-1861*, Whitcombe & Tombs: Christchurch 1896. p.342.

²²³ Saunders. p.343.

Sale of Arms Select Committee reported its findings and “difficulties thrown in the way of native purchase”.²²⁴

William Pember Reeves reached a very similar conclusion to that reached by Saunders:

Because a certain amount of smuggling went on in spite of it, the insane course was adopted of greatly relaxing its [the Arms Importation Ordinance] provisions instead of spending money and vigilance in enforcing them.²²⁵

Reeves also repeats the figure of £50,000 for the value of the arms and ammunition sold. There was a certain amount of truth to his suggestion that little money or vigilance had been expended on the policing of the ordinances. There was very little evidence that any of the various branches of Government, either central or provincial, were prepared to put sufficient resources into policing the regulations. However, it could hardly have been accurate to say that a “certain amount” of smuggling accurately reflected the reality of a near totally armed Māori population.

The view expressed by Saunders and Reeves, was echoed by Keith Sinclair. Sinclair believed the decision, which he attributed largely to the Governor, to be very unwise:

This was a very foolish action, for, if it were true that smugglers were arming disaffected tribes, the obvious course was a policy of stricter regulation. However, there was little opposition at the time. As a result of this measure, large quantities of powder were sold to the Maoris in addition to unlicensed sales.²²⁶

Tom Gibson, writing in the 1970s was similarly damning of the decision:

Gore Browne soon marked his tenure of office with a drastic error of judgement: in 1857 he repealed Grey’s longstanding law forbidding the sale of arms and gunpowder

²²⁴ Arthur Thomson, *The Story of New Zealand*, Vol.II (1st edition London, 1859) Capper Press: Christchurch 1974. p.254.

²²⁵ William Pember Reeves, *The Long White Cloud: Ao Tea Roa*, With additional chapters by Angus Harrop. Golden Press: Auckland 1973 (first published 1898) p.198.

²²⁶ Sinclair, *The Origins of the Maori Wars*, pp. 96-97

to Maoris and it is estimated that, over the next three years, Maoris spent the considerable sum of £50,000 in the purchase of arms.²²⁷

Tom Gibson had attributed a great deal of importance to Grey's arms restrictions. After describing Grey's visit to the scene of the fighting in the Bay of Islands in 1845, Gibson wrote:

...[Grey] sailed back to Auckland to attend to urgent matters that affected the modest colonial war effort: the raising of more Volunteers, supplies for the field force, and most important of all, forbidding the sale of arms and ammunition to natives, a highly lucrative commercial venture that some Auckland merchants pursued indiscriminately with few questions asked.²²⁸

To attribute so much importance to the measure would suggest that it was in some fashion effective. To describe Browne's decision as a "drastic error of judgement" equally implies that the decision had a serious negative effect. Saunders used similar reasoning. He believed that the relaxation had serious long term consequences: "The only advantage the industrious, civilised settlers had previously possessed against the restless, war-loving, and war-practising race around them was thus given up ...".²²⁹

Sinclair, Gibson and Saunders all illustrate an uncritical acceptance of the contemporary politically motivated criticism. Gibson's critique of the partial relaxation was not referenced –there are only very limited references throughout the book and it is therefore not possible to say with certainty from where his evidence is sourced. However, it is likely that his figure of £50,000 worth of arms comes from a memorandum by William Fox. Fox made a number of assumptions to derive this figure. He assumed, given the smaller quantity of arms and ammunition imported into the South Island, and his belief that very few settlers were interested in buying arms and ammunition, that "nearly the whole of the arms and ammunition imported into the Northern

²²⁷ Tom Gibson, *The Maori Wars: The British Army in New Zealand 1840-1872*, A.H. & A.W. Reed: Wellington, 1975. p. 72.

²²⁸ *ibid.* p. 58.

²²⁹ Saunders, p.342.

Island would ultimately find their way into the hands of the Natives.”²³⁰

Gibson has also not been particularly careful in his choice of words; the partial relaxation largely relaxed the restrictions on ammunition rather than arms, which were only sold legally in very small numbers.²³¹ Therein lies the key problem with the argument used by those most opposed to the partial relaxation; for if the partial relaxation did allow the importation of larger quantities of gunpowder, which were purchased by Māori, this ammunition was for firearms which were, for the most part, purchased on the black market. The partial relaxation at most supplemented the total trade, which at all times probably maintained a high proportion of illegal sales.

Another account of the 1857 relaxation was offered by B.J. Dalton in his 1967 book *War and Politics in New Zealand*.²³² Dalton argued that the relaxation had been prompted by the Christchurch Provincial Government’s decision to relax the restrictions locally. Dalton believed that the Canterbury decision was *ultra vires* and as such could have been invalidated. However, Dalton pointed out that the restrictions had been shown to be ineffective and that Browne therefore decided to amend the restrictions along the lines already recommended by the Board of Inquiry into Native Affairs. It is Dalton’s reference to the Board of Inquiry of 1856 which is the key element lacking in the assessments made by the other commentators.²³³ The evidence presented to the Board of Inquiry clearly showed that the restrictions had been ineffective. It

²³⁰ William Fox Memorandum. 8 October 1861. *AJHR* 1862 E-2 pp. 7-8. Grey used similar dubious reasoning to claim that nearly 6,000 stand of arms were sold to Māori through the port of Auckland from 1857 to 1861. In fact 5,727 arms in total were imported into that port. Only a small proportion of those arms were legally sold to Māori and to claim that every one of these legal imports was on-sold to Māori is highly dubious. It should be remembered that the increasing tensions would have only raised fears among the North Island settlers. It should also be remembered that the calls for the raising of volunteers and militia were for the protection of North Island settlements. G. Grey to Duke of Newcastle. 20 February 1862. No. 29. *AJHR* 1862 E-1 p. 62.

²³¹ Legal sales to Māori were at the rate of less than 1 per 100 people in the year following the relaxation. A total of 752 arms were sold to Māori (Evidence of Donald McLean Le 1 1858/8).

²³² B.J. Dalton, *War and Politics in New Zealand 1855-1870*, Sydney University Press: Sydney 1967. pp.69-72

²³³ Dalton makes a factual error, he believed that the restrictions were based upon an ordinance of 1851, which is incorrect as the Gazette notice to which he refers was under the authority of the Arms Importation Ordinance of 1845

therefore followed that any partial relaxation would have had little tangible effect on the supply of arms and ammunition.

Dalton's analysis avoids a repetition of the politically motivated contemporary criticism. Dalton believes that there was little chance of the restrictions succeeding because of the provincial control over the police. However this point is debatable. Although the inefficiency of the police probably played a role in the undermining of the restrictions, the police could only have had any effect over the areas in which they operated –ie, the settlements. The biggest hurdle for the restrictions was the fact that Māori communities had only a very limited engagement with the settler authorities and were able to evade the restrictions by buying from smugglers. A large proportion of the land and coastline remained effectively outside the jurisdiction of the settler authorities.

Growing concerns in Taranaki

The issue of arms transactions in Taranaki continued to raise concerns. Some of the local settlers felt a strong common interest with one faction in the puketapu dispute. In some cases the settlers provided arms and ammunition to this favoured faction. Browne described the province of New Plymouth as “swamped by native feuds in which the settlers cannot be restrained from interfering”.²³⁴ The Memorial of the Provincial Council of New Plymouth asked that the land selling faction be allowed to obtain arms:

...such had been their reliance on the justice and power of the Government, that they had ceased to reckon on their own strength, they had allowed their guns to rust, and possessed but a scanty store of powder and ball, while their opponents, who had always been hostile to British occupation, were well armed and munitioned, and their ultimate and least demand was, that they should be supplied with the means of opposing their enemies.²³⁵

²³⁴ Browne to Adderly 15 June 1858 Sir Thomas Gore Browne Letterbook 1855-1862, ATL qMS-0284

²³⁵ Memorial of the Provincial Council of New Plymouth 19 May 1858. *New Plymouth Provincial Gazette*. 2 June 1858. Vol. VI No. 9. p.56

Katatore reversed his earlier opposition to the sale of land and offered 40,000 acres for sale to the Government. On 9 January 1858, Katatore and Rawiri Karira were ambushed and killed on Devon Road in the Bell Block.²³⁶ Both were hacked to pieces. The reawakened dispute led to the proclamation of 12 February 1858, which announced that owing to the conflicts between armed parties of Māori, anyone found to be unlawfully assembled with arms within a proscribed district (which corresponded to the European area) will be considered to be in arms against the Queen's authority, and that military action would be taken.²³⁷ Although, the proclamation suggested tough action against those who assembled with arms, the Māori protagonists called the bluff of the authorities. C.W. Richmond instructed the Resident Magistrate at New Plymouth to use the provisions of the Riot Act against any assembly of armed Māori, if it did not disperse.²³⁸ However the Resident Magistrate and Bench of Magistrates did not act upon this request, apparently concerned at the consequences.²³⁹ When settlers attempted to provide sworn statements that they had observed certain men carrying arms within the prohibited area, the Resident Magistrate avoided taking their statements.²⁴⁰ The Select Committee of the Provincial Council of New Plymouth appointed to inquire into the matter concluded:

It is with regret that the Committee have to report that, notwithstanding the measures taken by His Excellency the Governor for the protection of the settlement and the observance of its neutrality, the settlers are still exposed to the dangers arising from the presence of armed Natives.²⁴¹

²³⁶ *Taranaki Herald* 16 January 1858. The subsequent reaction to the death was frequently reported in the *Taranaki Herald* in the following months.

²³⁷ Proclamation of the Governor, 12 February 1858, *New Zealand Gazette* 12 February 1858 No.5 p.25. Similar published in Māori pp.25-26.

²³⁸ C.W.Richmond to the Resident Magistrate, New Plymouth, 12 February 1858, *AJHR* 1858 E-3 p.2.

²³⁹ Resident Magistrate, Josiah Flight to the Colonial Treasurer, 6 March 1858; Five Magistrates of New Plymouth to Josiah Flight, Resident Magistrate New Plymouth, 4 February 1858. *AJHR* 1858 E-3 p.3.

²⁴⁰ *Taranaki Herald* 20 March 1858; *New Plymouth Provincial Gazette* 8 May 1858. Vol. VI No. 8. pp.43-49

²⁴¹ *New Plymouth Provincial Gazette* 8 May 1858. Vol. VI No. 8. p.43.

A showdown between the Government and Taranaki Māori was therefore avoided, for the time at least.

The growing tensions and the growing possibility of war in Taranaki had already led to an increased emphasis upon restricting the importation of arms and ammunition to that port. Further restrictions at New Plymouth were made under the authority of the Arms Importation Ordinance. In early 1859 the Customs officials were instructed not to issue licenses for the importation of arms to the port. With regard to firearms belonging to a Mr Kechney, the Collector of Customs at New Plymouth was informed; "...His Excellency the Governor does not, at present grant permits to import Firearms at New Plymouth, the guns in question must be placed under the Crown Lock, until they can be shipped to another Port."²⁴²

Increasing the restrictions upon the moving of warlike stores around the New Zealand coastline was suggested by the Collector of Customs in New Plymouth in April 1859. The Collector's suggestion was that Section 123 of the Customs Regulation Act 1858 should be used to restrict the carriage of arms and warlike stores via the coast. The Commissioner of Customs thanked the official for his suggestion and told him that the matter would be submitted to the Governor on his return from the South.²⁴³ Removal of arms and ammunition by the coast was prohibited by an Order in Council in November 1859.²⁴⁴ The prohibition was made under the authority of the 1858 Customs Act.²⁴⁵ The notice proclaimed that no arms or ammunition or other warlike stores, other than that owned by the Crown were to be carried by the coast anywhere in the Colony.

²⁴² C.W. Richmond to the Collector of Customs New Plymouth 16 April 1859. Archives of the Customs Department, National Archives. C4/1 No.219 p.103

²⁴³ Office of the Commissioner of Customs to the Collector of Customs New Plymouth 30 April 1859. C4/1 No. 215 p.100.

²⁴⁴ Minutes of the Executive Council, 25 November 1859 EC 1/2 pp. 273-274

²⁴⁵ Order in Council 25 November 1859 Prohibition of the transport of Arms Ammunition and Warlike stores. The order was not published in the *Gazette* (as it should have been), but referred to in the *Gazette* notice of March 1860. *New Zealand Gazette* 26 March 1860. No. 19. p.62.

As the tensions in Taranaki increased, a number of concerns were raised by settlers about the alleged relaxed regulations governing the sale of arms or ammunition. In May 1859 the Governor visited Wanganui and was met by a deputation of settlers who expressed their concerns about several issues, including ammunition sales. The *New Zealand Spectator and Cook's Strait Guardian* reported that the settler deputation brought the attention of the Governor to the fact that, as it stood, the law allowed the sale of gunpowder to Māori:

...upwards of four tons appearing to have been *openly* sold in Wanganui during the last twelve months, and which fact in connection with the present disturbed state of native feeling up the river became doubly important.²⁴⁶

Governor Gore-Browne assured the settlers that the issue of the sale of arms and ammunition:

...had formed the subject of anxious enquiry, and deep deliberation, by two several specially appointed committees; and their reports shewed it to be undesirable to continue the restrictions put upon its sale. The irregular, turbulent, and hostile portion of the natives, found no difficulty in obtaining all munitions, in any quantity, and were now largely possessed; whilst, those who were orderly, friendly, and respected the law, were thus left wholly defenceless. It was, nonetheless, not to be considered a matter wholly dismissed, but would still receive every attention as new facts might disclose themselves.²⁴⁷

As late as mid 1859 some large consignments of arms or ammunition were still entering New Zealand ports. A quarter million caps were imported by Grimshank, Smart and Co. of Auckland in July 1859.²⁴⁸

The efforts to stop the supply of arms and ammunition to the feuding parties in Taranaki extended off the mainland. The Government also sought to restrict the supply of arms and ammunition to Taranaki Māori through their relatives on the Chathams Islands. In 1856 Donald McLean had raised concerns that the Māori of the Chatham Islands (who were members of Ngāti Tama and Ngāti

²⁴⁶ Emphasis in original. *New Zealand Spectator and Cook's Strait Guardian*, 28 May 1859.

²⁴⁷ *ibid.*

²⁴⁸ Office of the Commissioner of Customs to the Collector of Customs Auckland 29 July 1859. C4/1 No. 387 p.176.

Mutunga, from the Taranaki area who had invaded the Chathams in 1835) were receiving supplies from Australia. McLean argued without powers such as that promised in the Native Offenders Bill, that arms and ammunition could be sent from Australia, via the Chathams to the port at Waitara which; “is purely Native; there is no Custom-house...”.²⁴⁹ Instructions sent to the Resident Magistrate on the Chathams in November 1858 authorised him to issue licences in accordance with the Proclamation of 25 June 1857 but warned him to be on the lookout for attempts to send arms and ammunition to Taranaki. He was told to report any such incident should it occur and to then suspend all sales of arms and ammunition until further instructions were received.²⁵⁰

The idea that records should be taken of the importation of arms and ammunition was one of the recommendations of the Sale of Arms Select Committee. This recommendation had been adopted and the Government apparently took the principle of intelligence seriously. In one case both the Master of the *Kate Kearney* and a Mr Ford were suspected of importing gunpowder without notifying the authorities. The Office of the Commissioner of Customs instructed the Collector of Customs in New Plymouth: “although there is now no restriction on the Importation of Gunpowder, the Government is determined to insist on being duly informed of the Amount of Importation.”²⁵¹ The Collector was therefore instructed to lay information for breach of the Customs Regulation Act 1858 against the parties involved.

Featherston's letter

Although the partial relaxation of the restrictions in 1857 had initially provoked only a few relatively isolated critics, over the following few years the relatively relaxed restrictions began to provoke a growing chorus of criticism. In 1859

²⁴⁹ Commissioner Donald McLean, Evidence Taken in Select Committee on the Native Offenders Bill 26 July 1856 *AJHR*. E-5A. p.4-5.

²⁵⁰ F. Whitaker, Attorney General's Office to the Resident Magistrate of the Chatham Islands, 23 November 1858, Archives of the Justice Department, National Archives. J 5/1 (No. 56 – 1858/56). p.31.

²⁵¹ Office of the Commissioner of Customs to the Collector of Customs New Plymouth. 3 March 1859. C 4/1 No. 107. p. 50

the criticism would reach a new level when the Superintendent of the Wellington Provincial Council, Dr Featherston criticised the arms regulations in a letter to the Native Minister as well as in a speech to the Wellington Provincial Council, published in a Wellington newspaper.²⁵² Featherston's public criticism led the Governor to justify his decision to the home government. Dr. Featherston was one of a number of politicians who were to use the 1857 partial relaxation as an example of incompetence in Colonial policy. Criticism of the partial relaxation would also be a feature of the speeches of the MP William Fox for years afterwards.

On 28 July 1859, Featherston wrote to the Minister of Native Affairs questioning the wisdom of the relaxation of the restrictions. He claimed that there had been no difficulty experienced in enforcing Grey's restrictions and that the law "had been submitted to by the Natives without resistance." He asserted that the measures were highly successful:

I have no hesitation in stating that Sir George Grey's scheme of disarming the Natives, and of rendering another Native War well nigh impossible was successful to a degree which he himself could not reasonably have anticipated.

Featherston maintained that the Māori in his province had been effectively disarmed by the restrictions, that the stored gunpowder was spoilt and the arms in disrepair. He argued that the restrictions had been for the benefit of both races.²⁵³ The reply from Henry Tancred of the Colonial Secretary's Office argued that Featherston had "totally misunderstood" the current regulations. He asserted that the regulations proclaimed in 1857 had in fact increased the restrictions upon the sale of arms.²⁵⁴

Governor Browne also made a detailed justification of the regulations to Featherston. He argued that the Proclamation of 1857 in fact tightened the

²⁵² New Zealand Spectator and Cook's Strait Guardian. 31 August 1859.

²⁵³ Superintendent Featherston to the Native Minister. 28 July 1859. Enclosure in No. 65 Browne to Lytton. 22 August 1859. CO 209/151. NA Micro. Z-491

²⁵⁴ Henry Tancred on behalf of Colonial Secretary to Featherston 15 August 1859. Enclosure in No. 65 Browne to Lytton. 22 August 1859. CO 209/151. NA Micro. Z-491

restrictions upon arms and only relaxed the sale of sporting ammunition (loose powder and shot) and not ball and cartridges. This was, he explained, because the restrictions prior to 1857 were based upon the proclamation of 20 August 1851. According to Browne, the theft of the gunpowder at Kawau was a protest directed at the arms restrictions. Browne stated that he had refused to listen to the protests until the powder was returned without condition. Only then did he look into the complaints and found that the all the “unfriendly Natives” were well armed and that “our friends complained that we would neither protect them nor enable them to protect themselves against their enemies.” He pointed out to Featherston that there were only around 8,000 Māori in the Wellington Province. Less than 4,000 lived within a hundred miles of the town of Wellington. The Governor stated that for this population of 8,000, only 43 firearms had been sold to Māori in the whole of the Wellington Province, and only 9 in Wellington itself. He argued that those licensed to sell firearms were now willing to come forward to give evidence against those who sold arms and ammunition illegally. Browne turned the tables on Featherston and hinted that the responsibility in fact lay at his door as he had control over the police:

I doubt not, however, that the sale you speak of has taken place illegally, but if so why did not the police interfere & bring the offenders to justice, as they have done in many cases here?²⁵⁵

The Home Government agreed with Browne, arguing that the Governor had no control of the policing of the regulations.²⁵⁶ On 13 August 1859 Browne approved the applications for sales of arms to Māori, however he added the warning “...I think great caution should be used not to extend the sale of arms more than is necessary to prevent illicit trade.”²⁵⁷

²⁵⁵ Browne to Featherston 13 August 1859. Sir Thomas Gore Browne Letterbook 1855-1862, ATL qMS-0284. Henry Tancred’s reply was far more blunt, suggesting that the police in Wellington had been lax. He expressed the hope that the important duty of the policing of the restrictions “...will be no longer overlooked by the local authorities.”

²⁵⁶ Fortesque suggested that the Governor’s course of action should be approved. Duke of Newcastle instructed the approval of the Governor’s actions. Harrop, p.63

²⁵⁷ Thomas Gore Browne Memorandum. 13 August 1859. G 36 /3 Governor Letterbook. p. 483

Did the traders have the policy changed?

An accusation, which would later be levelled at the decision makers, was that politicians hoping to personally profit in the sale of arms and ammunition to Māori, had the restrictions relaxed. During the 1860 Arms Bill debate, the MP for pensioner settlements, John Williamson, inferred that the decision to relax the restrictions was made because the Auckland traders wanted the lucrative opportunities offered by arms sales.²⁵⁸ Keith Sinclair repeats the accusation and names the two politicians, Walter Brodie and William Daldy, the two most prominent traders who sat in parliament during this period.²⁵⁹ One of the more sustained attacks was made by Veritas, who alleged that the settlers profited handsomely from the relaxation and indeed looked forward to the financial benefits that the inevitable resulting war would bring.²⁶⁰ Both of the politicians named by Sinclair had publicly urged for a relaxation of the restrictions prior to the 1857 proclamation.

In 1856 Walter Brodie asked the Government whether there would be any alteration to the arms restrictions. He argued a greater amount of gunpowder was presently being sold than before the restrictions were imposed. He said that he had repeatedly addressed his concerns to Wynyard and to Browne without satisfaction, and that the sales were encouraged by the “imbecility of Government”. Brodie believed that many of the restrictions, such as the requirement to give 48 hours notice of the intention to purchase gunpowder, were absurd.²⁶¹ Premier Stafford replied that there were no plans to change the law during the present session but promised that the Government would look at the subject with a possibility of modifying the ordinance sometime in the future.²⁶² After the restrictions had been relaxed, Brodie argued for the further

²⁵⁸ John Williamson Arms Bill Debate 9 October 1860 *NZPD* pp. 639-640.

²⁵⁹ Sinclair, *The Origins of the Maori Wars*, p.96

²⁶⁰ Veritas, pp. 6-7. Veritas argued that the relaxation had been pressed on the Governor by the Ministers who were in turn urged by their supporters, wealthy settlers.

²⁶¹ Walter Brodie, “Arms and Ammunition Ordinance”, 24 June 1856. *NZPD* p.229.

²⁶² 24 June 1856, *Journals of the House of Representatives 1856*, Vol. I p. 139. It is interesting to note, that Stafford’s response printed in the *Parliamentary Debates* p. 229 (which were compiled retrospectively and with the input from MPs) did not mention any promise to look into modifying the regulations.

relaxation of the restrictions, arguing that the laws remained a great inconvenience for the traders. He recommended that licences for the sale of arms and ammunition to Māori should be allowed under “a heavy security”.²⁶³ In August 1858 Brodie argued that; “the trade in arms should be as open as any other trade.”²⁶⁴

Less than three weeks after the proclamation relaxing the arms restrictions, Walter Brodie asked the Colonial Secretary for an “unconditional license” to sell gunpowder, shot and caps from 1 August 1857.²⁶⁵ He was told that the Licensing Officer authorised to grant such a licence had yet to be appointed.²⁶⁶ Walter Brodie was one of the most significant sellers of gunpowder to Māori in the month immediately following the relaxation, although his sales to Māori declined very rapidly after this (his sales to European clients also had a similar rapid decline). He sold a total of 360lb of gunpowder to Māori between the 25 June 1857 and 31 March 1858.²⁶⁷

Walter Daldy had addressed the Governor, urging a relaxation shortly before the decision to partially relax the restrictions was announced. Referring to the issue of the arms restrictions and the restrictions upon the sale of alcohol, he argued that the evasion of the laws was bringing the Government into contempt. Daldy suggested that both ordinances should be repealed. The Governor replied:

...the subject requires careful investigation. Admitting the correctness of Mr Daldy's assertion it remains to be considered whether the removal of the restrictions would not be attended with greater evils than those now existing.²⁶⁸

²⁶³ Walter Brodie. “Sale of Arms” 1 June 1858. *NZPD*. p.478.

²⁶⁴ Walter Brodie. “Sale of Arms and Ammunition” 3 August 1858. *NZPD*. p.77.

²⁶⁵ Walter Brodie to the Colonial Secretary July 16 1857 IA 1 1857/1123

²⁶⁶ Reply to Walter Brodie 20 July 1857 IA 1 1857/1124

²⁶⁷ Return showing the quantity of Ammunition sold in New Zealand between the 25th June 1857 and 31st March 1858, Return to an Order of the Honorable the House of Representatives. No. 77. Le 1 1858/231. The return was requested by Haultain on 1 June 1858 See *NZPD* p.477.

²⁶⁸ Minute 3 March 1857. Stafford Papers MS Papers 28 Folder 2.

Although, given his previously stated misgivings on the effectiveness of the restrictions, the Governor may have been tempted to wholeheartedly agree with Daldy, he was publicly more cautious. He instead asked for further advice on this subject from his responsible advisers.²⁶⁹ Walter Daldy was later involved in the case of Thomas Black, who was convicted under the Arms Importation Ordinance. His schooner, the *Hope*, was seized but returned. He claimed in Parliament that he had applied for a licence but was unaware that the application was to be made to the Resident Magistrate.²⁷⁰ When the 1860 Arms Bill was later debated, Daldy declared that he had never profited from arms sales “since the relaxation of the restrictions took place.”²⁷¹

Daldy and Brodie stood to gain from the relaxation. Both would have allegations made about their trading.²⁷² However, neither of these MPs were Ministers. The decision to relax the restrictions was made by the Executive Council after a request by the Governor that the matter be considered. The accusation that the politicians who traded in arms had the policy changed, overlooks the fact that Parliament did not sit during the whole of 1857. The opinions of the trader MPs were not brought into the discussion in which the matter was decided. True responsibility lay with Governor Browne and his advisers and it does not appear that any of the relatively low ranked trader MPs had any significant role in having the restrictions lifted. The decision was the ultimate responsibility of the Executive Council and of the Governor, but it is also clear that some politicians supported this decision.

By 1860, the laws restricting the sale of arms and ammunition had already long been proved to be ineffective. However, with the outbreak of war in Taranaki

²⁶⁹ Minute 3 March 1857. Stafford Papers MS Papers 28 Folder 2.

²⁷⁰ “Case of Thomas Black” 5 September 1860. *NZPD*. p.455. The property was returned immediately as the fine was paid the day it was levied.

²⁷¹ William Daldy Arms Bill Debate 25 October 1860 *NZPD* p.762

²⁷² Brodie was convicted and fined £10 under the Gunpowder Ordinance for storing an excessive quantity of gunpowder. *The New Zealander* 5, 8 & 12 August 1857. His employee was later tried for stealing powder, caps and shot from Brodie, which was subsequently illegally on-sold. *The New Zealander* 2 September 1857.

the perceived need was for far greater restriction upon arms supplies. Clearly a new approach in the form of new legislation was on the cards.

Chapter Three: The 1860 Arms Act.

In a conference, which was intended to seek a peaceful outcome to years of dispute in Taranaki, Te Teira, one of the prominent rangatira of the “friendly native” faction, offered land at Waitara for sale. Wiremu Kingi, the leading rangatira in the opposing faction, immediately rejected this offer. Despite the knowledge that the attempt to uphold the sale would lead to conflict between the troops and Māori, Browne decided to try to uphold the purchase. On 17 March 1860, British Troops sent to occupy the Waitara and enforce the survey of the block, exchanged fire with Māori led by Wiremu Kingi who were fortified in an earthwork pa.²⁷³ This action marked the beginning of the first Taranaki war. The outbreak of war greatly heightened the motivation to try to stop Māori from obtaining arms and ammunition. However the existing laws had already proved to be woefully ineffective. The obvious solution was new legislation. The obvious shape of the legislation would be stricter control.

Tightening the old laws

Soon after the outbreak of the War in Taranaki, the government issued the proclamation of 26 March 1860, which altered the arms importation and licensing regime imposed in 1857. The new proclamation was made under the Arms Importation Ordinance. Now all licences were to be issued by the Deputy Governor or the Commissioner of Customs in Auckland or by the Principal Officer of Customs at New Plymouth, Wanganui, Wellington, Napier, Nelson, Lyttelton and Dunedin.²⁷⁴ The proclamation of 25 November 1859 concerning the exportation or the carrying coastwise of arms, ammunition or other warlike stores was repeated on the same page of the *New Zealand Gazette*.

²⁷³ Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, p. 82.

²⁷⁴ Notice, Colonial Secretary's Office 26 March 1860. *New Zealand Gazette*, 26 March 1860 No. 19. p.62.

The proclamation of 26 March 1860 largely conferred upon the Customs Department the role of policing the sale of arms and ammunition. Customs Circular Number 103 issued on 27 March 1860 was to govern the department's administration of firearms licensing. It stipulated that with the exception of arms and ammunition imported for self-defence, all imported arms and ammunition were to be deposited in the public magazine. Those who wished to import arms and ammunition for the purposes of their own defence could, under the new regulations, still obtain a brace of pistols, or a revolver and a rifle, musket or shotgun (fowling piece) as well as 1,000 percussion caps, a pound weight of gunpowder and ten pounds weight of bullets, shot or lead.²⁷⁵ Licences for those who wanted to purchase arms locally for their own defence could be granted on the same terms. Licences could also be granted for blasting gunpowder as long as it was to be used for that purpose. All general licences issued under the proclamation of 23 June 1857 were revoked and no new general licences were “for the present be issued”. The proclamation of 26 March 1860 and Customs Circular 103 effectively spelt the end of the regime of relatively relaxed restrictions, which had been in place since mid 1857.

A separate circular was sent to the Customs Officer in New Plymouth explaining that, given the declaration of martial law in that province, it was unnecessary to forward instructions on firearms licensing to that region.²⁷⁶ In Napier, where fighting between Māori factions had also occurred, the circular was amended with a further limit on firearms for personal defence of “one Rifle, Musket or Fowling piece at the option of the applicant.”²⁷⁷ Customs officers were instructed to provide to the Commissioner of Customs returns

²⁷⁵ The instructions in Circular 103 appeared to allow the purchase of one of each, however instructions sent two Licensing Officers in December 1860 clearly stated that the Licensing Officer was to allow either one rifle or musket or Fowling Piece and one brace of pistols or a revolver. Office of the Commissioner of Customs to Lieutenant Colonel Nixon 11 December 1860 C 4/2 No. 495 p.33-34.

²⁷⁶ C.W. Richmond, Office of the Commissioner of Customs to the Collector of Customs New Plymouth 28 March 1860. C 4/1 No. 104 p.380. Martial law was proclaimed 25 January 1860. Proclamation of the Governor 25 January 1860. *Taranaki Provincial Gazette* 5 March 1860. No.2 p.5.

²⁷⁷ Applicants in the other areas (with the exception of New Plymouth) could have legitimately also asked for a brace of pistols or a revolver.

showing the names of applicants, and the quantities of arms and ammunition for all licences issued.

Under the instructions outlined in Circular 103 the Licensing Officer had the discretion to refuse any suspect purchase and was warned “most carefully to scrutinize all applications for the importation or purchase of Arms and Ammunition for personal defence, with a view of preventing acquisition, under that pretence, of Arms really intended for illicit sale.” While the Licensing Officers had the discretion to refuse sales to suspicious applicants who they thought might on-sell their firearms, this the only concern expressed in the instructions. There was no concern expressed that the settlers might misuse those arms themselves. The instructions regarding sales to Māori were quite different: “No licenses for importation by, or sale to Natives are to be granted.”

Several licence forms were sent with Circular 103. The form for the importation of arms and ammunition required information as to the quantity and description of the goods involved. The goods were to be landed in the presence of a Customs Officer and immediately sent to a specified magazine. The owner could only remove the stores from the magazine for sale to legally authorised persons, for the owner’s own lawful use, or for transfer to another magazine. Anyone who breached these conditions faced a penalty of £500. Private importers or purchasers of firearms or ammunition were issued with a licence form, which recorded the quantity and description of the arms, gunpowder or warlike stores. The importer was allowed to obtain their arms or ammunition: “On condition that the same be retained by you for the purposes of personal defence.”²⁷⁸ Customs Officers had the liberty to require a bond of surety for every licence and were to require a bond in every case of a licence to remove powder from one store to another.

²⁷⁸ Circular No. 103 27 March 1860 C4/1 No. 103 pp.377-380 .

By coincidence, on the same day as the proclamation associated with Customs Circular 103 was published, a Resident Magistrate in Wellington informed the Colonial Secretary that “a good deal” of gunpowder had recently been purchased by Māori, he presumed with the intention of supplying to Māori in Taranaki. The Resident Magistrate reported that he had issued a notice warning licensed dealers not to sell to Māori “on pain of application being made to the Governor for the revocation of their licences.”²⁷⁹ The rest of the Wellington Bench of Magistrates also expressed concerns at the sale of gunpowder and passed unanimously a resolution proposed by W. Fitzherbert:

That the following Magistrates of this Province being reliably informed that the Aboriginal Natives of this province have, under the regulations of His Excellency of the 14th July 1857 by which the regulations of Sir George Grey on that behalf were relaxed, for some time past been busy supplying themselves with arms and warlike ammunition....²⁸⁰

The magistrates considered it their duty to urge upon the Governor to re-impose strict regulations on the sale of arms and ammunition to Māori.²⁸¹

A proclamation of 10 May again warned that any shipment of warlike stores without prior licence would be subject to seizure and warned that any shipment arriving after the date of the proclamation would be seized accordingly. Any importer who could convince the Governor that the goods had been shipped before the proclamation and could not be practically stopped would be able to re-export the stores. Persons who wanted to import arms and ammunition in “reasonable quantities for the personal use of the Importer” were exempt from the need to apply for a licence prior to shipment and could make their application upon the arrival of the importing ship.²⁸² The Customs Officer in New Plymouth was sent the instructions of the 10 May but was again told that

²⁷⁹ Resident Magistrate Wellington to the Colonial Secretary, 26 March 1860. IA 1 1860/635

²⁸⁰ Resolution of the Justices of the Peace of the Militia District of Wellington, 20 March 1860 IA 1 1860/636. The justices of the peace had gathered to form a militia list for the district.

²⁸¹ A copy of the resolution was not received by the Colonial Secretary until the first week of April so the resolution could not be credited with prompting the tightening of the restrictions.

²⁸² Notice, Office of the Commissioner of Customs, 10 May 1860. *New Zealand Gazette* 11 May 1860 No. 15. p.88.

the licensing instructions “will necessarily remain in abeyance at New Plymouth whilst Martial Law is in force.”²⁸³

Instructions sent on 11 May regarding the sale of munitions from powder magazines and military stores required that all dealers in arms and ammunition enter into a bond of £500. The dealer was also to make a statutory declaration as to the quantity of his stock in hand. Licensing Officers were told that they had discretion over all licences, and were not to issue licences (for the removal of stores from magazines or military stores) to anyone convicted under the Arms Importation Ordinance.²⁸⁴ The very high cost of the bond would have made the trade in arms or ammunition prohibitively expensive for many settlers. In 1857 a dealer could obtain a dealers licence for a fee of £2. Now the dealer would need to enter into a bond of £500, “with two sufficient sureties”, in addition to the licence fee. Dealers, convicted under the Arms Importation Ordinance would also be effectively put out of business. However, the right of ordinary settlers to possess arms for their own defence remained. The instructions for Circular 159, which was associated with the proclamation of 10 May, reiterated that those wishing to import arms and ammunition for their own personal defence were unaffected by the notice, and that such licences were to be issued under the instructions contained in Circular 103.²⁸⁵ The war in Taranaki was the obvious motivating factor in these new efforts to restrict the supply of arms and ammunition.

Although the sales of arms and ammunition was to be principally controlled by the Customs Department, a number of people outside of the Department were also given the power to issue licences. Lieutenant Colonel Nixon and Major Ponsonby Peacock of the Auckland Militia were granted licences to sell or issue firearms. Principally this was for issuing service ammunition but they

²⁸³ Office of the Commissioner of Customs to Collector of Customs, New Plymouth, (with Circular 159) 11 May 1860. C 4/2 No. 159 p. 417.

²⁸⁴ Customs Circular 158 11 May 1860, Return to an Order of the House of Representatives, 14 June 1861, Le 1 1861/202.

²⁸⁵ Customs Circular 159 11 May 1860, Return to an Order of the House of Representatives, 14 June 1861, Le 1 1861/202.

were also authorised to sell to “respectable Settlers personally known to yourself”.²⁸⁶ Both were authorised to issue licences by the Office of the Commissioner of Customs. The Resident Magistrate of Blenheim was authorised by the Commissioner of Customs to hold a supply of gunpowder for sale to those he considered “trustworthy”. The Resident Magistrate was licensed as a sub-collector of customs.²⁸⁷

As at least a proportion of the illegal imports were being sourced from Australia, attempts were made to restrict the exportation of arms and ammunition from Australia. The Governor of Victoria, in a proclamation of 17 April 1860, prohibited the exportation of arms, ammunition or other warlike stores without a prior obtained licence.²⁸⁸ The Governor of Tasmania issued a similar proclamation on 13 April 1860.²⁸⁹ A similar notice by the Governor of South Australia appeared in the same issue of the *New Zealand Gazette*.²⁹⁰

Unsafe convictions?

Convictions under the arms control ordinances were relatively rare. In the years 1853 to 1859 inclusive, only thirteen convictions were obtained.²⁹¹ Despite the small numbers of settlers prosecuted under the regulations, some contemporary commentators viewed the enforcement of the ordinances with suspicion. They were concerned that important legal principles and traditions were being ignored, leading to the risk of unsafe convictions. More importantly from the point of view of those who wanted to enforce the law, a number of

²⁸⁶ Office of the Commissioner of Customs to Lieutenant Colonel Nixon, 11 December, 1860 C 4/2 No. 495 p.33-34.

²⁸⁷ Office of the Commissioner of Customs to the Collector of Customs, Nelson, 31 May 1860, C 4/1 No. 192 p.435.

²⁸⁸ Proclamation of the Governor of Victoria 17 April 1860. *New Zealand Gazette*, 11 May 1860 No. 15 pp. 87-88.

²⁸⁹ Proclamation of the Governor of Tasmania 13 April 1860. *New Zealand Gazette*, 28 July 1860, No. 24, p.131.

²⁹⁰ Proclamation of the Governor of South Australia 3 May 1860. *New Zealand Gazette*, 28 July 1860, No. 24, pp.131-132

²⁹¹ *Statistics of New Zealand*, New Zealand Government, Auckland 1853-1859. See table page 121.

shortcomings in the ability of the restrictions to gain convictions were clearly evident.

Edward Sydney Yates was accused of landing a firearm to sell to a Māori man near Mongonui. Yates however claimed that he had been “landing a rifle from an American Whaler for the purposes of sport - in ignorance of the law.”²⁹² He claimed that he had landed the rifle with the intention of trying it out and found that both Mr Schultz and Mr Kemp the customs officials were absent, and that as a result he had been unable to obtain “an entry to pass the rifle” as he claimed he had originally intended. He was caught bringing the rifle ashore and both the rifle, and the ship’s boat were seized on the spot. The ship’s captain, Henry Smith, claimed that Yates had returned to inform him of the seizure of both the rifle and the ship’s boat. He had then opted to stay the night on board. Smith claimed that the next morning Yates was found attempting to steal two pistols by hiding them under his coat.²⁹³

The report of W.B. White, the Resident Magistrate of Mongonui concluded that Yates should not have any of his £50 fine waived. White dismissed the plea of ignorance of the law pointing out that “the Messrs Yates” had been traders for nine years in the district and that both held licences to sell arms and ammunition.²⁹⁴ White was “quite convinced that it was fully intended to take the Rifle in question to Ahipaia, there to be disposed of amongst the Natives.”²⁹⁵ Yates had himself stated “I was anxious as my Native was waiting to carry it to Ahipaia, where we had arranged to go on Monday.”²⁹⁶ As to the claim that Yates had been keen to try out the rifle White argued “Mr E.S. Yates is not a sportsman and probably never fired a Rifle in his life.” In the Yates case, the Customs Officers personally stood to gain from any conviction, being

²⁹² Petition of Edward Sydney Yates 13 April 1860, enclosed in Resident Magistrate Mongonui to Attorney General 16 May 1860, J1 1860/270

²⁹³ Depositions Schultz vs. E.S. Yates 23-26 January 1860. Enclosure in Resident Magistrate Mongonui to Attorney General 16 May 1860, J1 1860/270

²⁹⁴ The other Yates may have been Samuel Yates, see *DNZB*.

²⁹⁵ Resident Magistrate Mongonui to Attorney General 16 May 1860, J1 1860/270

²⁹⁶ Depositions Schultz vs. E.S. Yates 23-26 January 1860. Enclosure in Resident Magistrate Mongonui to Attorney General 16 May 1860, J1 1860/270

able to claim up to half of any fine imposed. In June 1860 the Attorney General decided that he would not remit any of the fine imposed upon E.S. Yates.²⁹⁷

One of the most prominent cases was that involving Leopold and Frederick Yates and the one-time interpreter Charles Davis. Both Leopold and Frederick Yates, who were traders based at Kawhia were convicted under the Arms Importation Ordinance. It had been alleged during the trial that Leopold Yates had suggested that a *murū* should be used to obtain firearms in his stock, as he was unwilling to sell arms because of the prohibition. He allegedly suggested that payment could be made afterwards.²⁹⁸

William Fox questioned the conviction in Parliament, arguing that the Judge was a “bush Magistrate”. Hugh Carleton stated that if the guns had been taken under a “sham *murū*” that he would have no sympathy for the claimants. However he argued that the evidence presented in the case was insufficient to uphold the charges against the defendants. He accused the government of forestalling the Native Offenders Bill with their actions in closing the port of Kawhia, which had occurred after the alleged theft of the firearms. The government MP Weld countered by arguing that four of the Māori involved had taken the seized arms to Waitara.²⁹⁹ Although the Native Offenders Bill 1860 had yet to be debated (and would in any case be defeated), the authorities had evidently taken a similar course of action to that promised in that Bill by simply declaring that the port of Kawhia was to be no longer a legal port on 29 May 1860.³⁰⁰ The cancellation of the official port status of Kawhia was aimed at restricting trade with the Māori of Kawhia. The settlers of Kawhia were evacuated ostensibly for their own safety, though were subsequently allowed to

²⁹⁷ Attorney General's Office to the Resident Magistrate, Mongonui, Auckland 5 June 1860 J 5/2 No, 181 p.68.

²⁹⁸ Queen vs Yates and others. Depositions. 5 July 1860. Le 1 1860/247.

²⁹⁹ “Davis and Yates Petition” 28 August 1860. *NZPD*. pp.389-392.

³⁰⁰ Proclamation of the Governor 29 May 1860, *New Zealand Gazette* 9 June 1860. No. 19. p.97.

return to gather some of their property.³⁰¹ C.W. Richmond indicated that the port had been closed because of the flying of the King's flag, the gatherings of armed Māori and the seizure of arms from the settlers.³⁰² The matter of the convictions against the traders was sent to Select Committee for consideration. The Committee found that the conviction was sound, although the Committee admitted the petitioners had been given insufficient time to obtain legal counsel and had not been properly advised on expressing their intention to appeal the conviction. The Committee also concluded that the award of costs had been excessive.³⁰³

The case of the conviction of Henry Thomson illustrates the incentives given to witnesses to provide evidence. In July of 1860, the Resident Magistrate in Wellington wrote to the Attorney General, stating that it was desirable that a Constable Augell should be given a reward for the evidence he provided for the conviction of Henry Thomson. Normally Constable Augell would have been eligible for half of the £30 fine. However, as Thompson had been unable to pay the fine, he was jailed instead. The Resident Magistrate believed that a reward was desirable owing to the difficulty in obtaining information on illegal arms sales and to encourage the police.³⁰⁴ In reply the Attorney General recommended a £10 reward.³⁰⁵

The incentive to provide evidence was also well illustrated in the case of John Blair who was accused of selling a tupara to a Māori man named Moananui.

³⁰¹ A Mr Hunt was authorised to land at Kawhia to retrieve some of his property at his own risk and he was not to trade: Office of the Commissioner of Customs to Mr Hunt, 31 May 1860. C4/1 No. 181 p.429; Mr Yates could also have his property removed as long as the vessel set sail for return by 6 July. Office of the Commissioner of Customs to the Collector of Customs, Auckland 6 June 1860 C4/1 No. 191 p.434. Arms and ammunition were to be denied legal entry into other Māori dominated ports (such as Waitara) because no Licensing Officers were appointed to them.

³⁰² Evidence of C.W. Richmond 14 September 1860. Report of the Select Committee on the Petition of Charles Davis, Frederick and Leopold Yates. 2 October 1860. *AJHR* 1860 F-1 p.7

³⁰³ "Davis and Yates Petition" 2 October 1860. *NZPD*. pp.607-608.

³⁰⁴ Resident Magistrate Wellington to the Attorney General 13 July 1860 Archives of the Justice Department J1 1860/382.

³⁰⁵ F. Whitaker 25 July 1860. Minute on Resident Magistrate Wellington to the Attorney General 13 July 1860 Archives of the Justice Department J1 1860/382.

Moananui claimed that towards the end of 1859, he had exchanged a horse worth £25 for the gun for the agreed value of £20, the difference to be paid later in cash. Moananui claimed that Blair failed to pay the agreed £5 so he took court action against Blair. Moananui hoped to be paid £60 of the possible £500 fine, which Blair may be forced to pay. The Blair case illustrates that the informant might have considerable incentive to give evidence against the accused. It also illustrated that someone motivated by ulterior motives might use the law for their own ends. In this case, the informant hoped to recoup a loss by sharing in some of the potentially large fine. Moananui also had a grievance against Blair, which extended beyond the alleged £5:

Q: Why did you not lay this information before this?

A: I have now laid this information on account of the many wrongs which I suffered at the hands of Blair.³⁰⁶

The case was referred by the Resident Magistrate's Court of Napier to the Attorney General for an opinion on the appropriate fine and for instruction on whether the informant, Moananui, should receive any portion of that fine. An opinion was also asked about whether any further information on sales of firearms to Māori should be gathered. According to Moananui, it was Blair's "professed practise to sell guns and he had been doing so for years."³⁰⁷ Although the bench professed no doubt as to the guilt of John Blair, two points were raised in the defendant's favour, the first that there was a discrepancy between the evidence of two of the witnesses and the second, the fact that the evidence had not been laid within the required six months.

Kohimarama Conference

One of the few opportunities for the expression of Māori viewpoints on "native policy" was offered by the Kohimarama conference, which was opened by the Governor on 10 July 1860. Governor Browne had intended that the

³⁰⁶ Archives of the Justice Department J1 1860/600 Resident Magistrates Court Napier to the Attorney General 22 October 1860.

³⁰⁷ *ibid.*

Kohimarama conference was to be the first of an annual meeting of a parliament of chiefs.³⁰⁸ Invitations had been sent to 250 rangatira, though less than half that number attended, a fact which the Assistant Native Secretary partly attributed to an epidemic.³⁰⁹ The addresses presented by the Māori participants at the conference covered many issues including surveying, trade and the methods used by the government in purchasing land. Complaints about the arms restrictions were repeated in a number of the addresses. Not a single Māori participant expressed whole hearted support for the arms restrictions, at least according to the summaries reproduced in the *British Parliamentary Papers*. Te Waka Perohuka of Ngāti Kahungunu asked:

...bring forth those things which we so greatly desire –guns and powder, the things which are desired by us, the people who are under the law, that we may speak the same words. If you consent to this, it will be well.³¹⁰

Wiremu Waka and Karaitiana Te Korou, both from the Wairarapa believed that the Māori who were not part of the Kingitanga movement should be allowed all the goods brought by the settlers:

Marshal your people living in this island in New Zealand, that you may know which are yours; and it is for you to provide for your children. You provide for them by permitting them to be supplied with all your goods and commodities, and causing us to dwell in peace and security. The subjects of the Maori King must look to their king to the same for them.³¹¹

An address from Ngāti Kahungunu rangatira, Ngatuere Tawhirimatea and Hoani Wiremu Pohotu acknowledged the destructive power of firearms; “The evil thing is the gun its evil is that human life is destroyed by it.” However, they also asked that Māori be allowed firearms for sport:

³⁰⁸ Grey had however subsequently opposed this on the grounds that it would rival the General Assembly. Ward, p. 126

³⁰⁹ Report on the Native Conference at Kohimarama, Thomas Smith, Assistant Native Secretary, 27 August 1860. Encl. No. 1 in No. 39 Browne to Duke of Newcastle. 28 August 1860. *BPP* 1861 [2798] Vol. XLI p. 97.

³¹⁰ Te Waka Perohuka. [Ngāti Kahungunu] Native Conference at Kohimarama. *BPP* 1861 [2798] Vol. XLI p. 102.

³¹¹ Reply from Ngāti Kahungunu No. 3. 16 July 1860. Native Conference at Kohimarama. *BPP* 1861 [2798] Vol. XLI p. 103. Karaitiana te Korou was himself the following year listed as a Kingitanga supporter. *AJHR* E-7 1862 p.27

Friends! this is another word to you, that is, to the runanga of the Government. Do you give us guns, powder and shot, and caps, to shoot birds with, that this word may be made good, which says “the Pakehas and Maories are one people.”³¹²

Te Irimana Houturangi of Ngāti Porou professed no support for the King but suggested Pakeha duplicity in trade and asked that the trade and payment for Māori produce be regulated. He also asked for the lifting of the arms restrictions: “Let us buy guns, powder, shot and caps for shooting birds, that we may have something to give relish to our breakfasts.”³¹³

Pehimana Manakore from Waitotara (near Wanganui) asked that the restrictions be lifted, at least for those who supported the Government:

Let the restrictions on the sale of powder and shot be removed, that we the people who are belonging to the Government, may buy. In the case of those who are disaffected to the Government, the restriction should be in force against them.³¹⁴

Te Moroati Kiharoa of Ngāti Raukawa, residing at Otaki also asked on behalf of the people that they be allowed powder, shot and caps.³¹⁵ Retimana Te Mania and Wiremu Hopihona Te Karore of Ngāti Whātua told the Governor that the restrictions on arms and ammunition stood in the way of the union of the two peoples:

In one respect it (union) is complete, but in another it is not yet so; I allude to guns and powder, which are closed to the Maories, but open to the Pakehas. I am not finding fault with you; I know your thoughts on that subject.³¹⁶

³¹² Reply from Ngāti Kahungunu No. 5. Ngatuere Tawhirimatea and Hoani Pohotu, 16 July 1860. Native Conference at Kohimarama. *BPP* 1861 [2798] Vol. XLI p. 104.

³¹³ Reply from Ngāti Porou No.1. Te Irimana Houturangi. 16 July 1860. Native Conference at Kohimarama. *BPP* 1861 [2798] Vol. XLI p.110.

³¹⁴ Reply from “Ngaraura” (Ngā Rauru) 16 July 1860 Native Conference at Kohimarama. *BPP* 1861 [2798] Vol. XLI. p.112.

³¹⁵ Reply from Ngāti Raukawa Native Conference at Kohimarama. *BPP* 1861 [2798] Vol. XLI. p.113.

³¹⁶ Reply from Ngāti Whātua No.1 17 July 1860. Native Conference at Kohimarama. *BPP* 1861 [2798] Vol. XLI p.114. Parenthesis on original.

Another address from 18 rangatira of Ngāti Whātua expressed a similar sentiment, although also stating some support for the ban on the importation of arms and ammunition:

....it is to ask you who it was that separated us, the Pakehas and the Maories. Was it the Maori or was it the Pakeha? We consider that you have done so, for they are your councils which enact laws for the people, and also for that which is used to shoot birds which are food for the people.

Hearken! these things (arms and ammunition) must be left across the seas (if they are to be kept from the Maories). The Maories and the Pakehas do not fear the law. The Maories and Pakehas are buying and selling guns and powder at the present time. The Maories are drinking spirits at the present time, and do not regard the law. It would be better not to have these things here, in our island of New Zealand, lest they should become a cause of dissention between us.³¹⁷

The arms restrictions were resented because they were seen as unfair and discriminatory. The restrictions were considered especially annoying by those Māori who were professing loyalty to the Government. A desire to obtain firearms and ammunition for the purpose of shooting birds was expressed and the participants at the conference clearly wanted equality before the law.

Turning a new leaf: 1860 Arms Bill

The 1860 Arms Bill was introduced to Parliament on 9 October 1860. The Arms Bill was intended as an improvement over the preceding legislation. The Arms Importation Ordinance and the Arms Ordinance were both very briefly stated laws. These regulations did not define possession, nor did they set out a clear regulatory regime. As a result, the authorities had difficulty enforcing these laws. The Edward Yates case among others, illustrated the difficulty in gaining a conviction. In that case, the offender had been caught actually bringing the offending item ashore. Once the firearm was ashore, there was very little chance of proving that the item had not been legally landed. Unless the culprit was caught red handed in the act of importation, or soliciting a sale to a Māori purchaser, it would have been difficult to prove a case against a suspect. Patrolling the enormously large New Zealand coastline was well

beyond the resources of the new colony. In any case, the smugglers and Māori purchasers were both quite capable of conducting their transactions outside of the colonial jurisdiction. Anyone intent on evading the regulations would have had to be extremely unlucky to be caught and convicted, a fact that was reflected in the very low conviction rate. Just about every firearm in the hands of a Māori owner was purchased illegally. However, once the firearm got into the hands of a Māori purchaser it was too late for the Government to do anything about the purchase. To try to act against Māori who possessed firearms, risked the outbreak of serious conflict. The authorities did not, and indeed could not, safely act against the Māori owners of firearms.

The most obvious differences from the previous regime offered by the new Bill were the measures to define and regulate possession. These were to be achieved with a registration system, which would in theory have provided the authorities with the means to prove whether each firearm in the hands of a settler had been lawfully imported or otherwise obtained. Sections 9-23 of the Arms Bill were to form the basis of a registration scheme, which was to govern any prescribed district. The interpretation of terms for the Bill defined the important new elements of the proposed law: the “Register of Arms”, which was the record of firearms within the district and the “Registrar of Arms”, who had the role of recording the firearms in the register.

The provisions of the Bill allowed the Governor by proclamation to define and set out any area within the Colony, and to require that all owners of firearms within that area to come forward within seven days of a date set by the Governor to have their arms registered. Anyone who failed to comply with this order would be guilty of a misdemeanour.³¹⁷ Arms purchased after the day of registration were to be reported to the registrar within twenty-eight days of purchase. Anyone who failed to comply with this provision would also be guilty of a misdemeanour. To police the registration scheme, the Governor was

³¹⁷ Reply from Ngāti Whātua No.2 17 July 1860. Native Conference at Kohimarama. *BPP* 1861 [2798] Vol. XLI. pp. 115-116. Parenthesis in original.

³¹⁸ Arms Bill 1860. Select Committee papers. Le 1 1860/8

to be provided with the power to demand that any person or the people of any district to come forward and produce their arms to the Registrar of Arms. Anyone who failed to comply risked a £100 fine.

Should the Governor proclaim a district for registration, the dealers within that district were to be subject to different provisions. Dealers were to be licensed as such. No person without a dealers licence was to sell or repair firearms or manufacture firearms or gunpowder. Gunsmiths who made or repaired firearms, gunpowder and warlike stores required a licence. They would also be prevented from making house calls. They could not work upon any of these items except on the area specified on their licence. Presumably this was an effort to stop the illicit repair of arms. Anyone wishing to be licensed as a dealer was to report to the Registrar of Arms with a return of all arms, gunpowder and other warlike stores in their possession. They were to keep a register of all these goods after they had obtained their dealers licence. Dealers were to be subject to searches without warrant to ensure that they complied with the provisions of the registration. Firearms owners who were not dealers were to be subject to search should a Justice of the Peace have grounds to suspect illegal possession. Such searches did not require that the information implicating the homeowner was laid under oath. Wide powers of search and seizure were also planned for ships. The master of any ship arriving at a New Zealand port was required to give details of all arms gunpowder or other warlike stores on board the vessel.

Arms dealers records were to be compared with the Registrar's record every three months. Their stock was to be compared at the same time. A dealer who was found to have been in possession of arms, ammunition or other warlike stores, which were not entered in the Registrar's records, was guilty of a misdemeanour. In addition to the set times for examination the Registrar could examine the records at any time that he thought fit. Arms dealers would have to enter into their records every single round of ammunition that they might have, and record every single conceivable part of any firearm, no matter how insignificant. During the debate, Alfred Brandon argued that the Bill went to

ridiculous lengths. It defined all parts of a firearm as an arm and prohibited the modification or replacement of parts such as the nipples, which often had to be replaced as part of routine maintenance.³¹⁹ Dealers were to have a permitted number of firearms indicated on their licence. Those found with a greater quantity risked prosecution. The Bill intended to make the fraudulent marking of firearms so as to make them appear to have been lawfully registered, a felony. Anyone accused of possessing such a firearm would have had to prove their innocence.

A licence was required to import, or land from a ship firearms, gunpowder or other warlike stores. It would have been a felony to sell to any other person any firearm or warlike stores without a licence. Anyone who fraudulently sold any type of firearm, gunpowder or warlike stores other than that specified on a licence would be guilty of a misdemeanour. This provision was aimed at the more technologically advanced firearms such as revolvers, breechloaders or Minié rifles. Another fundamental change proposed in the Bill was the requirement for a licence to carry firearms for sport or self-defence:

Any person who shall carry arms for the defence of his person or for sporting without a license in the form F in the said schedule or after the expiration of the time mentioned in any such license shall be guilty of a misdemeanour.³²⁰

This was a positivist approach to the possession of arms for self-defence. Licence forms for those who wished to purchase or import arms for self defence had been required since March, however this proposed provision would require that the person obtain a licence simply to carry their arms. Another very significant provision was the offence of possessing a firearm without a licence. Previous restrictions required a licence for the acquisition of arms but not the possession of arms. The new proposal would have required the licensing of arms already in the possession of the arms holder kept within their own dwelling.

³¹⁹ Alfred Brandon, Arms Bill Debate. October 25 1860. *NZPD* p.758.

The proposed penalties for the new restrictions were harsh. Those found guilty of a felony under the Bill risked imprisonment for a maximum of six years or a minimum of three. According to the Native Minister, the offence of selling arms without a licence was to be made a felony, which was he believed more appropriate for such a serious offence.³²¹

The Prime Minister Edward Stafford introduced the Arms Bill for the first reading on 9 October 1860. According to Stafford, the Bill was aimed at gaining greater control over the disposal of arms and ammunition, by the registration of arms already within the colony and of future imports. Stafford claimed that one of the benefits of the proposed Bill would be the increased facility to gather information on arms sales and possession and that the Government would gain greater control over the sales of arms within the Colony. He argued that the proposed new law would make firearms owners responsible for the sale of their arms. According to Stafford, the Bill was in part an answer to the 1857 relaxation, although he also justified that relaxation by claiming that it had also allowed greater scrutiny of arms sales. Stafford said he wished to remind the house that the relaxation was a decision made by the Governor, and not by his advisors. He claimed that the restrictions prior to 1857 had been evaded constantly and that in his opinion, Māori purchasing of arms and ammunition had not been facilitated by the modification of the restrictions in 1857.³²²

Colonel Haultain said that he thought the relaxation of “Sir George Grey’s most politic measure as one of the greatest mistakes that had been made –one fraught with immense mischief to the Northern Island.” He claimed that of the numerous witnesses who had given evidence to the 1858 Sale of Arms Select Committee, not one had claimed that the Māori had been irritated by the restrictions and that quite to the contrary, many Māori, including Te Whero

³²⁰ Section XLVII Arms Bill 1860. Le 1 1860/8

³²¹ C.W. Richmond, Arms Bill Debate. October 25 1860 *NZPD* p.757

³²² Edward Stafford, Arms Bill Debate. 9 October 1860. *NZPD* p.638.

Whero, believed the restrictions wise.³²³ Colonel Haultain claimed that at the time of the 1858 Select Committee hearing that he had heard of 20 tons of gunpowder being sold to Māori purchasers, and that one trader had sold a thousand stand of arms for resale to Māori.³²⁴

Thomas Forsaith, who had sat on the 1858 Select Committee, said that he now felt regret that he had not then urged the need for the re-imposition of the restrictions.³²⁵ John Williamson described Sir George Grey's restrictions as "wisest policy ever adopted by the Colonial Government."³²⁶ He believed that, while the restrictions might be evaded in the northern areas, smuggling further south was impractical. He argued that the great demand for gunpowder evidenced in southern areas upon the relaxation of the restrictions had proved the effectiveness of those restrictions. Williamson believed that an enormous quantity of gunpowder had been sold since the relaxation, and added that he was not surprised that the MP for Auckland City William Daldy had recommended the removal of the restrictions, given the great profits which could be made in the trade. In response, Daldy protested that he had never profited, either directly or indirectly from the trade.³²⁷

James Richmond argued for the Bill, relaying a report from Taranaki that a "Waikato contingent" had arrived to join the fighting, in many instances only armed with spears and tomahawks.³²⁸ Clearly James Richmond considered this a good thing. The Native Minister, C.W. Richmond, supported Williamson's argument for strict restriction on the sales of arms and ammunition. However, he did not agree that the smuggling was confined to the northern North Island. He believed that smuggling was widespread on the east coast of the North

³²³ Haultain's recollection of the Select Committee proceedings (of which he was a part) however appears at variance with the Select Committee papers, which indicated that many witnesses reported Māori were indeed irritated by the restrictions and went to great lengths to evade them.

³²⁴ Colonel Haultain, Arms Bill Debate. 9 October 1860. *NZPD*. p.639

³²⁵ Thomas Forsaith, *ibid*.

³²⁶ John Williamson, *ibid*.

³²⁷ Walter Daldy, *ibid*. p.640.

³²⁸ James Richmond, *ibid*.

Island and at Tauranga.³²⁹ He also ironically argued for the previous partial relaxation of the restrictions, claiming that because the Māori purchasers had become used to purchasing gunpowder whenever they wished, they were now almost destitute of it. He implied that the new proposed restrictions would therefore now be more effective.³³⁰

The second reading of the Bill was moved by the Native Minister, C.W. Richmond on 25 October. He reminded the house that the Bill had now been before the House for some time and that the members will be aware of its strict provisions. According to C.W. Richmond, one of the principal reasons for the Bill was the difficulty which had been experienced in gaining convictions under the old regulations. He said that all of the cases which were brought under Grey's Ordinances during the whole of 1856 and early 1857 had failed, and that almost every attempt to gain a conviction under Grey's Ordinances would fail.³³¹ He argued this was because the regulations did not keep track of the possession of firearms.³³² Although it was an offence to sell to anyone without a licence, it was impossible to prove that a transaction had in fact taken place without knowing who held the firearm prior to the transaction. Richmond argued that some effort had been made to strengthen the controls but that the restrictions as they stood did little good: "...by some complicated contrivances we have now got a little hold on the dealers; but practically the existing law is almost ineffective for its purpose."³³³ Here the Minister appears to be referring to the new bonds system, which demanded large bonds from dealers. Richmond spelt out how the Bill would obtain greater control:

The main feature of the present Bill is this: that it enables the Government, by the machinery of registration, to identify all the firearms in the country, and to render the present holders responsible for their disposal.³³⁴

³²⁹ His view is supported by evidence presented to the 1858 Sale of Arms Select Committee. Le 1858/8

³³⁰ C.W. Richmond. *ibid.*

³³¹ The official statistics for the period in fact record three convictions. See table p. 121.

³³² C.W. Richmond, Arms Bill Debate. October 25 1860. p. 755.

³³³ *ibid.* p.757.

It is clear from the speeches in favour of the proposed law by the Premier Stafford and the Native Minister C.W. Richmond that universal registration was intended as a means to gain far greater control over the possession and more especially the disposal of firearms within the Colony. The universal registration of firearms would create a body of paperwork, which would provide the authorities with evidence that could be produced in court to convict settlers who had on-sold their firearms. The Native Minister recognised that universal registration would be a difficult task: “No doubt it will be impossible to make this fully operative in some districts. The law is therefore not intended to be at once universally binding.”³³⁵ Richmond claimed that the 1857 relaxation had been necessitated by the fact that the Government did not have control of the police, nor control of the Provincial Governments.³³⁶ He pointed out that the suspension of the Arms Ordinance by the Canterbury Province and the Provincial Superintendent, had been pivotal in the Governor’s decision to relax the restrictions throughout the Colony.

According to C.W. Richmond, William Fox had greatly exaggerated the amount of arms and ammunition sold to Māori. Fox had previously claimed that £40,000 worth of arms and ammunition had been sold to Māori since the relaxation. Richmond pointed out that the great majority of arms and ammunition would have been sold to settlers and that it was fallacious to argue that all of the sales had eventually found the way into Māori hands.³³⁷ He argued that only 25 double and 8 single barrelled firearms had legally been sold to Māori in the Wellington Province from March 1858 to April 1860. He admitted that far more had been sold further north, but argued that most of these had been sold north of Auckland to Māori he believed were loyal and who indeed might use those arms in the defence of the settlers.³³⁸

³³⁴ *ibid.*

³³⁵ *ibid.*

³³⁶ *ibid.* p.756

³³⁷ *ibid.* pp.756-757

³³⁸ *ibid.* p.756.

The Native Minister's long speech in favour of the Bill was met with strongly worded opposition from the next speaker, the MP for the Wellington Country District, Alfred Brandon, who described the 1860 Arms Bill as an insult to a British community. He claimed; "...you are to take from every one the constitutional right to have arms for his defence."³³⁹ He argued against the Arms Bill on grounds of personal liberties, pointing out that under the Bill houses would be liable to search without information under oath, and that a licence holder would be "liable for the criminal act of his agent". He pointed out there was no statutory limitation on the time taken to obtain a prosecution and he argued that the Bill would not have been necessary had Grey's ordinances been kept in place. Brandon believed the Bill to be an "invasion of the jurisprudence and government of Englishmen"³⁴⁰

William Daldy voiced many misgivings about the proposed law. He argued that the Colonial Secretary should not be trusted with the powers promised in the Bill, alleging that Stafford had been involved in illegal seizure of the schooner *Hope*.³⁴¹ Daldy professed to admit responsibility for the relaxation of the previous regulations, having chaired the 1858 Select Committee tasked with investigating arms sales.³⁴² Daldy said he would have preferred the imposition of martial law to the present Bill. He argued that all legal sales should be through the agency of the Government and that private sales should be banned.³⁴³

William Fox denied that he had exaggerated the extent of the sales of arms and ammunition. He repeated his claim that large quantities of arms and ammunition had been sold to Māori since the relaxation. He also claimed that

³³⁹ Alfred Brandon, *ibid.* p.758.

³⁴⁰ *ibid.* p.759

³⁴¹ William Daldy. *ibid.* p.762. The schooner *Hope* had been seized in connection with the case of Thomas Black, who was convicted under the Arms Importation Ordinance.

³⁴² However he exaggerated his role in this matter, the committee to which he refers had not in fact relaxed the restrictions; that had been decided by the Governor and the Executive Council the year previously. The committee had simply not recommended the re-imposition of the restrictions.

³⁴³ William Daldy, Arms Bill Debate, 25 October 1860 *NZPD.* p.763.

the Government had sent arms out of the colony and had sold off surplus firearms despite the worsening crisis. He believed that most of the sold Government firearms had passed into the hands of Māori.³⁴⁴

The next speaker, Thomas Forsaith, MP for the city of Auckland, stated he would not vote for the Bill as it stood and asked for a guarantee that the Bill would be altered in committee. Stafford then rose to defend the Bill and asked Forsaith to withdraw his amendment calling for the Bill to be sent to Select Committee. Stafford pointed out that Government MPs could not sit on that Committee and he wanted the control to remain with the Government. The Premier disagreed with the member for Dunedin Country District, Thomas Gillies, who had alleged that the Arms Bill could only be applied nation wide. He believed that the Bill could be enforced in some districts with little interference in others.³⁴⁵ This would seem to be at odds with the Government line that the previous restrictions had been undermined by the Canterbury Superintendent's decision to relax the regulations locally.

The fact that the illegal trade in arms and ammunition had undermined the previous restrictions ensured that the illegal trade in arms and ammunition was a key part of the debate for the Arms Bill. C.W. Richmond described the arming of Māori as a "mad and wicked" act, an act he likened to boring a hole in the bottom of a boat far from shore.³⁴⁶ He referred to the smugglers as "...that vile class who are, at the present moment, selling the blood of their countrymen for gold."³⁴⁷ According to Prime Minister Stafford, American involvement had a most serious seditious aspect. He believed that one American trader was telling Northland Māori that they would be better off governed by the United States.³⁴⁸

³⁴⁴ William Fox, *ibid.* *NZPD* p.765

³⁴⁵ Edward Stafford, *ibid.* *NZPD* p.764

³⁴⁶ C.W. Richmond *ibid.* p.757

³⁴⁷ *ibid.* p.755.

³⁴⁸ Edward Stafford, Arms Bill Debate. 9 October 1860. *NZPD* p. 638

Reports of shortages of arms and ammunition would have been a sign of success for the restrictions. Edward Stafford urged the need for the expeditious passage of the Arms Bill for this reason. Stafford believed that many Māori were already destitute of gunpowder and that every day which went on, more might be left in a similar position. He said that the Government wanted to make sure that these Māori could not obtain fresh supplies, and that the Government acting with this aim in mind could not be “chargeable with a desire to undermine the constitutional government of the country.”³⁴⁹

The MP for Bay of Islands, Hugh Carleton, argued that the restrictions were not only futile but “absolutely mischievous.” He argued that the solution was “justice to the Natives” and that, if the Government was to subject the Waitara purchase to an open inquiry with the assistance of Māori assessors, and bound itself to the findings, there would be peace within three months. Carleton believed that, unless the Government could take back all the arms already in the hands of Māori, the proposed “remedy was worse than the disease.”³⁵⁰ William Moorhouse also expressed concern that the proposed restrictions would alienate “loyal” Māori.³⁵¹

Both sides of the Arms Bill debate made reference to the constitutional rights of Englishmen. Several argued against the Arms Bill on the grounds that it was a threat to traditional liberties, with excessive powers given to the prosecuting authorities. The other concern was that the possession of arms was itself a fundamental right and that the Arms Bill threatened that right. Alfred Brandon argued that the Bill created:

...four or five felonies, twenty or thirty misdemeanors,...And for what? Many of them to prevent a man from doing that which, under his birthright, he is entitled to do –to keep arms for his own protection.³⁵²

³⁴⁹ Edward Stafford, Arms Bill Debate. 25 October 1860. *NZPD* p. 764

³⁵⁰ Hugh Carleton. *Ibid.* p.760.

³⁵¹ William Moorhouse. 9 October 1860. *NZPD* p.639.

³⁵² Alfred Brandon. 25 October. *NZPD* p.758

Daldy claimed that every Magistrate would be made a despot if they used the powers to be given them under the Arms Bill.³⁵³ Concerns were expressed that the regulations might undermine important principles of law and justice. These concerns were not only directed at the present Bill, but also the preceding ordinances. Hugh Carleton commented on the Yates case. He argued that the conviction was based upon evidence of Māori witnesses obliged either to implicate themselves or the defendant. Daldy at this point interjected: “Half the penalty” and Carleton added “very possibly they might get it...” evidently referring to the fact that witnesses stood to gain from the substantial fines imposed. He argued this had the effect of: “...tempting of one half of the country to turn informer on the other half.”³⁵⁴

Against the arguments based on legal traditions was the Government’s argument of the necessity of answering the present emergency. Edward Stafford argued against the idea of the liberty of the individual where this might endanger the safety of others:

There was no such thing as liberty inherent in man – there was no hereditary right for an individual – to injure the community of which he was a member merely for the sake of personal gain.³⁵⁵

Native Minister C.W. Richmond argued along similar lines:

No man will go beyond me in respect and love for or constitutional privileges as Englishmen; but for the sake of these privileges we should submit ourselves for a time to these necessary restrictions.³⁵⁶

C.W. Richmond stated that in his opinion, “institutions fit for the quiet towns and villages of the Mother-country –are not what New Zealand requires at the present moment.”³⁵⁷ He argued that the extensive powers in the Bill were like those given to the Customs Officers, and that only evil-doers need fear the

³⁵³ William Daldy Arms Bill Debate 25 October 1860 *NZPD* p.763

³⁵⁴ Hugh Carleton *ibid.* *NZPD* p.760.

³⁵⁵ Edward Stafford Arms Bill Debate 25 October 1860 *NZPD* 763

³⁵⁶ C.W. Richmond *ibid.* *NZPD* p. 755.

³⁵⁷ *ibid.*

restrictions. He believed that the Government could be entrusted with these powers because it was a Government of elected representatives liable to removal. The rights of society, he argued, sometimes outweigh the rights of the individual.³⁵⁸

William Fox pointed out to Richmond that there was a key difference between the Customs Act and the proposed Arms Act:

Did he not know that the Customs Act affected but a very small portion of the community as compared with the provisions of this [Arms] Bill, and that in respect to the Customs Act there could not be any great complaint about its direct interference with the natural liberties of the subject?³⁵⁹

Most of the Members of Parliament who had expressed an opinion during the debate of the Bill were in favour of restriction upon the sale of arms and ammunition, however the debate centred around whether the proposed law was likely to do more harm than good.

The 1860 Arms Act: the lawmakers backtrack

The Bill was sent to Select Committee on a motion moved by William Fox.³⁶⁰ Although the Native Minister was included in the Committee, Stafford's fear that the Government would lose control of the legislation should it be sent to Select Committee proved well founded. The Select Committee papers indicate that a number of the clauses of the Bill were considered and either amended, expunged or passed as they were. The final version which emerged was fundamentally different in several key areas to the legislation which the Government Ministers had proposed.

The Select Committee reported back to Parliament on 30 October. Many of the key elements of the Bill had been pruned in an effort to allow its passage:

³⁵⁸ *ibid.* p.757.

³⁵⁹ William Fox. *Ibid* p.765

After a careful consideration of the clauses of the Bill as submitted to them Your Committee having regard to the importance of presenting the Bill to the House in such a shape as would facilitate its passing into law during the present session, recommend the abandonment of the principle of Registration except as applicable to Dealers and new importations and sales of arms ammunition and warlike stores...³⁶¹

In addition to the removal of most of the registration provisions, Sections VII, LXIX and LXXIII of the Bill were also amended.³⁶² The sections LIII-LVII respecting those deemed to be an agent of a licensee, which had drawn criticism during the debate, were removed.³⁶³ These sections were not key parts of the Bill, however it is clear that these provisions had been considered overly onerous, and that they illustrate that the Select Committee was willing to make changes to the Bill to meet the criticisms levelled in the House.

After the Select Committee reported its changes, the House resolved itself into a Committee to consider the amendments. The most important change made was to convert the Bill into a temporary law, which would be in force only to the end of the next session of Parliament, and which would require yearly renewal by a continuation act if it was to stay on the statute books.³⁶⁴ The House of Representatives passed the Bill on 30 October. The Legislative Council then considered the Bill. On 2 November the Council agreed to a free conference requested by the House of Representatives to consider the amendments it had made to the Bill. All of the amendments made by the Legislative Council were passed with the exception of clause 67, which was expunged and a new clause inserted instead.³⁶⁵

³⁶⁰ 25 October 1860. *NZPD* p.766

³⁶¹ Report of the Committee appointed to consider the Arms Bill, 30 October 1860. Le 1 1860/8.

³⁶² *ibid.*

³⁶³ Section V, which also mentioned the provisions respecting agents was also removed. Le 1 1860/8.

³⁶⁴ *Journals of the House of Representatives*. 30 October 1861. pp. 216-217. Section 44, which had allowed information to be taken, which was not under oath was amended to require an oath.

³⁶⁵ "Arms Bill" Legislative Council. 2 November 1860. *NZPD*. p.799. Section 67 stipulated that the law would be in operation until the end of the next session of Parliament but also allowed for the prosecution of anyone who had committed offences under the act while it was in force after the act had itself expired.

The most important difference between the Act and the Bill was the fact that all of the provisions for the registration of privately held arms had been removed from the Act. Sections 9 to 23 of the Bill, which set out the universal registration regime, had been deleted. Some of the desired accountability for the possession of arms was retained by Section 34. That stipulated that those who were licensed to purchase or import arms for their own defence or otherwise for their own personal use were, upon receipt of a summons, to produce the arm or arms for verification that they still had them, or to explain why they didn't. This provision may have been simply countered by the licensee borrowing another arm to present for inspection, although this was an offence under Section 22. At this time firearms were not usually marked with easily recorded markings or serial numbers, so Section 8 allowed for the stamping of arms. The Governor, by Order in Council, had the power to demand the stamping of firearms upon entry into the Colony, or of those arms in the possession of a dealer, or upon transfer of arms between private parties. The Governor also had the power to require the registration of these arms. This was a significant backtrack from the original intention of the Bill, which would have required the registration of all arms within a given district. Dealers were to keep a book, in which they were to enter all of their arms, gunpowder and warlike stores if required to do so by an Order in Council under Section 8 of the Act. One key element of the Bill, which survived the Select Committee, was the intention of unifying the arms restrictions and penalties under one law. The key provisions of all three previous ordinances were unified under the same legislation.

The sections of the Act dealing with vessels indicate an intention to police the arms carried by vessels in New Zealand waters. Section 36 required a licence for the transfer of arms and ammunition between vessels (including boats or canoes) within the jurisdiction of the Colony. Section 37 required that the master of a ship provide a full return of all arms and ammunition on board upon arrival in port. If it was later found that the ship had a smaller quantity of arms or ammunition, the master would have to explain the difference or face a penalty of £500. The sections dealing with vessels however illustrate a

fundamental weakness in the Act. The Act could only be enforced within the jurisdiction of the Colony. Māori and traders were often conducting their transactions outside of the colonial jurisdiction and would have been beyond the reach of the new law.

During the Arms Bill debate, Alfred Brandon pointed out that Māori were going to be effectively exempt from the provisions of the Bill: “They would not register the arms of the Natives.” He asked rhetorically; “Would the Natives allow it?”³⁶⁶ Despite the fact that the purpose of the law had always been to try to stop Māori from obtaining firearms, Māori were effectively going to be exempt from the new law. Section 59 of the Arms Act stipulated that no Māori were to be convicted under the Act unless the information or complaint was laid by a person specifically authorised to do so.³⁶⁷ Simply by neglecting to authorise any person under this section, the authorities were able to avoid the risk of provoking conflict with Māori should an over zealous official attempt to take action against any one of the large number of Māori evading the law.

It is difficult to draw any definite relationship between some of the events of the preceding years and the decision to either include or omit a provision from the Bill. However it is likely that the new law had been modified to an extent by the criticism of the previous regulations. The Yates and Davis case was mentioned during the debate and had been the subject of inquiry by Parliament. The case of Thomas Black had also been brought to the attention of Parliament, shortly before the Arms Bill had been presented. Black had been fined £100 for breaching the Arms Importation Ordinance, and £50 of the fine was awarded to five Māori informants.³⁶⁸ Walter Daldy argued that the rewarding

³⁶⁶ Alfred Brandon. Arms Bill Debate. 25 October 1860. *NZPD*. p.758

³⁶⁷ Section 59 Arms Act 1860: “No aboriginal native shall be convicted of any offence under this Act except on the information or complaint of some officer duly authorised in that behalf by the Governor by writing under his hand.” A similar clause was used in Section 6 Gunpowder Ordinance 1847.

³⁶⁸ Return to an Order of the House of Representatives 6 September 1860. Le 1 1860/204. In addition Mr Black had one double barrelled gun and four 25lb kegs of gunpowder seized. The Return was requested by MP for Auckland Walter Daldy on 5 September 1860. “Case of Thomas Black” 5 September 1860. *NZPD* p.455. Daldy was the owner of the schooner *Hope* which was seized, though later returned.

of Māori informers was becoming commonplace and the “Natives were beginning to look upon perjury as nothing.” The Native Minister C.W. Richmond agreed that the rewarding of witnesses “was an ugly feature at the best, and especially objectionable with regard to the natives.”³⁶⁹ Concerns about the way in which these convictions were obtained may have influenced the provisions for rewarding informants. Under the original Bill, an informer stood to gain a proportion of any fine imposed.³⁷⁰ This had also been the case with the previous regulations. The Arms Act did not retain the provision to reward an informer, with the penalty obtained from the offender. Provision for the rewarding of informants was later offered separately by the Government which offered a £300 reward for information leading to convictions, with the funds derived from the Colonial revenue and not from the offender.³⁷¹ Clearly a substantial incentive for informants to provide evidence in arms cases remained.

The changes made during the Select Committee illustrate an important point. The settler representatives in Parliament were able to extensively modify proposed legislation put up by the Government Ministers. The only opportunity for the broad expression of Māori opinion at this time, the Kohimarama conference, indicated that many Māori were dissatisfied with the arms restrictions and wanted a position of equity with the settlers. The settlers, by way of their representatives, significantly modified the intended policy. Māori did not have any representatives in Parliament and had no other legal way of influencing policy decisions.

Meanwhile prosecutions continued. The case of John Winter was an early prosecution under the Arms Act 1860. Fearing that the two principal Māori witnesses might be induced to leave Auckland before the earliest possible date

³⁶⁹ “Case of Thomas Black” 5 September 1860. *NZPD* p.455.

³⁷⁰ Section 83 Arms Bill 1860. The proportion of the penalty awarded was not limited to half the penalty as had been the case with the previous legislation. Section 84 provided for rewards derived from Colonial revenue, however this section was also removed.

for a trial, Inspector Haughton had asked that a special new trial date be set. A proclamation of 21 June declared a special session of the Circuit Court.³⁷² The prosecution was successful and the unfortunate John Winter was sentenced to 3 years penal servitude. One of the worst features of the old arms regulations remained evident. One of the Māori witnesses “William” applied to Inspector Haughton for the reward money. The inspector then forwarded an application for distribution of the reward money for both “William” and “Kissling” the two Māori Witnesses and also for two policemen also involved in the case. Inspector Haughton declined any interest in any portion of the reward himself.³⁷³ A note signed by Stafford indicates that £300 was given to Inspector Haughton and that he was to be authorised to distribute the money to the witnesses involved.³⁷⁴ Clearly a substantial financial incentive to those who were supposed to give evidence remained evident, despite the misgivings expressed by leading politicians. If there was indeed a plot to pay “William” and “Kissling” to make themselves scarce for the trial, they might have gained either way.

The introduction and passing into law of the 1860 Arms Bill has excited less comment from historians than the previous partial relaxation in 1857. It is probable that this is because the 1860 Arms Act had sparked less controversy than the 1857 relaxation. Most commentators agreed that more controls were a great deal better than less. Alfred Saunders in his *History of New Zealand* makes some comment on the passing of the Act. According to Saunders the Government had been hard pressed in the narrow defeat of the Native Offenders Bill. Both sides of the debate had exhausted themselves in the close-fought battle and this delayed the presentation of the Arms Bill. He believed that the presentation of the Bill was a humiliating admission on the part of the

³⁷¹ Notice of the Colonial Secretary’s Office 5 June 1861. *New Zealand Gazette*, 11 June 1861 No. 29. pp. 152-153. See also Browne to the Duke of Newcastle, No. 31. 2 July 1861, *BPP* 1862-64 [3040 and 4049] Vol. XXXVII p. 63 (IUP p.77).

³⁷² Inspector of Police, Haughton (Auckland) to Colonial Secretary 18 June 1861. Copy of Proclamation attached. IA 1 1861/1364

³⁷³ Inspector of Police, Haughton (Auckland) to Colonial Secretary 10 July 1861. IA 1 1861/1364

³⁷⁴ Minute on *ibid*.

Government Ministers that they had erred in partially relaxing the restrictions three years before. The apparent divergence from the British traditional liberties prompted comment from Saunders. He described the 1860 Arms Bill as: “extremely arbitrary and gave powers to the Government that a liberty-loving people would not willingly leave in the hands of any government”. Even after the removal of some of its “most objectionable features” he described the 1860 Arms Act as “one of the most remarkable restrictions of the liberty of the subject that necessity has ever enforced upon a civilised nation.”³⁷⁵

A good proportion of the sections in the final Act had parallels in the previous regime. Whether or not these sections were a conscious repetition of the previous legislation is unclear. Unfortunately there does not appear to be any surviving papers indicating the reasoning put into the initial draft of the Bill. However, it is reasonable to presume that the Bill had been intended to be a permanent and lasting improvement over the previous regime. By the time the Bill had passed into law it had changed radically, and was far closer to the regime it was intended to replace. It had also been converted into a temporary law requiring yearly renewal. This probably explains why the previous ordinances remained on the statute books for so long after they had effectively in theory at least been sidelined, their provisions being duplicated in the 1860 Arms Act. It would also soon be demonstrated that there was a reluctance to implement the 1860 Arms Act at all. Given the controversy surrounding the 1857 proclamation, there was evidently a certain attachment to Grey's Ordinances or at least a reluctance to be seen to do away with them altogether. In addition, Section 48 of the 1860 Arms Act allowed the Governor to not only define “warlike stores” for the purposes of the Act but also for the purpose of the previous Arms Importation Ordinance.

In many ways the 1860 Arms Act merely complemented the existing regime. With its most radical provisions removed during the Select Committee stage, the Act could perhaps be regarded as a mere codification and amalgamation of

³⁷⁵ Saunders, p.415

the previous laws. The key differences were the requirement for a licence to possess arms and the limited provisions for the registration of newly imported arms and arms sold after a date set by the Governor. Perhaps one of the most striking examples of how little difference the passing of the Act made was the fact that Customs Circular No. 103 which governed the Customs Department's part in firearms licensing remained in place until well after the Act was passed.³⁷⁶ No new instructions were sent out with the new Act. The authority for the regulations outlined within Circular 103 remained with the previous regulations.

Given the ongoing war in Taranaki and the growing likelihood of war with the Waikato, it might have been expected that there would have been a rapid implementation of the 1860 Arms Act. However, this was not the case. When two new Licensing Officers were appointed on 11 December 1860 they were authorised to issue licences under the Arms Importation Ordinance and not the 1860 Arms Act.³⁷⁷ Lieutenant-Colonel Marmaduke George Nixon and Major Ponsonby Peacocke were both authorised to issue licences under the authority of the proclamation of 26 March 1860 and not the Arms Act.³⁷⁸ The time limit for implementing the Act was almost reached before the Act was enabled.³⁷⁹ The Executive Council approved the notice enacting the Arms Act on the first of February 1861.³⁸⁰ The notice subsequently appeared in the *New Zealand Gazette* and the Act was enabled on 20 February 1861.³⁸¹ Eight Licensing Officers were appointed under the 1860 Arms Act on that day.³⁸²

³⁷⁶ A return of the instructions given to Licensing Officers was requested by MP for Porirua Alfred Brandon "Military Stores" 14 June 1861. *NZPD*. p.43.

³⁷⁷ Office of the Commissioner of Customs to Lieutenant Colonel Nixon (Militia) 11 December 1860 C4/2 No. 495 p.33-34.

³⁷⁸ Notice, Colonial Secretary's Office 6 December 1860, *New Zealand Gazette*, 6 December 1860. No. 38. p. 206.

³⁷⁹ Section 3 of the Arms Act 1860 required that it be enabled throughout the Colony by 1 March 1861.

³⁸⁰ Minutes of the Executive Council 1 February 1861, EC 1/2 p.329.

³⁸¹ Notice of the Executive Council 1 February 1861. *New Zealand Gazette* 2 February 1861. No. 7. p.29. The 1860 Arms Act was to be enabled on 20 February 1860.

³⁸² Notice of the Treasury, 20 February 1861. *New Zealand Gazette* 20 February 1861. No. 8. p.33.

When the instructions were sent to the Licensing Officers on 22 February 1861 they were told that their authority still lay within the old ordinances.

The powers now conferred upon you do not supersede your authority for acting under the Proclamation of the 26th of March last, and you will continue to be guided by the instructions contained in the Circular letter of the 27th March, 1860, No. 103, so far as they are applicable.³⁸³

The Licensing Officers were informed that the limited registration provisions (the substantial registration provisions had been removed during the Select Committee stage) had yet to be enacted.³⁸⁴ It would have been difficult in any case to maintain the integrity of the registration scheme given that a large proportion of the firearms within the colony (which would have included all the firearms already within the Colony in the hands of settlers) would have been exempt from the requirement to register.

Although officers appointed to issue licences were named, no officers were appointed under the Section 60 of the Act to lay information against those accused of felonies or misdemeanours under the Arms Act 1860, with the exception of one police inspector in Auckland.³⁸⁵ Indeed most of the officers employed to bring prosecutions under the Act would not be appointed as such until after the Stafford Ministry had fallen and been replaced by the Fox Ministry.³⁸⁶ Shortly before the fall of the Stafford Ministry, C.W. Richmond reported that the Government was in fact considering relaxing the restrictions as; “the strict carrying-out of those rules had been found impossible.”³⁸⁷ It was only the discovery of gold in Otago and the subsequent fear expressed by South Island MPs that armed North Island Māori might be among the influx of people

³⁸³ Customs Circular No. 60. 22 February 1861 C 4/2 No. 60 p. 57

³⁸⁴ “You will perceive that the provisions of the Act under Section VIII relating to the registration of Arms have not yet been brought into operation.” Customs Circular No. 60. 22 February 1861 C 4/2 No. 60 p. 57

³⁸⁵ Memorandum, Commissioner of Customs to the Colonial Secretary, 2 September 1861 IA 1 1861/1791 No. 38

³⁸⁶ The Fox Ministry replaced the Stafford Ministry on 12 July 1861. *NZPD* 1861 p.1.

³⁸⁷ “Military Stores” 14 June 1861. *NZPD*. p.43. Soon after this the restrictions upon the importation of sporting arms and powder was lifted. See below.

to the area that prompted further attention to the 1860 Arms Act.³⁸⁸ The Customs Officers were reminded of the need to prevent the carriage of arms by the coast and their attention was brought to the Order in Council of 25 November 1859 preventing the carriage of arms around the coast. It was also suggested that the Governor appoint officers to allow prosecutions under the Arms Act. Nearly a year after the 1860 Arms Bill was introduced into the House of Representatives warrants to allow prosecutions under the Act were finally sent out. So late were these warrants, that copies of the Arms Act Continuance Act, the Act which allowed the operation of the 1860 Arms Act for another year were sent out simultaneously to many of the named police.³⁸⁹ Such was the state of planning and the level of knowledge of who might have been expected to enforce the 1860 Act that a questionnaire had to be circulated asking who might be named to enforce the 1860 Arms Act. It was suggested that the Chief Landing Waiter be appointed temporary officer to lay information “until it can be ascertained who is the head of the Police.”³⁹⁰ Four officers appointed to lay proceedings under the Arms Act were published in the *Gazette* of 14 September 1861.³⁹¹ A further four appointments were published in October.³⁹²

Despite the new Act, the trade in arms and ammunition evidently continued unabated. There was little chance of apprehending the traders, and the Government evidenced little inclination to spend a great deal of money or effort on the policing of the trade. A rare example of a proactive approach to the upholding of the law was shown, when it was learnt that the Waikato tribes had collected a large sum of money to purchase gunpowder at Tauranga. The

³⁸⁸ Memorandum, Commissioner of Customs to the Colonial Secretary, 2 September 1861 IA 1 1861/1791 No. 38

³⁸⁹ See letters of acknowledgement with IA 1 1861/1791

³⁹⁰ Memo. 3 September 1861. Enclosure with Memorandum, Commissioner of Customs to the Colonial Secretary, 2 September 1861 IA 1 1861/1791 No. 38. A memorandum was circulated among the Members of the House who provided the names of all but one of the names required. However instead it was decided to ask each of the Superintendents the name to be inserted in the warrant.

³⁹¹ Notice of Colonial Secretary’s Office. 13 September 1861. *New Zealand Gazette* 14 September 1861. p. 243.

schooner *Zillah* was hired at the rate of £200 per month to send to the area to apprehend the smugglers. In order to further encourage the crew and the master they were promised half of any fines collected.³⁹³ However, there was no record of any success resulting from this operation.

The new Act may have been technically superior to the previous legislation in some aspects, however it could not give an answer to the basic problems facing the authorities. The smugglers and the Māori purchasers could continue their transactions with impunity. Even if the authorities had been prepared to pay for a massive increase in the policing effort, it could not surmount the difficulties of a widespread coastline, and the smuggler's ability to conduct their business outside of the jurisdiction of the Colony.

³⁹² Notice Colonial Secretary's Office 15 October 1861. *New Zealand Gazette* 17 October 1861 No.45 p.273

³⁹³ Office of the Commissioner of Customs to Collector of Customs Auckland, 4 April 1861, C 4/2 No. 130. p.78: C.W. Richmond, Office of the Commissioner of Customs to John Salmon Esq. 3 April 1861, C4/2 No. 129 p. 77

Table 2. Total Convictions by Ethnicity of Offender, Resident Magistrate and Magistrate Courts 1853-1861.

Offence	1853		1854		1855		1856		1857		1858		1859		1860		1861	
	E	M	E	M	E	M	E	M	E	M	E	M	E	M	E	M	E	M
Ethnicity ⇒	E	M	E	M	E	M	E	M	E	M	E	M	E	M	E	M	E	M
Assault	104	7	147	8	167	15	165	12	171	8	193	8	216	17	217	12	238	11
Arms Importation Act	0	0	3	0	2	0	3	0	0	0	3	0	2	0	9	0	1	0
Bribery & Treating Act	0	0	0	0	0	0	4	0	3	0	0	0	0	0	0	0	0	0
Cattle Trespass Ordinance	208	0	392	3	315	0	194	0	96	5	132	0	124	0	0	0	71	10
Gold Fields Act	0	0	0	0	0	0	0	0	0	0	0	0	0	0	17	0	5	0
Impounding Act	80	0	83	0	22	7	77	2	73	3	31	3	138	2	36	2	11	0
Licensing Act	11	0	8	0	13	0	4	0	29	0	19	0	52	0	29	0	53	0
Merchantile Marine Acts	99	0	161	0	193	0	120	0	169	0	223	0	123	0	145	0	148	0
Sheep Act	8	0	2	0	0	0	3	0	5	0	21	0	70	0	39	0	12	0
Desertion Army & Navy	7	0	3	0	0	0	8	0	19	0	6	0	5	0	7	0	45	0
Drunkenness	719	27	868	29	1151	25	1157	38	1148	42	1418	37	1516	45	1381	36	1669	22
Felony	19	20	18	17	26	10	36	25	35	20	41	26	56	38	38	16	104	20
Malicious Injury	14	0	8	1	11	4	5	2	9	0	6	1	13	0	10	0	14	0
Sureties of the Peace	16	0	62	0	41	0	58	3	47	0	56	1	41	0	82	1	45	1
Vagrancy	5	0	5	0	4	0	13	0	29	0	10	0	5	0	11	0	14	0
All other cases	83	9	195	8	209	7	158	4	177	24	430	11	388	18	882	36	1060	11
General Totals	1373	63	1955	66	2154	68	2005	86	2010	102	2589	87	2749	120	2903	103	3490	75
% of total convictions	0	0	0.15	0	0.09	0	0.15	0	0	0	0.12	0	0.07	0	0.31	0	0.03	0

Table 3. Total Convictions by Ethnicity of Offender, Resident Magistrate and Magistrate Courts 1862-1870.

Offence	1862		1863		1864		1865		1866		1867		1868		1869		1870	
	E	M	E	M	E	M	E	M	E	M	E	M	E	M	E	M	E	M
Ethnicity ⇒	E	M	E	M	E	M	E	M	E	M	E	M	E	M	E	M	E	M
Assault	425	15	586	20	746	31	682	29	688	29	806	49	889	23	875	22	756	17
Arms Importation Act	0	0	1	0	0	0	1	0	2	0	0	1	0	0	1	0	0	0
Bribery & Treating Act	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Cattle Trespass Ordinance	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Gold Fields Act	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Impounding Act	140	0	213	1	280	2	293	0	357	1	104	6	185	7	246	0	332	0
Licensing Act	139	0	133	0	286	1	168	1	100	5	262	1	211	0	254	0	211	0
Merchantile Marine Acts	363	0	635	0	574	0	339	0	254	0	192	0	224	0	259	0	227	0
Sheep Act	60	0	138	0	105	0	136	0	102	0	112	1	98	0	44	0	56	1
Desertion Army & Navy	86	0	88	0	71	0	123	0	97	1	64	0	65	0	81	0	26	0
Drunkenness	3026	51	4080	63	5159	101	4858	102	5191	143	4833	94	4511	84	4371	58	4660	40
Felony	166	25	256	22	383	23	463	42	554	38	439	34	401	12	383	16	425	20
Malicious Injury	15	0	29	1	40	0	48	1	100	1	72	2	110	1	144	0	69	1
Sureties of the Peace	69	0	72	1	125	0	148	0	130	2	162	2	219	0	258	0	243	3
Vagrancy	194	0	392	0	467	0	339	1	474	3	355	1	322	1	334	0	628	1
All other cases	1686	29	2673	37	3120	52	2504	49	2991	51	3808	37	3738	14	4445	18	4357	31
General Totals	6371	120	9296	145	11357	210	10102	225	11040	274	11209	228	10973	142	11695	114	11990	114
% of total convictions	0	0	0.01	0	0	0	0.01	0	0.02	0	0	0.44	0	0	0.01	0	0	0

The summary of convictions for the period 1853 to 1870 (tables 2 and 3) indicates that during the whole period very few convictions for offences under either the Arms Act or the preceding ordinances were obtained.³⁹⁴ The figures show that the introduction of the 1860 Arms Act did not lead to a significant increase in the rate of convictions. In fact more than three times as many individuals were convicted in the eight years prior to the introduction of the Act, than were convicted in the eight years following. A total of twenty two individuals were convicted in the eight year period from the beginning of 1853 to the end of 1860. Only seven convictions were obtained in the ten year period from the beginning of 1861 to the end of 1870. The conviction rate for arms related offences as a percentage of total convictions remained statistically insignificant throughout the period and trended downwards, with the total number of convictions increasing significantly. The total convictions for arms offences for the period after 1860, while remaining statistically insignificant, was nevertheless significantly less than the rate of convictions prior to the passing of the 1860 Arms Act. There was a significant increase in the total settler population throughout this period. For the ten years 1853-1860 an average of a little over one in one thousand convictions were under the arms ordinances. The average fell to a negligible average of a little over 7 in every 100,000 convictions for the period 1861 to 1870 inclusive. The increased interest in Arms control issues may have been behind the apparent 1860 “blip”, however even this anomaly remained a statistically insignificant percentage of the total convictions for that year. During the whole period only one single conviction of a Māori offender was recorded. It is also worth noting that the total number of convictions for Māori offenders remained at a level far below that of the settlers. Suggesting the extent to which Māori were engaged with the settler justice system was, as Belich suggests, very limited during this period.³⁹⁵

³⁹⁴ Source for table data: *Statistics of New Zealand*, New Zealand Government. 1853-1865 Auckland; 1866-1870 Wellington. Multiple Volumes 1853-1870.

³⁹⁵ Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, p. 305. Belich indicates that the Māori level of assault convictions rate did not match that of the Europeans until 1908-1917. (ibid. p.309). See also James Belich *Making Peoples: a History of*

The level of convictions suggests that either the restrictions were very effective and deterred the trade, or that the restrictions were, on the contrary, extraordinarily ineffective. Evidence presented on the contentious issue of arms control varied a great deal. Some informants claimed that Māori possessed few firearms; however the far more common report was that Māori were on the whole very well, or even universally armed. Certainly this was the conclusion reached by Browne. Although firearms can potentially have a very long service life, especially when they have been well maintained, a certain level of attrition should have been expected. For the bulk of the Māori population to have remained well armed despite fifteen years of restrictions suggests that numerous illegal transactions occurred throughout the colony during the whole period prior to the 1860 Arms Act, and there is no reason to doubt that this continued afterwards. The level of convictions throughout the period illustrates just how ineffective the restrictions were.

In July 1861, Donald McLean reported that the supply of gunpowder to Māori continued:

I have reason to believe that the natives have been largely supplied with powder by American vessels frequenting the coasts of New Zealand during the whaling season.

The natives can board these vessels at sea from various points on the coast, at a distance from European settlements, thus possessing every facility for evading the law.³⁹⁶

The next day, Browne reported his opinion of the effectiveness of the restrictions to the home government. He noted that although the penalty for selling arms to Māori was as high as £500 “there is no doubt they have been able to purchase a considerable quantity of both arms and ammunition.” Browne believed that resident traders and ships were both supplying the

the New Zealanders from Polynesian Settlement to the End of the Nineteenth Century, Penguin: Auckland 1996. pp. 224-225.

³⁹⁶ Memorandum by D. McLean. 1 July 1861 Encl. in Despatch No. 31. Browne to the Duke of Newcastle 2 July 1861, *BPP* 1862-64 [3040 and 4049] Vol. XXXVII pp. 63-64 (IUP pp.77-78).

contraband. He gave two examples of recent convictions; the captain of an American whaler who was fined and an “Englishman” who was jailed having been detected selling a firearm to a Māori purchaser. He believed that Māori women were purchasing gunpowder in Auckland “or its neighbourhood” and smuggling the contraband out hidden in their blankets. Browne explained that the Government had offered a reward of £300 to anyone who might lay information, which would lead to a conviction of the smugglers. However the only successes were the two examples above. He concluded by stating: “Certain it is that the Māoris do obtain ample supplies of gunpowder, and that the law is powerless to prevent it.”³⁹⁷

Browne's summary is telling. It is clear that the arms restrictions were remarkably unsuccessful. Only the very smallest proportion of the entire Māori population of around 77,000 people had been legally able to purchase firearms yet just about the whole population was able to “obtain ample supplies”. For such a large proportion of the Māori population to have obtained firearms and ammunition would have required numerous illegal transactions throughout the Colony. Yet he could only cite two cases of illegal supply of arms or ammunition resulting in prosecution.

The return of Grey in 1861 saw a return of a “gun control” Governor to the helm. Grey revived the 1857 controversy by bringing attention to Wynyard's 1857 letters of protest. Grey's publication of Wynyard's letters did not include an explanation of how the restrictions might have been more effectively enforced. The wars, which had already started before the introduction of the 1860 Arms Bill to Parliament, would rage across the northern island of New Zealand for the rest of the decade. Although localised shortages of arms and ammunition would be reported among the Māori combatants, Māori as a whole were not disarmed by the arms restrictions. The 1860 Arms Act, subject to a number of important amendments, would remain on the statute books until well

³⁹⁷ Browne to the Duke of Newcastle, No. 31. 2 July 1861, *BPP* 1862-64 [3040 and 4049] Vol. XXXVII p. 63 (IUP p.77).

after these wars were over, however it is debatable how much the law contributed to the eventual Māori defeat.

The first three chapters of this thesis have been an examination of the events, which led to the 1860 Arms Act. These have shown how the 1860 Arms Act came into being. The next unanswered question is why the authorities sought such different policy outcomes for Māori and for the settlers. The final chapter of the thesis examines why the settler Government wanted the supply of arms restricted to Māori throughout the period.

Chapter Four Arms Control Themes

The last section of this thesis examines themes common to the whole period 1854 to 1861. This is an examination of the general arms control issues, which were evident throughout the period. The arms policies from 1854-1861 had the aim of different outcomes for the settlers and for Māori. No significant barrier was put in the way of the settlers obtaining arms throughout the period, despite the fact that this would have greatly simplified the enforcement of the restrictions. On the other hand many barriers were put in place in an effort to stop the supply of arms to Māori. How were the different intended outcomes justified? Did the settlers believe they had a right to possess arms? What was the basis for this belief? As the settler controlled government held authority over most of the key areas of policy, the attitude of the settlers to the Māori possession of arms remained an important factor in the arms control policies throughout the period. There was a range of settler attitudes to the Māori possession of firearms. Some settlers argued that Māori possession of arms was an undesirable reality, which had to be dealt with. Other settlers believed that every possible impediment should be put in the way of Māori purchasing and possessing arms. Only a few settlers expressed the belief that Māori should be allowed firearms on the same terms as the settlers.

Arms control and the English Tradition

Many of the laws and institutions established in the colony of New Zealand simply duplicated the laws and institutions long established in the home country. The restrictions upon arms and ammunition were a departure from the English tradition, for there were no restrictions of a similar nature in England at this time. However, they were made in the context of common understandings among the settlers about their traditional rights, and within a framework which shared many commonalities with the home country. Joyce Lee Malcolm argues that the right to bear arms survived in England until the early Twentieth

Century.³⁹⁸ Although arms restrictions were brought in after unrest in England's industrial centres and the famous Porterloo massacre in 1819, these restrictions were not used to permanently prevent the general population from keeping arms for their own defence in their own homes.³⁹⁹

During the Arms Bill debate, both sides acknowledged that the settlers had a right to possess arms. This right originated in England. Joyce Lee Malcolm has shown that the idea of the right to bear arms in the United States was also inherited from England.⁴⁰⁰ However, the way in which the settlers in New Zealand conceptualised their rights was different to that currently evident in the United States arms debate. Unlike citizens of the United States, New Zealand settlers more often made general reference to principles rather than to specifically documented rights. Although many settlers expressed the belief that they had a right to possess arms for their defence, it is difficult to find any reference made to any specific document guaranteeing that right. The most probable document for such a claim would have been the Bill of Rights (or Petition of Right) of 1689, which had listed the right to possess arms as an English right:

That the subjects which are Protestants may have Armes for their defence Suitable to their Condition and as allowed by Law.⁴⁰¹

Malcolm argues that the final version of this clause was prompted by the intention to emphasise that the right to possess arms was more of an individual right to self-defence, rather than a right of a community to rebel. She argues that the restrictions "Suitable to their Condition" refers to the wealth of the

³⁹⁸ Joyce Lee Malcolm, *To Keep and Bear Arms: The Origins of an Anglo-American Right*, Harvard University Press: Cambridge Massachusetts 1994. p. 170.

³⁹⁹ The Seizure of Arms Act 1820 gave powers to enter houses and seize arms, however this law was only extended to areas of unrest and the law was allowed to expire after two years. *Ibid.* pp. 166-169. –According to Robert Malcolm Kerr the statute 60 Geo III c.1 (abbreviation per original) was an attempt to prevent the abuse of the right to possess arms and not an attempt to restrict or destroy the right. Sir William Blackstone, *Commentaries on the Laws of England*, (1862 edition). Vol. I p.126. Compare to Sir William Blackstone *Commentaries on the Laws of England* (facsimile of 1783 version), Vol. I. p.144.

⁴⁰⁰ Malcolm, pp. 136-137

⁴⁰¹ *ibid.* p.119

owner –a wealthy land owner might be expected to amass a large number of firearms, while a less wealthy man with a similar number of arms would be suspected of being a potential revolutionary.⁴⁰² Malcolm argues that the term “as allowed by Law” gave some scope for regulating the right to possess arms, for instance to restrict the ownership of handguns.⁴⁰³ The restriction of the right to Protestants was motivated by a concern of a potential Catholic revolution. However the Catholics were still to be allowed arms to be kept for the defence of their homes.⁴⁰⁴

Specific mention of the 1689 Bill of Rights is absent from the arms debate prior to the passing of the 1860 Arms Act.⁴⁰⁵ While the arms control debate in the United States revolves around the constitutional right to bear arms, the debate in New Zealand prior to the 1860 Arms Act did not refer to the specific instance where that right had been spelt out. This reflects a fundamental difference in the constitutions of the two countries. In the United States, the constitution was and is sovereign. In England and New Zealand, Parliament was and remains sovereign and the Bill of Rights 1689 was not such a fundamental document. Furthermore the Bill of Rights of 1689 was believed to be a reaffirmation of the ancient rights of Englishmen.⁴⁰⁶ Macaulay argued that there was nothing novel in the Declaration of Right:

Not a single new right was given to the people. The whole English law, substantive and adjective, was, in the judgement of all the greatest lawyers, of Holt and Treby, of Maynard and Somers, exactly the same after the Revolution as before it.⁴⁰⁷

⁴⁰² *ibid.* p.120.

⁴⁰³ *ibid.* p. 121.

⁴⁰⁴ *ibid.* p. 123.

⁴⁰⁵ A petition signed by some of the key missionaries in the colony made specific reference to the petition of right. In this instance the clergymen were criticising the Native Offenders Bill, which they argued gave the Governor the power to punish Māori communities and declare what would in effect be martial law without reference to Parliament. Remarks by the Bishop of New Zealand and others on the Native Offenders Bill, 29 August 1860, Enclosure No. 3 in No. 45 Browne to the Duke of Newcastle, 7 September 1860, *BPP* 1861 [2798] pp. 131-133.

⁴⁰⁶ Malcolm argues that this belief was erroneous and that the right to bear arms was one of a number of novel rights proclaimed by the 1689 Declaration of Right. Malcolm, pp.121-122.

⁴⁰⁷ Thomas Babington Macaulay, *The History of England from the Accession of James II*, Vol. 2. (1902 Edition) J.M. Dent & Sons: London 1935. pp. 211-212, Macaulay goes on to state: “Some controverted points had been decided according to the sense of the best jurists; and there

The settler right to possess arms was less “positive” than that held by Americans. It was a “right” which was more of the nature of a right of tradition and a commonly held belief.

There is strong evidence to suggest that the right to self-defence was still considered by the settlers to be a fundamental legal right in the mid Nineteenth Century. This right was specifically and repeatedly recognised in the arms regulations, and the instructions provided to Licensing Officers. The recognition of the settler right to possess arms for their own defence undermined the potential for strict enforcement of the arms restrictions. One of the most important and widely respected commentators on the Common Law was William Blackstone. Blackstone was clear about the sanctity of the right to self-defence:

The *defence* of one’s self, or the mutual and reciprocal defence of such as stand in the relations of husband and wife, parent and child, master and servant. In these cases, if the party himself, or *any* of these his relations, be forcibly attacked in his person or property, it is lawful for him to repel force by force; and the breach of the peace, which happens is chargeable upon him only who began the affray. For the law, in this case, respects the passions of the human mind; and (when external violence is offered to a man himself, or those to whom he bears a near connexion) makes it lawful in him to do that immediate justice, to which he is prompted by nature, and which no prudential motives are strong enough to restrain. It considers that the future process of law is by no means an adequate remedy for injuries accompanied with force; since it is impossible to say, to what wanton lengths of rapine or cruelty outrages of this sort might be carried, unless it were permitted a man immediately to oppose one violence with another. Self-defence therefore, as it is justly called the primary law of nature, so it is not, neither can it be in fact, taken away by the law of society.⁴⁰⁸

Although the right to self-defence was considered a fundamental right, and no threat to the right of the settlers to self-defence was offered by the first arms control ordinances, some of the settler politicians complained that the 1860

had been a slight deviation from the ordinary course of succession. This was all and this was enough.” “...our Revolution was a vindication of ancient rights...”.

⁴⁰⁸ Blackstone’s Commentaries on the Laws of England were updated for an 1862 version, edited by Robert Malcolm Kerr which reiterated Blackstone’s original view that the right to self-defence was a fundamental right under English law. Sir William Blackstone, *Commentaries on the Laws of England*, (1862 edition). Vol. III. pp.3-4. This section corresponds to the original version. See Sir William Blackstone, *Commentaries on the Laws of England*, (facsimile of 1783 version), Vol. III p.3-4. Blackstone warns that the violence of the defender must not exceed that of defence and prevention.

Arms Bill went further than the previous restrictions. When the 1860 Arms Bill was debated in the House, Thomas Gillies complained that the Bill “made the keeping of arms by Europeans so great a cause of annoyance to them as to prevent them having arms even for self-defence”.⁴⁰⁹ The 1860 Arms Bill retained a provision for settlers carrying arms for their own defence, although in a more positivist fashion, requiring a licence to possess or carry arms for self-defence. Anyone who did not obtain this licence was liable for prosecution. This section was dropped and the Act was more liberal than the Bill. Section 30, which outlined the penalties for the removal of arms from one part of the Colony to another without the required licence, expressly recognised a right to possess arms: “Provided that this provision shall not extend to any person carrying arms for the defence of his person or for sporting.”⁴¹⁰ The right to possess firearms for self-defence for settlers remained after the passing of the 1860 Arms Act.

In contrast, prior to the outbreak of war, Māori could not obtain firearms to defend themselves under any circumstances. Some complained of the unfairness of this. The Rev. H.H. Turton who was closely involved in the Puketapu feud complained that the “restless or evil disposed Natives”, the “intriguing and revengeful” had the opposing faction at their mercy:

The well disposed have been very anxious to obtain the means of self defence, as against their own race and have complained bitterly at being sacrificed to this restrictive law. Their constant cry is to be allowed to defend themselves against their enemies on a fair field and without favour.⁴¹¹

Turton believed that the main reason for Māori applications for arms and ammunition was for self-defence. During the Arms Bill debate, Hugh Carleton said that the Government had failed the “friendly natives” in the Puketapu feud. He said that this faction had complained that they did not break the law and were suffering as a result:

⁴⁰⁹ Thomas Gillies, Arms Bill Debate. 25 October 1860. *NZPD* p.761.

⁴¹⁰ Section 30 Arms Act 1860. The right to possess arms for self-defence was also retained in the instructions to Licensing Officers, which remained with Customs Circular No. 103.

⁴¹¹ Evidence of the Rev H.H.Turton. Le 1 1858/8

“We have not broken your laws – we have not smuggled arms; our enemies have arms in abundance. We cast ourselves on the protection of the law. Come you in and help us.” But the Government did not venture to interfere.⁴¹²

He said that he had not felt so humiliated in all of his life. He told the supporters of the Bill “...that if one of them would rise and engage to defend unarmed friendly Natives whenever appealed to, he would vote for the Bill; if not, he would not consent to hindering the chance of self defence.”⁴¹³

Although there were settlers who believed that Māori had a right of self-defence, it is doubtful that the idea of allowing Māori firearms for self-defence was ever seriously considered as a policy prior to the outbreak of war between the Government and Māori in Taranaki in 1860.⁴¹⁴ A point repeatedly made by some of the key figures, such as Governor Browne, was that the firearms restrictions had an unequal effect upon the Māori population. It was argued that some Māori were unable or unwilling to purchase arms to defend themselves, and that this therefore was one of the reasons for the partial relaxation in 1857: “our friends complained that we would neither protect them or enable them to protect themselves against their enemies.”⁴¹⁵ C.W. Richmond argued that the partial relaxation of restrictions in 1857 had allowed the “friendly tribes of Hokianga” to arm themselves with arms and ammunition which might in the future “be used for our defence”.⁴¹⁶ This was an excuse offered after the fact. If the Government wanted to make good on this issue the 1857 proclamation would have been the ideal opportunity. However the instructions sent to Native Department officials when the partial relaxation was announced, stipulated that Māori in areas where feuding was taking place were not to be allowed firearms. Māori who could show that they were in a situation of clear and present danger could not obtain the tools for their defence. Māori

⁴¹² Hugh Carleton, Arms Bill Debate, 25 October 1860. *NZPD* p.760

⁴¹³ *ibid.*

⁴¹⁴ At least not in the period researched for this thesis.

⁴¹⁵ Browne to Featherston 13 August 1859. Sir Thomas Gore Browne Letterbook 1855-1862, ATL qMS-0284. Browne argued along these lines on other occasions. See also *New Zealand Spectator and Cook's Strait Guardian*, 28 May 1859.

applicants for licences who lived in other areas could only apply for arms and ammunition for the purpose of sport. Officials who issued licences to Māori were not given the discretion to allow the purchase of arms or ammunition for self-defence.

If any Māori community in the colony could lay claim to being “friendly natives” it was the land selling faction in the Puketapu feud. The Government was clearly a willing buyer of Māori land, having during the 1850s bought up a large proportion of the lower North Island, and almost all of the South Island. Ihaia’s faction of the Puketapu hapū were willing sellers of land. The Government would eventually enter into a war to enforce the Waitara purchase, which had been offered by Te Teira, a member of Ihaia’s faction in the dispute. However not even this group of archetypal “friendly natives” were allowed to purchase arms for their own defence. The idea that Māori had a right to a defence from other Māori, certainly had an influence upon the sentiment of some settlers. It did not however have much, if any, influence upon policy.

In addition to allowing individual settlers to possess arms for their own defence, the government set out to organise the settlers for the purpose of collective defence. A number of measures were undertaken to provide an armed settler response to the Māori threat. These included the militia, volunteers and the pensioners. The pensioner settlements were populated with armed retired soldiers and were supposed to provide low cost protection for the general settler population. However William Fox believed them to be costly failures. Envisioned as a protective cordon around Auckland, Fox suggested that they would instead have been a handy source of arms and ammunition for attacking Māori who would have made short work of the mostly middle aged or older pensioners, many of whom had health and social problems from their long service.⁴¹⁷ However one part of the pensioner settlement equation may have been overlooked. Resolutions of the Pensioners of Howick in 1860 asked

⁴¹⁶ C.W. Richmond, Arms Bill Debate. 25 October 1860. *NZPD* p.756

⁴¹⁷ William Fox, *The Six Colonies of New Zealand*, (1st edition: John Parker and Son, London 1851), Hocken Library Facsimile No. 12: Dunedin 1971. p.44.

that they be supplied with arms and a stockade for their defence “against Native aggression.”⁴¹⁸ Presumably they applied to the Government because they had been supplied with neither.

The purpose of the Militia was principally that of local self-defence, both from insurrection and rebellion but also ostensibly from attack from a foreign power. Initially the colonial militia were not to be directed beyond a radius of 25 miles from the police office of the district in which it was raised.⁴¹⁹ The Honourable Frederick Weld argued; “The very essence of Militia service is defence of one’s own property.”⁴²⁰ The *New Zealand Government Gazettes* of 1861 devote considerable space to matters concerning either the Militia or Volunteers. The two Auckland Militia Licensing Officers were authorised to issue licences to Militiamen, Volunteers or “respectable Settlers personally known to yourself.” 1,000 caps a pound of gunpowder, one rifle, or musket or fowling piece, one revolver or brace of pistols. Militiamen or Volunteers were to be allowed to purchase 1lb gunpowder 250 and caps a month for ball practise.⁴²¹ The settlers were also encouraged to take up shooting with the establishment of shooting competitions. New Zealand’s most famous shooting competition, which was eventually to be known as the Ballinger Belt, was inaugurated in 1861.⁴²² The report on the results of the competition noted that many of the militia were unfamiliar with the use of the rifles: “a large proportion of the Militia had never fired before.” It was also noted that in most districts there was no proper shooting range available. The mobilisation of the militia and

⁴¹⁸ Resolutions of the Pensioners of Howick 27 [March?] 1860. IA 1860/646. RDB pp. 50655-50657.

⁴¹⁹ Section 6 Militia Ordinance 1845. This was changed in the Militia Act 1858 to only allow operations within the militia district in which the militia was raised, except where the militia members themselves volunteered to go further. Section 7 Militia Act 1858.

⁴²⁰ Frederick Weld Militia Act Amendment Bill 25 October 1860 *NZPD* p.767

⁴²¹ Office of the Commissioner of Customs to Lieutenant Colonel Nixon (Militia) 11December 1860 C4/2 No. 495 p.33-34.

⁴²² The *New Zealand Gazette* of 4 January 1861 gave notice that a shooting competition was to be held on 24 May 1861. The first prize of £140 was provided by the New Zealand Legislature. The regulations for the shooting competition appeared in the *New Zealand Gazette* of 27 March 1861. Firearms and ammunition were provided by the Government. The winner was to keep the competition pouch and belt for the year in which it was won. The first winner of the competition was 2nd Lieutenant Brighton of the Auckland Volunteer Rifles. This competition came to be known as the Ballinger belt and is New Zealand’s oldest sporting trophy.

volunteers and the establishment of the shooting competition was the beginning of a concerted effort on the part of the Government to get the settlers familiar with the use of arms. The official policy was to encourage settlers to keep and use firearms.

The Government had indicated that it wanted to limit the supply of arms and ammunition to Māori while at the same time encourage the settlers to mobilise with Government or privately owned firearms. It is questionable how committed the Government was to either policy. It failed to provide significant funds to police the trade in arms and ammunition. It also initially failed to import large numbers of firearms or even provide adequate storage of the arms already within the colony. In August 1860 a return of all the arms, and military stores exported from the Colony was requested. The reply to this request indicated that a total of 1,146 firearms were sent from the Auckland stores, all but 53 smoothbore muskets. Correspondence associated with this return revealed that concerns had been raised about the storage available for arms within the Auckland storehouse and magazine. The Secretary of State for War had advised that no funds were available to provide for further works in New Zealand and that the costs of the extra storage should be brought to the attention of the Colonial Government. Although the funds required were then requested from the Colonial Government, this was apparently not provided and the arms were sent away as a result.⁴²³

A September 1860 request for a return of all the arms in the possession of the Government revealed that only 1,730 of a total of 4,592 militia or volunteers in the Auckland Province were armed. The volunteer corps in Auckland and Taranaki were fully armed but those in all other areas were not. All the cavalry in the Auckland Province were armed with revolvers, swords and breach loading carbines, however in total the Government had only 109 revolvers, five of which were in storage and the rest issued in Auckland. Of the total of 3,417

⁴²³ Return to an Order of the Honorable the House of Representatives. 15 August 1860. Lieut Col. Kenny to the Governor 27 August 1860. Le 1 1860/201.

arms possessed by the Government, 1,472 were rifles, 1,836 were smoothbore muskets. There were only 550 rounds of ball ammunition for every rifle then in use. In contrast, there were considerable quantities of the obsolescent percussion musket ammunition.⁴²⁴ These figures did not include arms possessed by the Imperial Government (issued to Imperial servicemen) or arms privately held by settlers. The number of firearms held by Māori at this time numbered in the tens of thousands.⁴²⁵ In June 1861, the MP for the Wairarapa, Charles Carter, moved that a return of all arms and ammunition issued to the militia and volunteers be compiled. This was objected to by James O’Neal and Edward Stafford who did not believe it wise to publish where the arms were located. Carter complained that not a single rifle had been sent to his area. He argued: “...it was better, as far as publicity was concerned, that the Natives should know the settlers to be armed, than that they should suppose that they had no arms at all.”⁴²⁶ The Government had eventually moved to import numbers of firearms. In August of 1860 Stafford reported that 4,500 of the “best rifles” had been ordered from England, though they had yet to arrive.⁴²⁷

If Māori were not allowed to possess arms for their own defence, the other side of the coin was the notion of protection, the idea that the Government could or would provide the protection to the individual or the community. However the promise of Government protection was an empty one. The home Government had warned the settler Government that the settlers would have to defend themselves:

Her Majesty's Government no longer consider themselves bound to follow the policy of their predecessors in permanently furnishing the white inhabitants with military defence against possible danger from the Natives. Such danger must be provided

⁴²⁴ Return to an Order of the Honorable the House of Representatives. 12 September 1860. LE 1 1860/202.

⁴²⁵ The Bishop of New Zealand mentions the figure of 20,000-30,000. Evidence of the Bishop of New Zealand Le 1 1858/8.

⁴²⁶ “Military Stores” 13 June 1861. *NZPD*. p.38.

⁴²⁷ Stafford reported that 1,000 had been ordered the previous year, which had not arrived, and a further 3,500 had since been ordered. “Military Stores” 15 August 1860. *NZPD* p.307.

against by the provincial communities themselves, by the organisation of a militia or police force.⁴²⁸

Responding to a request for assistance from the settlers of Hawkes Bay, Stafford reiterated this policy:

...this was one of the numerous applications the Government was in the habit of receiving from isolated settlers. The only means of protection were the troops, which the Government would not wish to employ for such a purpose, unless under extreme circumstances. He would point out that there were means of organising self-protection, in any effort at which the Government would be happy to co-operate.⁴²⁹

When Fox brought a motion of no-confidence in the Government he alleged among other things that the Government had entered a war when the settler population of Taranaki were ill prepared for conflict:

...not only were they unarmed, but they were utterly unprepared. We were told now that we must defend ourselves everywhere except at the centres of population. But how could the settlers protect themselves if unarmed and unorganised? When the first blow was struck the whole Province of Wellington was absolutely without a weapon of defence except the few fowling pieces with which the settlers might amuse themselves with shooting pigeons –not one arm for twenty men.⁴³⁰

The Government was not even able to provide protection for the outlying settlers, a far more favoured group than the Māori. Māori were left in a legal no-mans-land, without the recognised right to actively defend themselves, or the ability to depend upon the Government to intervene to help.

By accepting Te Teira's offer, the Government effectively joined into the Puketapu feud in Taranaki. When it did so, the long standing policy of nominal neutrality came to an end. The feature of this policy of neutrality which had been most resented by the land selling faction, the refusal to supply them with

⁴²⁸ Colonel Wynyard quoting Labouchere, Defences of the Colony Debate, 25 June 1858, *NZPD* p.564.

⁴²⁹ Reply of Edward Stafford, "Native Disturbances at Hawke's Bay" 9 July 1856. *NZPD*. p.266.

⁴³⁰ William Fox. Want of Confidence Debate 3 July 1861. *NZPD* p.104. Fox went on to accuse the Government of allowing Māori to arm themselves "to the teeth" by repealing Sir George Grey's "wise laws against the sale of arms and ammunition..." and by selling off Government arms.

arms and ammunition came to an abrupt end.⁴³¹ The father of Te Teira, Tamati Raru was supplied with a firearm after he signed the Waitara Deed. General Pratt was also instructed to protect the land selling faction.⁴³² The supplies of arms and ammunition to Māori allies extended beyond the immediate Taranaki area:

I am directed by the Attorney General to instruct you to hand over to the chief Wiremu Nero the arms in your custody, Wiremu Nero will receive communications on the subject from the Office of the Native Secretary.⁴³³

Wiremu Nero resided in the Waikato. The so-called kupapa or Māori allies of the Government were not a major feature of the political landscape prior to the departure of the Imperial troops. However, it is important to note that the Government did not ally itself with the land selling faction until it opened conflict with the Wiremu Kingi's faction.

Right to resist.

An important element of the Whig idea of essential rights of man was the right to resist oppression. John Locke argued that if a ruler should force without right, then all prior obligations ceased, and the oppressed had the right to resist the oppressor.⁴³⁴ This idea that Māori might with justice resist the Government was expressed by a small number of influential commentators. There were legal precedents for this. According to Blackstone, the fundamental English rights consisted of:

...the free enjoyment of personal security, of personal liberty, and of private property. So long as these remain inviolate, the subject is perfectly free; for every species of compulsive tyranny and oppression must act in opposition to one or other of these rights, having no other object upon which it can possibly be employed. To preserve these from violation, it is necessary that the constitution of parliament be supported in

⁴³¹ Browne to the Duke of Newcastle. 4 December 1860. *BPP* 1861 [2798] Vol. XLI p.190

⁴³² Browne to General Pratt. 27 June 1860. *BPP* 1861 [2798] Vol. XLI p.91.

⁴³³ Attorney General to the Resident Magistrate at Raglan, Auckland 10 September 1860, *J5/2* No. 268 p. 109

⁴³⁴ John Locke, *Two Treatises of Government*, Critical edition with introduction and notes by Peter Laslett Cambridge University Press. (first edition published 1689): London 1960. The Second Treatise Paragraph 232 p.467.

its full vigour; and limits, certainly known, be set to the royal prerogative. And lastly, to vindicate these rights when actually violated or attacked, the subjects of England are entitled, in the first place, to the regular administration and free course of justice in the courts of law; next, to the right of petitioning the king and parliament for redress of grievances; and lastly, to the right of having and using arms for self-preservation and defence.⁴³⁵

Blackstone argued that the right to possess arms was a fundamental right. In fact the right to possess arms was the ultimate guarantor of all other rights. He argued that the right to possess arms was in part a natural right to resist oppression:

...a public allowance under due restrictions, of the natural right of resistance and self-preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression.⁴³⁶

Whether or not the right to possess arms for self-defence was still conceptualised in exactly this fashion by the New Zealand settlers is a matter for debate. However, it is true that no serious impediment was ever offered to the New Zealand settler right to possess arms for his own defence. It is also true that contemporary commentators believed that the English had previously resisted unjust Government by force of arms. Macaulay for instance, argued at length for the justice of the resistance to James II.⁴³⁷ The right to possess arms was believed to be in part a right to resist unjust government.

According to the Whig idea of law, resistance to oppression and unjust laws was itself lawful. However, a different interpretation appears to have motivated the Governor's warning to the press and clergy:

The Motives of the authors of such publications may be most conscientious; but the Natives in their present state of civilization, cannot be expected to discriminate between the right of opposition by lawful means and of resistance by force of arms to

⁴³⁵ Sir William Blackstone *Commentaries on the Laws of England*, (1862 edition). Vol. I. p.127. This section corresponds to the original version. See Sir William Blackstone *Commentaries on the Laws of England*, (facsimile of 1783 version), Vol. I. p.144.

⁴³⁶ Sir William Blackstone *Commentaries on the Laws of England*, (1862 edition). Vol. I. p.126. This section corresponds to the original version. See Sir William Blackstone *Commentaries on the Laws of England*, (facsimile of 1783 version), Vol. I. pp.143-144.

⁴³⁷ Macaulay, pp.9-15

that which they are taught to believe by persons holding influential positions is unjust and illegal.⁴³⁸

Many settlers argued that Māori should not be able to resist the Government under any circumstances. Member of the Legislative Council James Menzies argued “The law that barbarous tribes can best understand is, that might shall govern.”⁴³⁹ Menzies urged that the settlers should: “conduct this war so as thoroughly to convince the natives of the important truth, that armed resistance is altogether hopeless, and can only lead to their destruction...”.⁴⁴⁰ He argued that the treatment of the Māori should be like that of the Scots. They should be enrolled as a fighting force for the benefit of the Crown but as a population disarmed.⁴⁴¹

Although Richmond argued that there were no politicians in New Zealand who believe that the “Natives can only be governed by demonstrations of physical force”, he also stated:

Unfortunately, the vigour and success of the Military operations in Taranaki did not vindicate, in the only way in which would have been recognised in Waikato, the Governor's right to rule the country. Disaffection spread –not because injustice had been done, but because authority had been asserted –because authority had been asserted –because authority had been asserted and resistance had not been effectively put down.⁴⁴²

Some missionaries could see that there may be some justification in taking up arms. The Rev. A. Purchas considered that the Waikato might clash with the Government: “I believe they are very unwilling to do so but I think they would not hesitate if they considered it necessary for their preservation as a people.”⁴⁴³ Octavius Hadfield believed that the declaration of Martial Law in Taranaki left

⁴³⁸ Notice of the Governor 24 January 1861. *New Zealand Gazette* 25 January 1861, No.4 p.17.

⁴³⁹ James Menzies Legislative Council Debate 5 September 1860 *BPP* 1861 [2798] Vol. XLI p.351

⁴⁴⁰ James Menzies Legislative Council Debate 5 September 1860 *BPP* 1861 [2798] Vol. XLI p.350

⁴⁴¹ James Menzies Legislative Council Debate 5 September 1860 *BPP* 1861 [2798] Vol. XLI p.351

⁴⁴² Memorandum by C.W. Richmond in Reply to Sir William Martin *AJHR* 1861 E-No.2 p.25

⁴⁴³ Evidence of the Rev. A. Purchas, Le 1 1858/8

the impression on the Taranaki Māori that it was “lawful to take up arms.”⁴⁴⁴

He argued that Māori had no other legal avenues to oppose the government:

I deem it right to warn Her Majesty's Government against confounding dissatisfaction at the Governor's proceedings with disaffection to the Crown. I would further observe, that whereas the natives of this country are a high-spirited people, and at present have no legal tribunal to appeal to for the protection of their territorial rights, there will be a great danger if they are debarred from using the right open to all British subjects of petitioning the Crown in a constitutional manner for the redress of their wrongs, that they will be driven to seek redress by force of arms.⁴⁴⁵

Richmond's response to Sir William Martin making a similar point was to argue that an investigation by the Land Purchase Department was equivalent to a court hearing. This same Land Purchase Department to which Richmond refers, was at the time of his writing, leaving a trail of unfinished, and poorly documented transactions throughout the Colony. Well over a century later historians would find themselves trying to unravel numerous essentially incompetently executed transactions.⁴⁴⁶ Richmond further argued that the Governor had the sole right to determine Treaty matters. He argued that it would be desirable to bring Māori within the law:

Here then is the fallacy: at the present moment the *desideratum* is to bring the Maories within the pale of the law. Sir William's argument assumes that they already are within it.⁴⁴⁷

There were settlers who believed that Māori should be on exactly the same legal footing as the settlers. It would appear that these settlers were not in the majority, for this opinion never held sway in arms policy from 1845 until the early Twentieth Century. The idea that Māori lacked the maturity to enjoy the full rights enjoyed by settlers was a more common argument and was shared by some of those who advocated for Māori. The Bishop of New Zealand, George Selwyn, argued that there was good reason to treat Māori as minors at least for

⁴⁴⁴ Octavius Hadfield Evidence before a committee of the whole house, 14 August 1860, *BPP* 1861 [2798] Vol. XLI p.332

⁴⁴⁵ Hadfield to the Duke of Newcastle, 24 August 1860 Encl. in No. 41 Browne to Duke of Newcastle. 31 August 1860 *BPP* [2798] Vol. XLI. p.124.

⁴⁴⁶ See for instance Barry Rigby, *Wairarapa Crown Purchases 1853-1854*, Report commissioned by the Waitangi Tribunal: Wellington December 2002. p.28.

the present time. He believed that there was justice in restricting Māori from access to firearms, or alcohol and he also reasoned that the restrictions upon the sale of lands were justified.⁴⁴⁸ The Rev. G. Kissling maintained that Māori were like children in their fondness for firearms and had no self-control. He also argued that guns should be stamped in Māori with a warning not to load with ball, so that Māori would not injure themselves.⁴⁴⁹

The Rev H.H. Turton seemed to have similar sentiments, although he drew a completely different conclusion. He advocated that the restrictions should be relaxed enough for Māori to buy “those miserable fowling pieces which the traders can now legally sell.” In this manner the Māori “may be effectively disarmed and yet kept in humour at the same time.” Turton argued; “Our chief duty to the Maori is to prevent his injuring others; and our chief duty to ourselves is to prevent our being injured.”⁴⁵⁰

Donald McLean to the Kohimarama Conference argued that it was the Māori lack of maturity that demanded the different treatment before the law:

Some of you have said that the laws for the Māori are not the same as the laws for the Pakeha. This is in some measure true. Children cannot have what belongs to persons of mature age; and a child does not grow to be a man in a day.⁴⁵¹

Although generally not in favour of the restrictions, the Rev. J. Whitely felt that the restrictions were in some cases beneficial for Māori. He maintained that the Kawhia Māori regarded the restrictions: “as an evidence of the paternal care of the Government for their welfare: that they might not waste their property in the useless purchase of guns, nor destroy themselves as a people by the use of

⁴⁴⁷ Memorandum by C.W. Richmond in Reply to Sir W. Martin. *AJHR* 1860 E-No.2 p. 21

⁴⁴⁸ Evidence of the Bishop of New Zealand Le 1 1858/8

⁴⁴⁹ Evidence of the Rev. G. Kissling, Le 1 1858/8

⁴⁵⁰ Evidence of the Rev. H.H. Turton, Le 1 1858/8

⁴⁵¹ McLean's speech Kohimarama Conference *AJHR*. 1860 E-9. p. 7

them.” He thought that the Kawhia Māori “regarded the gun as an instrument they had no longer any use for”.⁴⁵²

Some argued that Māori should be denied the full rights enjoyed by the settlers because they did not or could not fulfil the obligations, which accompanied those rights. MP Thomas Forsaith argued that the New Zealand settlers were surrounded by “a population technically British subjects like themselves, but not conscious like themselves of the responsibility and privileges implied in that title”.⁴⁵³ Charles Brown argued: “It was absurd to apply the refinements of British constitutional rights, which had been centuries in growing, to a nation the commencement of whose civilization dated but from yesterday.”⁴⁵⁴ Although there were many expressions of the desirability of equality before the law for Māori and the settlers, the fact remained that the policies directed towards the two peoples were different. The arms restrictions were one of a number of laws that expressly discriminated against Māori.

If the right to bear arms was considered to be a fundamental English right how could the attempts to disarm Māori be justified? It is curious to note that in the language of the debates and of the regulations the right of the “people” to possess arms was not questioned. Stafford asserted: “There was nothing in the Bill to prevent any man from procuring a license.”⁴⁵⁵ The previous Arms Ordinance, and Arms Importation Ordinances stated that every “person” could possess arms for their own defence. Both implied that it was the right of the

⁴⁵² Evidence of the Rev. J. Whitely, Le 1 1858/8. He later repeats this point “Speaking of the Kawhia natives I think the effect was most decidedly good. They regarded the measure as that of a father who sought his children’s welfare...” However Whitely described an entirely different situation in New Plymouth, where he claimed the “friendly natives” were disadvantaged by their adherence to the law. He told the committee that they had repeatedly requested that they be allowed arms and ammunition. Whitely implies that the shortages suffered by the “friendly natives” were overcome by 1858, and that both sides were well supplied with quality arms.

⁴⁵³ Thomas Forsaith, Arms Bill Debate. 25 October 1860. *NZPD* p.759.

⁴⁵⁴ Charles Brown, *ibid.* pp.760-761.

⁴⁵⁵ Edward Stafford, Arms Bill Debate. 25 October 1860. *NZPD* p.764

“people” to possess arms.⁴⁵⁶ Native Minister C.W. Richmond said that the 1860 Arms Bill was for the “safety of every man, woman and child in the country”.⁴⁵⁷ The same Bill promised to safeguard the settler ability to keep arms for their own defence, yet was also specifically aimed at trying to control the supply of arms and ammunition to Māori. Māori could not apply for a licence to possess arms for their own defence. This begs the question were Māori part of the “people”? There was a certain consistency to the reasons given as to why Māori should not be allowed firearms on equal terms to settlers. Māori were considered something less than citizens, even aliens or foreigners. According to Richmond Māori could not enjoy many of the rights enjoyed by settlers because they were effectively foreign:

In his eloquent assertion...of the principal that, not only the subject, but the Executive Government itself, is bound by the Law of the land, of which the Judges are interpreters, Sir William Martin overlooks one essential point. True it is, that the founders of the English Commonwealth “forbad the Executive Government to use its power against any man, the meanest in the State, “without due sanction of law.” But it cannot be said that, in any but a technical sense, the Maori people are yet *within* the state. The State's relations with them, at least as respects their territorial rights practically, are external, and not internal relations, foreign and not domestic.⁴⁵⁸

Richmond argued that because Māori deliberately opted out of abiding by British law they could not expect all of the rights of British subjects. He argued that most Māori communities were beyond the pale of British law and that redress for wrongs committed by those living amongst these Māori communities could only be obtained with negotiation. Richmond in essence argued that Māori were not a part of “the people”.

Who were prepared to see Māori possess arms?

Given the number of transactions throughout the colony, clearly some settlers were prepared to see Māori purchase arms and ammunition. Governor Browne

⁴⁵⁶ Arms Ordinance "An Ordinance to Regulate the Removal and the Making and Repairing of Arms, Gunpowder, and other Warlike Stores, within the Colony of New Zealand." 12 November 1846. Session VII. No.XVIII.

⁴⁵⁷ C.W. Richmond, *ibid.* p.755.

⁴⁵⁸ Memorandum by C.W. Richmond in Reply to Sir W. Martin. *AJHR* 1860 E-No.2 p.20.

blamed “foreigners, unprincipled adventurers, deserters, or escaped convicts” for the smuggling.⁴⁵⁹ The very high profits, which could be made in the trade was an encouragement for many settlers. However, it was not just the isolated Pakeha-Māori who engaged in the exchanges and it was not merely the incentive of money which motivated many of the transactions.

A high profile case of the officially sanctioned sale of ammunition to Māori was brought to public attention in 1861. The incident involved the prominent early settler F.E. Maning, who was accused selling gunpowder to Hokianga Māori. The case led to accusations of government corruption. Maning had been officially authorised to distribute gunpowder in limited quantities to Māori in his area:

...His Excellency the Governor has authorised the issue to you to the Natives on the Hokianga, for sporting purposes, (100) one hundred pounds of gunpowder in quantities not exceeding (1) one pound per quarter of a year to any one individual...⁴⁶⁰

Both Maning and the government were accused in the *New Zealander* of supplying gunpowder to Māori.⁴⁶¹ Maning, in his defence, repeatedly emphasised the loyalty of Māori who had received the powder. In his letter to *The Southern Cross* he stated that some of these same Māori had used arms and ammunition paid for by themselves in the service of the Queen. Maning claimed that the Māori in his neighbourhood expended more than £700 worth of gunpowder, lead and destroyed firearms during the Northern War: “Sir, these men are the Queen's loyal subjects and soldiers, and my intimate friends.” Maning emphasised that the recipients of the gunpowder had lost many near relatives fighting on the side of the Government.⁴⁶²

⁴⁵⁹ Browne to Sir William Molesworth, 14 February 1856, No. 81 *BPP* 1854-1860 [2719] Vol. XLVI, p.187 (IUP 461)

⁴⁶⁰ Office of the Commissioner of Customs to F.E. Maning Esq, Hokianga, 9 May 1860. C 4/1 No. 149 p. 410. MP Sir Osbourne Gibbs requested a return of all correspondence between Maning and the government on the matter. 10 June 1861. *NZPD*. p.12.

⁴⁶¹ *The New Zealander*, 9, 16 & 23 February 1861, 6 March 1861.

⁴⁶² F.E. Maning to the Editor. 5 March 1861. *Southern Cross* 19 March 1861. See also David Colquhoun, ‘Pakeha Maori’, the early life and times of Frederick Edward Maning, MA Thesis University of Auckland 1984. pp. 165-168

Maning was the self-styled archetypal old settler, someone who had been the colony long enough to have experienced life within Māori communities before the establishment of major alternative Pakeha centres of settlement. He and others like him had been a part of the “old New Zealand” described by Belich.⁴⁶³ The arming and supporting of Māori communities had once been a key part of the early settler/Māori relationship. The Maning case illustrated that the sympathies of the settlers could be a complicating factor in the arms restrictions. Living among Māori communities required establishing relationships of mutual perceived benefit. Māori consistently preferred arms and ammunition above all other trade goods. Getting on with Māori communities often required providing those communities with the goods the community demanded.

Another motivating factor was the sympathies of the settlers in one side of local feuds. In Taranaki, the major tangible contribution made by sympathetic settlers to the cause of Ihaia and his allies was the supply of arms and ammunition. The Provincial Council warned the Central Government that the settlers were involving themselves in the dispute: “...for the mass of the settlers were known to sympathise with the friendly Natives besieged in the Ninia Pa, and many of them supplied the besieged with munitions of war.”⁴⁶⁴ The key Taranaki respondents to the Select Committee Henry Turton and the Rev. J. Whitely and the previous superintendent Charles Browne all opposed the strict enforcement of the arms restrictions.

The Rev. H.H. Turton reported that the small number of settlers of Kawhia were not concerned by the partial relaxation of 1857, but stated that he had been informed that the settlers of Auckland were much more concerned. The Rev. Thomas Buddle who resided in Auckland reported “a good deal of

⁴⁶³ Belich *Making Peoples: a History of the New Zealanders from Polynesian Settlement to the End of the Nineteenth Century*, pp. 129, 187-193.

⁴⁶⁴ Memorial of the Provincial Council of New Plymouth 19 May 1858. *New Plymouth Provincial Gazette*. 2 June 1858. Vol. VI No. 9. p.56

anxiety” among the Europeans over the relaxation of the restrictions. James Preece in Thames reported that he had heard anxiety expressed in Auckland about the relaxation “but in my district no fear at all is expressed even in the event of the reimposing the restrictions.” McCaskill also reported that the settlers in the Thames area were not anxious at the partial relaxation.⁴⁶⁵ According to Francis Fenton: “I have heard no anxiety expressed in the country –that feeling seems confined as far as I can judge to the towns.”⁴⁶⁶ It appears that it was the “old settlers” and the “out settlers” who were most willing to accept Māori owning firearms, and the new settlers or the town settlers who were less willing. According to Thomson, the new settlers wanted action:

New settlers, who were unacquainted with the natives, said New Zealand yet required the rough remedy of a Roman conquest, before a better state of things could be established.⁴⁶⁷

The “New New Zealand” school, those who lived in the towns and in the settler dominated areas, did not want to see Māori possess arms. Those who lived among Māori communities were generally less concerned. This situation was ironic because the Pakeha-Māori and out-settlers lived amongst Māori and were the most vulnerable to any attack, while the town settlers were relatively safe.

According to Thomson, the class of people known as “Pakeha Māori” had dramatically reduced in numbers over the years prior to 1860. Perhaps these settlers were gravitating to the settler-dominated areas as those areas grew in influence. Certainly their proportion of the total settler population declined markedly.

A key factor in the willingness of some resident traders to trade in arms and ammunition was the need to maintain relations with local Māori. Many traded without the sanction of the Government, and others like Maning did so with government approval. Both traded arms with the Māori whom they dealt with

⁴⁶⁵ Evidence of McCaskill, Le 1 1858/8.

⁴⁶⁶ Evidence of the F. Fenton, Le 1 1858/8.

⁴⁶⁷ Thomson, p. 179

on a regular basis. At this local level, it is not surprising that the often long time settler who had developed relationships with surrounding Māori would be willing to provide the items which their Māori neighbours desired above all else, firearms and ammunition.

Firearms for sport or self-defence?

Prior to 1860 the settlers were freely allowed firearms for sport. However, after the outbreak of war in Taranaki, the authorities stopped the licensed sales of sporting arms and ammunition. In August 1860, a number of Lyttelton applicants were told “that the Instructions given by His Excellency the Governor do not admit of licenses being issued for the Sale of Ammunition for Sporting purposes.” They were informed that this policy change had been necessitated by the outbreak of war.⁴⁶⁸ A more revealing explanation was offered to Major Speedy of Mauku:

...I am directed to inform you that it is considered inexpedient to allow the issue of Powder & Shot to Europeans for Sporting as the Natives will claim the same indulgence and also, that amongst Europeans it is impossible to discriminate in any satisfactory way what applications shall be granted and what refused.⁴⁶⁹

Settlers were still allowed to import firearms for personal defence. A Mr Russell of Wellington for instance was allowed to import one Whitworth breach-loading rifle with 2,000 cartridges on the condition “that the same be retained by the Importer for personal defence.”⁴⁷⁰

In June of 1861 the Government announced that it was considering relaxing the restrictions.⁴⁷¹ Soon after, the settlers were again allowed to purchase arms and ammunition for sport. Customs Circular 249 told Licensing Officers that they

⁴⁶⁸ Office of the Commissioner of Customs to Messrs J.T. Peacock & C, Lyttelton, 27 August 1860. C4/1 No. 328 p.510.

⁴⁶⁹ Office of the Commissioner of Customs to Major Speedy, Mauku. 11 September 1860 C 4/1 No. 343. p. 517

⁴⁷⁰ Office of the Commissioner of Customs to the Collector of Customs, Wellington. 5 July 1860. C4/1 No. 249 p.469.

⁴⁷¹ C.W. Richmond “Military Stores” 14 June 1861. *NZPD*. p.43.

were authorised to issue licences for sporting purposes to settlers. These licences were limited to no more than one pound of gunpowder, ten pounds of lead shot and five hundred percussion caps and required the signature of a Justice of the Peace unless the applicant was known to the Licensing Officer.⁴⁷² Occasional licensed sales of sporting ammunition to Māori continued. The Resident Magistrate at Wanganui was authorised to licence D.S. Durie for 40lb gunpowder with shot and caps for distribution in small quantities to “the principal chiefs of Putiki” to allow them to shoot birds for the “next meeting of the Native conference.”⁴⁷³

The brief ban on sporting firearms illustrated one important point; the settler right to possess arms for their own defence outweighed any right to possess arms for the purpose of sport. Māori could only purchase sporting arms and sporting ammunition at times of peace. For most of the period, the settlers could freely purchase sporting arms and could at all times purchase guns, rifles and pistols for their own defence. As tensions grew, the settlers were for a time prevented from purchasing sporting arms, but retained the right to buy arms for their own defence. The ban on sporting arms and ammunition was effectively a ban on all Māori purchases, as Māori purchasers could only purchase arms and ammunition for sport. During the brief ban on the sales of sporting ammunition to the settlers there were some limited exemptions for Europeans who wished to obtain shot, the two Militia Officers for instance authorised to issue arms licences were told that only Commissioned Officers could be given licences to possess shot.⁴⁷⁴

Where Māori were few, there seemed less reason for strict control. In October of 1860, South Island farmers Messrs W.P. & G Rhodes were authorised to import six rifles for the purpose of destroying dogs and wild pigs on their

⁴⁷² Customs Circular 249 3 July 1861 C 4/2 No. 249 p.113.

⁴⁷³ Office of the Commissioner of Customs to Licensing Officer Charles Sharp esq. Wanganui, 11 July 1861, C 4/2 No. 268, p.118

⁴⁷⁴ Office of the Commissioner of Customs to Lieutenant Colonel Nixon (Militia) 11 December 1860 C 4/2 No. 495 p.33-34.

run.⁴⁷⁵ Licensing Officers in the South Island were later issued separate instructions, which authorised them to allow run-holders up to ten pounds of gunpowder and equivalent shot and caps per quarter (which by the standards of those licensed in the rest of the country would mean one hundred pounds of lead and five thousand percussion caps). Licensing Officers were to satisfy themselves that the ammunition would be used on the run hold to shoot pigs or wild dogs, for rifle practice, or “some other legitimate purpose.”⁴⁷⁶

The attempts to differentiate between “sporting” firearms and non-sporting firearms would have been a relatively new avenue for firearms policy internationally. It is only during this period that a meaningful difference emerged between the firearms commonly used by wing sportsmen and those used by the military. Even so, the advantages offered by Minié rifles were welcomed by sporting shooters and farmers and were in some demand by private purchasers. A run-holder trying to control sheep-worrying dogs for instance would have found the far greater range and accuracy of the Minié rifle invaluable.

Denying Māori access to new innovations in firearms technology was an aim of the restrictions. Firearms technology was at this time on the verge of a revolution. New innovations in firearms technology such as the revolver and the Minié rifle offered significant advantages over the firearms used over the previous century. The Minié rifle offered an enormous improvement in both range and accuracy over smooth bore firearms. The early rifles had been largely confined to sportsmen because the relatively tight fit required to force the projectile (usually held with a cloth wad) to engage with the rifling, meant that the barrel quickly became fouled with the deposits left by the burning gunpowder propellant. Such rifles required frequent cleaning; otherwise the

⁴⁷⁵ Office of the Commissioner of Customs to Acting Collector of Customs, Lyttelton, 18 October 1860 C 4/2 No. 410 p.10.

⁴⁷⁶ Circular 103 (1861) 11 March 1861. C 4/2 No. 103 p.69 Sent to Nelson, Wairau, Lyttelton and Dunedin. The limit on gunpowder brought by passengers from England to Lyttelton was increased to 5lb and the restrictions on the importation of lead and saltpetre to the southern

projectile and wad could become hopelessly jammed part way down the barrel during loading. The Minié rifle had overcome this problem with a relatively free fitting elongated projectile, which expanded to fit the rifling upon the ignition of the propelling charge. The rifleman armed with a Minié rifle could fire with accuracy many times the distance covered by someone armed with a musket and could still reload for the next shot in a comparable time.

When the British Army was upgrading to rifles, the MP for the Hutt district, Dillon Bell, moved that the Governor ask whether a number of the earlier model firearms could be made available for the colonial militia. Stafford opposed this motion, arguing “the Minie rifle, and not the old Brown Bess, was the weapon suitable to the colony”. MP for the City of Auckland, Thomas Beckham, also said that only the Minie rifle would be thoroughly effective. The price of each Minie rifle would be £3 15s. The motion was agreed to only after the wording “free of cost” was added to the request.⁴⁷⁷ Evidently smoothbore firearms were not good enough for the settlers if they had to be paid for.

Efforts were made to stop Māori obtaining the new technology. A proclamation of 27 August 1858 warned that in cases where persons were licensed to sell a certain type of firearm to a Māori purchaser and had instead supplied a different type of firearm, they risked prosecution for unlicensed sales.⁴⁷⁸ The Rev. G. Kissling told the Sale of Arms Select Committee that he believed that rifles and pistols should be banned for public sale. He believed that rifles should be restricted to members of the militia. He argued that the terrain of New Zealand offered such an advantage for concealment that Māori armed with rifles would be extremely dangerous.⁴⁷⁹ An outright ban on the importation of rifles would have made enforcement easier, but no limitation

ports were also eased. Office of the Commissioner of Customs to the acting Collector of Customs Lyttelton, 5 November 1861. C4/2 No. 459 p.174.

⁴⁷⁷ “Arms for the Militia” 15 July 1856. *NZPD*. p.281.

⁴⁷⁸ Notice of the Treasury 27 August 1858, *New Zealand Gazette*, 28 August 1858, No. 24. p.121

⁴⁷⁹ Evidence of the Rev. G. Kissling, LE 1 1858/8

was placed upon the settlers importing rifles for their own use. Instead the importation of rifles by dealers for retail sale was restricted. The Collector of Customs in Auckland was told that a Mr Perschler may land 12 single and 30 double-barrelled guns but could not keep two Minié Rifles, which were part of the same shipment. The two rifles must be re-shipped within a month.⁴⁸⁰ Mr Perschler responded to the order of re-shipment, arguing that one of the rifles was for his own personal use, the other for the personal use of a “European friend”. In light of this the Auckland Customs official was then told that the regulations: “...under which the Importation of Rifled Firearms by individuals for their own use will be permitted, are under consideration of the Governor, and that as soon as the terms of these Regulations are settled, the application of Mr Perschler will be entertained.”⁴⁸¹ The ordered re-exportation of the rifles was therefore suspended.

The interim policy for rifles was that a private individual could import a rifle, a dealer could not. The intention was clearly to limit the number of rifles in circulation. Soon after Perschler's case, a Mr Hobson was allowed to import six guns and quantities of firearms parts “provided the Guns are not rifled” – strictly speaking an unnecessary proviso, guns are not rifled and rifles are not guns.⁴⁸² But as today it seems that some may have used the term “gun” carelessly, perhaps even dishonestly. Soon after a Mr Winter was allowed to import firearms “providing they are of the authorised description”⁴⁸³

As an interim measure, while the issue of the importation of rifles was yet to be decided a new form was issued for declaring the type of firearm being imported.

⁴⁸⁰ Office of the Commissioner of Customs to the Collector of Customs Auckland 25 May 1859. C 4/1 No. 252 p.113

⁴⁸¹ Office of the Commissioner of Customs to the Collector of Customs Auckland. 24 June 1859. C 4/1 No. 301 p.136.

⁴⁸² Office of the Commissioner of Customs to Collector of Customs Auckland 25 July 1859. C4/1 No.378 p.172

⁴⁸³ Office of the Commissioner of Customs to the Collector of Customs Auckland 1 August 1859. C 4/1 No.394 p.180

I (AB) of _____ in the Colony of New Zealand do hereby declare that the _____ described or referred to, is intended to be imported (or purchased) by me for my own personal use, and not as an article of Merchandise⁴⁸⁴

This form was intended to reinforce the policy of allowing relatively free importations for settlers as long as the firearms were not going to be immediately on-sold. The following month this policy was confirmed when W. Hobson was allowed to land a case six double-barrelled guns but two rifles also in the case “not being imported by Passengers for their own personal use, cannot be admitted.”⁴⁸⁵

The restriction on the settler importation of rifles was complemented by a ban on the sale of rifles or revolvers to Māori. Edward Stafford challenged William Fox to show a single instance where a Māori had been lawfully supplied with a rifle or revolver.⁴⁸⁶ This was part a policy of denying Māori access to the latest firearms technology. The success of the efforts to stop Māori from acquiring the latest technology was not clear. Stafford believed that Māori had illegally purchased “large numbers” of rifles.⁴⁸⁷ The famous early engagement of the first Taranaki war at Waireka illustrated the relative effectiveness of the rifle compared to the smooth bore musket. In this engagement a mixed force of militia and volunteers armed with smoothbore muskets faced Māori opponents, some of whom were armed with rifles. Charles Brown found that the “natives soon made us aware that they possessed pieces of long range, against which our muskets were of no use...”⁴⁸⁸ Future events would show that the Waireka engagement was an atypical encounter, usually if there was a great disparity between the opponents it would be Māori fighters who would be hopelessly outranged by settler, Imperial or kupapa enemies.

⁴⁸⁴ Office of the Commissioner of Customs to Collector of Customs Auckland 2 August 1859. C 4/1 No.396 pp.180-181

⁴⁸⁵ Office of the Commissioner of Customs to the Collector of Customs Auckland 22 November 1859 C 4/1 No. 588 p.283

⁴⁸⁶ Edward Stafford, Want of Confidence Debate 8 July 1861, *NZPD* p.110.

⁴⁸⁷ *ibid.*

⁴⁸⁸ Captain Charles Brown Taranaki Militia to Major Herbert Commanding Militia and Volunteers, 29 March 1860. *BPP* 1861 [2798] Vol. XLI p.27

The engagement at Waireka left the authorities questioning how the Māori fighters had obtained their weapons. There was a belief that Wiremu Kingi had stockpiled arms and ammunition since long before the war. Richmond alluded to the alleged stockpile held by Wiremu Kingi: “He did not need to accumulate warlike stores, having always been well supplied with arms and ammunition.”⁴⁸⁹ Charles Brown thought that Wiremu Kingi’s ammunition stockpile dated to the musket conflicts.⁴⁹⁰ However well the gunpowder may have been stored; this did not explain how modern firearms might have got into the hands of Kingi and his followers. If the firearms used by Kingi and his followers had been of the same age as his long stored gunpowder, they would have almost certainly have been smoothbore flintlocks.

Part of the explanation may have been that some the rifles may have been captured in some of the heavy defeats inflicted on the Imperial troops in the area. But reports indicate that rifles had been in use since the first engagement. The only other plausible explanation was that numbers of rifles had been sold illegally. In a confidential letter, Browne asked Major General Pratt to send to Auckland examples of any rifles captured at Taranaki. The Governor also asked for any firearms that appeared to be new or nearly new. It was hoped that this might give some clue as to how the weapons had been smuggled. Pratt was urged to keep the intention to find out about the importation a secret.⁴⁹¹

Despite the technology gap, Māori combatants scored notable successes over the regular forces:

In the course of the first six months we have seen a body of the Queen's troops armed with the rifle and the bayonet, and supported by artillery, literally driven off the field, leaving their dead upon the ground, by a native force not more than double their number, without a single bayonet, without artillery, and armed, for the most, only with muskets, fowling pieces, and double-barrelled guns.⁴⁹²

⁴⁸⁹ Memorandum by C.W. Richmond in reply to Sir William Martin. *AJHR* 1861 E-No.2 p. 23. The Rev. H.H. Turton also alluded to a stockpile of carefully stored gunpowder. Le 1 1858/8

⁴⁹⁰ Evidence of Charles Brown. Le 1 1858/8.

⁴⁹¹ Browne to Maj. Gen. Pratt. 8 November 1860 G36/3 Governor Letterbook p. 294.

⁴⁹² William Swainson, Legislative Council Debate 5 September 1860, *BPP* 1861 [2798] Vol. XLI p. 349.

Restricting Māori access to modern weapons was an aim of the restrictions. This aim was apparently to a large extent achieved, though the degree to which the regulations could be credited with this outcome might be debated. Māori who lawfully purchased arms were restricted to smoothbore fowling pieces; however lawfully acquired arms would only have represented a small fraction of the total number of firearms purchased. Rifles had been in use by sportsmen for well over a century prior to the outbreak of war in Taranaki; however the critical advance in military technology offered by the Minié rifle was then very new. It is possible that the very high profits in the illicit trade in arms meant that smugglers had less incentive to procure the newer arms and that there was therefore a slower uptake in the new technology. It is possible that the Māori purchasers sought the tupara in preference to rifles. However, the relatively rapid uptake in percussion arms years before, and indeed in firearms in general would tend to suggest that had there been a *laissez faire* arms regime, Māori purchasing of Minié rifles would have been rapid.

The arms control regime could be credited with limiting the military effectiveness of the Māori warriors and communities as a whole by denying the acquisition of rifles. This success was not achieved by the controls on the sale of technologically advanced firearms to Māori, the total legal sales to Māori were too statistically insignificant, but rather it was achieved by limiting the wide scale Māori purchasing of firearms to the black market, which did not provide the same opportunities for purchasing new technology which may have been available on the open market. Although the restrictions imposed on the settler acquisition of rifles through dealers may have had some small effect on the black market in these weapons, the coastal trader was probably a more important supplier to the black market. The supervision kept upon legal sales would have prevented most would-be settler black marketeers from becoming major players in that market.

Belich argues that one of the key elements of the modern pa was a killing zone, in which the defenders gunned down the troops. Belich points out that the

effective range of smoothbore Māori muskets dictated the size of this area.⁴⁹³ This innovation effectively negated the advantage possessed by the rifle-armed troops, and in fact, gave the Māori warriors who were often armed with two-barrelled arms a distinct advantage over their opponents armed with single-barrelled arms. Had Māori been more generally armed with rifles, the danger area around the pa could have been extended many times over. It is certainly conceivable that had Māori owned many more rifles, the course of the following wars could have been radically different.

Māori response

The Māori response to the restrictions included protest and dialogue but above all else, it involved the widespread evasion of the law. The restrictions added a new complication to the trade in arms and ammunition, which had been a feature of the Māori economy for decades. Māori purchasers of arms had been dealing with coastal traders for over a generation before the first restrictions had been enacted. There was only a relatively narrow window of opportunity for many Māori arms purchasers to purchase arms and ammunition directly from resident importers or traders within the colony. With the exception of Kororareka or Russell, many of the principal towns or settlements within the North Island were only established shortly before the restrictions were put in place.

The restrictions upon the sale of arms and ammunition ensured that the arms trade largely remained a sellers market with highly inflated prices. Māori who wished to buy arms and ammunition had to make contact with traders willing to defy the law. For the Māori purchasers, the coastal trader was better than the resident trader. They had less risk of interference by the authorities and were able to provide much greater quantities of arms and ammunition. Resident illegal traders existed, although the relative amount these traders sold was probably a lot less than that traded by coastal traders. Only the coastal trader

⁴⁹³ Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, p.296

could safely deal in large quantities of arms or ammunition without a significant risk of detection. Donald McLean believed that the coastal traders supplied the bulk of the contraband. The visiting whalers could trade large numbers of firearms and ammunition at a high profit with very little danger of being caught. A large proportion of these whalers were American, adding a political complication for the authorities. Stafford claimed that an American vessel trading in the Bay of Islands was urging the local Māori that they would be better off with the protection of the United States.⁴⁹⁴ The Premier believed that the Home Government would have disallowed the acts of the Settler Government should they threaten the whalers, rather than risk war with the United States.⁴⁹⁵

Māori also avoided the regulations, and the heavy prices demanded by smugglers by manufacturing gunpowder and casting projectiles. This posed problems for those who hoped to restrict the trade in potential war material. Licensing Officers in the Customs Department were warned on 8 October 1860 that lead was to be considered within the meaning of “Warlike Stores”. As such it would require a licence obtained under the provisions of the Proclamation of 26 March 1860 before import or purchase.⁴⁹⁶ There were numerous reports of Māori gunpowder making. C.O. Davis believed that there were several “stations” where gunpowder was made, one North of Auckland and three in the Waikato. He believed that one of the powder makers who made superior quality gunpowder had been employed in a gunpowder mill near Sydney and had returned to New Zealand with a powder mill.⁴⁹⁷ There were reports of settlers assisting in the manufacture of gunpowder. The most famous of these was William Moffat who made gunpowder at Taumarunui from

⁴⁹⁴ Edward Stafford, Arms Bill Debate. 9 October 1860. *NZPD* p.638.

⁴⁹⁵ Edward Stafford “Sale of Arms to Natives” 1 June 1858. *NZPD*. 47. Stafford repeated his belief that there was a risk of a “foreign war” over the trade in the Want of Confidence debate of 3 July 1861. *NZPD*. p.110

⁴⁹⁶ Customs Circular 388 8 October 1860 C 4/2 No. 388 p.4. A proclamation of the 25 of October 1860 publicly repeated this same point. Notice, Office of the Commissioner of Customs, 28 October 1860, *New Zealand Gazette* No.35, 19 November 1860 pp. 195-196.

⁴⁹⁷ C.O. Davis. Minutes of evidence taken before the Waikato Committee. 6 October 1860. *AJHR*. 1860. F-No.3 p. 21.

sulphur obtained from Tongariro, charcoal and saltpetre canoed up from Wanganui.⁴⁹⁸

Of the three principal ingredients of gunpowder, the most easily restricted was saltpetre (or potassium nitrate). Sulphur was naturally occurring and there was little chance of trying to control the one other principal ingredient, charcoal. In 1856, Mr Field of Waitotara reported that at least two hundred-weight of saltpetre had been sold to Māori in his area.⁴⁹⁹ A proclamation of the Governor of 23 March 1861, defined “Warlike Stores” for the purposes of the 1860 Arms Act as well as the Arms Importation Ordinance. Among other items the list included: lead, “manufactured or otherwise”, Shot, Ball, Bullets, “and all other articles that may be used as Missiles from Fire Arms”, and Saltpetre.⁵⁰⁰ This broad definition of what constituted arms was part of an effort to prevent Māori evading the restrictions by manufacturing gunpowder and projectiles. In addition to the manufacture of gunpowder, saltpetre was used for a number of other benign purposes. Because saltpetre could only be sold by persons licensed to sell warlike stores, a number of grocers obtained dealers licences to enable them to sell the product to their customers. Instructions to Customs Officers stated that saltpetre was to be sold in quantities of up to 28lb for “curing meat, domestic or medicinal purposes,” on the condition that a weekly return is supplied. The instructions sent to the Customs Officers were clear about applications made by Māori; “...of course Sales to natives are prohibited.”⁵⁰¹

James Belich argues that the demand for firearms had been the main reason why Māori wanted settlers to settle in amongst them.⁵⁰² The arms restrictions were by 1860 just one of a growing number of examples of Māori expectations

⁴⁹⁸ James Cowan, *Tales of the Maori Bush*, A.H. & A.W. Reed: Wellington 1934 p. 164.

⁴⁹⁹ Superintendent New Plymouth Charles Brown to Colonial Secretary, 14 February 1856, TP 7/4

⁵⁰⁰ Proclamation of the Governor, 23 March 1861. *New Zealand Gazette* 25 March 1861, No. 16. p.87.

⁵⁰¹ Office of the Commissioner of Customs to Licensing Officer Napier, 25 July 1861, C 4/2 No. 282 p.122. 28lb of saltpetre could produce around 37lb of gunpowder.

⁵⁰² Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, p. 19

clashing with that of the settlers. Māori had wanted Pakeha settlements primarily for trade, among the most desirable of all the trade items were arms and ammunition. The settlers, on the other hand, did not want to live near and especially be overawed by, powerful and armed Māori communities.

Section 71 and Māori Autonomy

A key part of the debate about arms control was the military power, which arms gave to Māori communities. Over a large proportion of the North Island, Māori communities were the ultimate decider of right and wrong and acted accordingly. The settler response to this reality mirrored the response to the widespread evasion of the arms restrictions. Many settlers appeared to be in a state of denial, unwilling to recognise that Māori possessed large quantities of arms and were politically powerful enough to govern themselves. Belich argues that the settlers had expected Maori independence to end with the signing of the Treaty of Waitangi.⁵⁰³ However, over fifteen years later, Māori political power had not disappeared, some even argued that Māori confidence was growing: “They seem to have more ridiculous and inflated views of their own power and authority now than they had Twenty years ago.”⁵⁰⁴ The fact that Māori communities largely remained autonomous and independent after the signing of the Treaty of Waitangi was an uncomfortable reality for the settlers and Colonial Government. The belief that Māori control over the power of coercion should have ended with the signing of the Treaty of Waitangi was later reflected by the 1840 rule, which was later used by the Native Land Court. The Court recognised shifts in boundaries and land claims dating to the so-called ‘musket wars’, and any date up until 1840. However the Court would not recognise claims later than this date. The primary reason for boundary changes was inter-tribal (and intra-tribal) violence, and some very profound changes in Māori ownership of land, later recognised by the Native Land Court were brought about with the aid of firearms. The upheavals of the ‘musket wars’, the death toll, the migration and the very important and

⁵⁰³ *ibid.* p. 21

profound economic changes, which were driven by the need to trade with Europeans for the all-important muskets, had profoundly reshaped Māori society. All of a sudden, and with the stroke of a pen in 1840, this process was to stop, at least in the minds of the Judges of the Native Land Court. No re-adjustment after the cut off point of the signing of the Treaty of Waitangi was to be recognised. But what of the communities which were supposed to live by this rule? The settler authorities did not gain substantial control over many Māori communities until well after 1840, or even 1860. What principles of law were to govern in the interim?

One of the questions put to those questioned by the Sale of Arms Select Committee asked:

Does the possession of arms and ammunition, and increased facilities for acquiring them, have any tendency to increase the difficulty of bringing the Natives under subjection to British Law?

The Rev. G. Kissling answered: “It certainly tends to foster their spirit of independence generally.” The Rev. A. Purchas answered: “Decidedly so”. The Rev. Burrows believed that the possession of firearms helped lead to a feeling of independence. He believed that many Māori wanted the principles of the English law without English authority. When Burrows was asked if he believed that the Maori in his area thought conflict with the Government was likely he replied:

Many Natives may think it probable. Some few may even entertain a wish to do so: but my decided opinion is that the great majority wish to live on friendly terms with Europeans, and not to oppose the Government so long as their rights, guaranteed to them by the Treaty of Waitangi are respected.⁵⁰⁵

Official recognition of a degree of Māori independence was shown in Lord Normanby’s instructions to Hobson.⁵⁰⁶ This recognition was later to find

⁵⁰⁴ Evidence of the Rev H.H. Turton Le 1 1858/8

⁵⁰⁵ Evidence of the Rev. R. Burrows, Le 1 1858/8

⁵⁰⁶ Hobson was instructed, that until Māori could be “brought within the pale of civilised life and trained to the adoption of its habits, they must be carefully defended in the observance of

expression in Section 71 of the New Zealand Constitution Act. This section stated:

AND WHEREAS it may be expedient that the laws, customs, and usages of the aboriginal inhabitants of New Zealand, so far as they are not repugnant to the general principles of humanity, should for the present be maintained for the government of themselves, in all their relations to and dealings with each other, and that particular districts should be set apart within such laws, customs, or usages should be so observed:⁵⁰⁷

Although the authorities had at their disposal the means to set aside districts where Māori customs would hold sway, the measure was not used. Some degree of Māori participation was promised by the Native Districts Regulation Act 1858, which gave the power to proclaim districts to be administered by runanga. However this measure was not used until 1862 when the attempt proved abortive.⁵⁰⁸ These institutions were, in any case, like the Resident Magistrate, more a means to bring the settler law into Māori districts, than the recognition of Māori autonomy implied in Section 71 of the Constitution Act. When the Native Secretary, C.L. Nugent was sent to investigate the situation in Taranaki he was asked to investigate whether the recognition of Māori authority should be considered:

Would the exercise by the Governor of the power of setting apart the native districts in the neighbourhood of New Plymouth for the maintenance of native laws be beneficial or otherwise?⁵⁰⁹

In reply, Nugent reported:

I do not see any object would be gained by setting aside any district in the neighbourhood of New Plymouth for the maintenance of native laws. The sooner our laws are put in force among the natives the better; and the natives are rapidly

their own customs, so far as these are compatible with the universal maxims of humanity and morals.” Normanby to Hobson 14 August 1839. No. 16 *BPP*. 1840 [238] Vol. XXXIII p. 40.

⁵⁰⁷ Section 71. New Zealand Constitution Act (UK) 1852. *The New Zealand Constitution Act: Together with correspondence between the Secretary of State for the Colonies and the Governor-In-Chief of New Zealand in explanation thereof*. R. Stokes, Wellington. 1853. p.27.

⁵⁰⁸ Sinclair, *The Origins of the Maori Wars*, p.104

⁵⁰⁹ Instructions [from the Acting Governor?] to the Native Secretary, 27 December 1854, Encl. No. 3. In, No. 37 Wynyard to Sir George Grey, 28 December 1854. *BPP* 1854-1860 [2719] Vol. XLVI p.64. (IUP p.338), p. 64.

decreasing and the settlers increasing, we shall soon be able to force our laws, but at present we must tacitly acquiesce in some of their customs; but I think an open acknowledgement that there were two systems of laws in force would have a bad effect, and might tend to retard the operation of our laws.⁵¹⁰

The Native Affairs inquiry asked many of the informants: “Has a native a strictly individual right to any particular portion of land, independent and clear of the tribal right over it?” The replies were overwhelmingly in the negative.⁵¹¹ It followed that social cohesion was an important element in maintaining clear and undisputed tenure over the land. The board argued that until the Government had real power, Māori communities were going to look to their own social structures:

While they continue as communities to hold their land, they will always look to those communities for protection, rather than to the British laws and institutions, which although brought so near, does not embrace them in regard to their lands.⁵¹²

There were some settlers who appreciated that a localised coherent Māori body politic had some advantages, most especially when dealing for land. Captain Bolger of the Bay of Islands for instance argued:

The number of claimants have increased of late years. Any native who may have lived on the land, hearing that it is to be sold, endeavours to claim it. This arises from the original owners dying off, and the tribe becoming weak. Persons who would not have dared to bring forward a claim, do so now with impunity.⁵¹³

The Memorial of the Provincial Council of New Plymouth similarly argued that the coherence of the Taranaki Māori social organisation had been disrupted and that this made the acquisition of Māori land difficult.⁵¹⁴

⁵¹⁰ Native Secretary C.L. Nugent to Colonial Secretary 25 January 1855. Enclosure No. 1 in No. 43. Wynyard to Sir George Grey. 5 February 1855. *BPP* 1854-1860 [2719] Vol. XLVI p.73 (IUP p. 347).

⁵¹¹ Report of the Board of Inquiry into Native Affairs *BPP* 1854-1860 [2719] Vol. XLVI. p.245 (IUP 519)

⁵¹² Report of the Board of Inquiry into Native Affairs. Encl. in No. 100, Browne to Labouchere 23 July 1856, *BPP* 1854-1860 [2719] Vol. XLVI

⁵¹³ Evidence of Captain Bolger *Bay of Islands*. Board of Inquiry into Native Affairs. *BPP* 1854-1860 [2719] Vol. XLVI. p.263. (IUP p.537)

⁵¹⁴ Memorial of the Provincial Council of New Plymouth 19 May 1858. *New Plymouth Provincial Gazette*. 2 June 1858. Vol. VI No. 9. p.56

Some argued that the emergence of the Kingitanga was an attempt to impose a more regulated system of authority. This was the opinion of the Bishop of New Zealand.⁵¹⁵ Archdeacon Hadfield argued along similar lines:

...it struck me that the origin of it [the Kingitanga] was the absence of law among the Natives, and the necessity of some law to govern them. The Natives say, "As far as we are able to judge, the law of the pakeha exists only for the protection of the pakeha, and for those immediately around their districts..."⁵¹⁶

Archdeacon Maunsell argued that the Kingitanga was established because "they were really excluded from even the least portion of legislative power."⁵¹⁷

However the Executive Council could see nothing in the establishment of the Māori King other than the organisation of a mob:

At this very time the adherents of the Native King, are using the most strenuous efforts to possess themselves of arms and ammunition for the purpose of effecting their objects by intimidation and violence.⁵¹⁸

There was no room in this point of view for the idea that Māori might use arms in a similar way to that employed by the settler society, for law and order and the protection of the community. Instead the Māori of Ngaruawahia were told that submission to the sovereignty of the Queen required:

That rights be sought and protected through the law, and not by a man's own will and strength. No man in the Queen's dominions is permitted to enforce rights, or redress wrongs, by force: he must appeal to the law.⁵¹⁹

There was no suggestion that Māori would be able to participate in determining what the law should be. Certainly there was no suggestion that the decisions made by the Kingitanga should have the authority of law. Some settlers argued that the Māori system of land ownership was merely the right of might. The

⁵¹⁵ Evidence of the Bishop of New Zealand Le 1 1858/8

⁵¹⁶ Archdeacon Hadfield examined before the House. Native War Debate. 14 August 1860. *NZPD* p.293.

⁵¹⁷ Minutes of evidence taken before the Waikato Committee. 11 October 1860. *AJHR*. 1860 F-3 p. 43.

⁵¹⁸ Minutes of the Executive Council 22 May 1861 EC 1/2 pp. 366-68.

⁵¹⁹ Declaration to the "Natives of Ngaruawahia", Minutes of the Executive Council 22 May 1861 EC 1/2 pp. 366-68.

Native Secretary in an address to the Kohimarama Conference stated: “Tribes vary in their customs about land, but after all their various customs are liable to be superseded by the Law of Might.”⁵²⁰ Many settlers believed that Māori authority rested entirely upon the use of force. Some believed that mana meant nothing more than the right of might. According to Alfred Domett, mana was not a principle of law but rather “the abrogation of law” or simply “the blind principle of force”.⁵²¹ If the rule of violence was to be ended it must lead to the disruption of the Māori order.

The successful settlement of New Zealand required two things: more settlers than Māori, and more settler firearms than Māori firearms. However, the situation on the ground was the very reverse. Arthur S. Thomson argued that the settlers were in no position to awe the Māori:

No country can prosper with a few petty armed tyrants; and there must always exist a feeling of insecurity, so long as a hundred natives possess more fire-arms than ten thousand settlers.⁵²²

Although believing that the introduction of firearms had promoted the “peace and civilisation” of the Māori, Thomson believed “the natives would be better subjects, and the Queen's law would run better through the land, if they were entirely without them”.⁵²³

If the basis of the Kingitanga and other Māori institutions was military power, then it begged the question as to whether military power required to oppose them. Alfred Domett asked the Waikato settler J. Armitage:

Is the attachment of the disaffected Natives to the King movement so great that in your opinion it would prevent the introduction by Government of British Institutions among them even now, or would you think it necessary first to show the Natives the superiority of our power by arms there or elsewhere?⁵²⁴

⁵²⁰ Native Secretary to Kohimarama Conference *AJHR* 1860 E-9 p. 11

⁵²¹ Alfred Domett Native Offenders Bill Debate August 7 1860 *NZPD* page 212

⁵²² Thomson, p. 255.

⁵²³ *ibid.*

⁵²⁴ Minutes of evidence taken before the Waikato Committee, 28 September 1860. *AJHR* F-3 p.6.

Domett rhetorically asked the Bishop of New Zealand:

...you think that a nation, convinced of its own superiority to another in physical force and warfare, will quietly submit to the authority of that other, because of its superior civilization?⁵²⁵

Both Queenites and Kingites were using novel methods for social control. J. Armitage told the Waikato Committee that in the district where he lived the taua had ceased to be used, that the whakawa was being used instead. Another measure was the code of English Laws translated by William Martin, which was to have the status of “rules” and not that of law.⁵²⁶ They were to be rules to guide assessors when they were out of reach of an “English Court”.

Wynyard reported his view of the significance of the feud in Taranaki:

Had such a feud on such a point existed in the interior, its adjustment might be of little consideration, or might have been permitted to wear itself out; but in the neighbourhood of a small isolated settlement, with many of its inhabitants scattered in outlying farms, and where the native population is interwoven with the European, it becomes of the utmost moment that peace should be restored as speedily and as firmly as possible, in order to protect New Plymouth from the consequence that might ensue should the weaker of the combatants be compelled to fall back on the town, and thus expose the unprotected settlers to the horrors inevitably attendant on savage warfare.⁵²⁷

Wynyard believed that where the violence was Māori upon Māori and did not in any way threaten the settlers it could be allowed to continue, but where this violence might in any way endanger the settlers it should be stopped. When McLean outlined the intentions of the Native Offenders Bill in 1856, he made it clear that the Government was only concerned when Māori violence threatened the settlers:

⁵²⁵ Minutes of evidence taken before the Waikato Committee. 17 October 1860. *AJHR*. 1860 F-No.3 p. 66

⁵²⁶ Native Secretary to Kohimarama Conference *AJHR* 1860 E-9 p. 9

⁵²⁷ Wynyard to Sir George Grey, 18 April 1855, No.50, *BPP* 1854-1860 [2719] Vol. XLVI p. 100 (IUP p.374)

It should only be enforced in extreme cases such as that of the Kawau robbery of powder, or when any serious injury has been done to the life or property of Europeans. I would not apply it to cases of disturbances between tribes themselves, the less interference with their districts the better.⁵²⁸

For Māori living in the districts where few Europeans resided, the prospects appeared bleak. If the fighting did not threaten Europeans or their property, the Government would not do anything to interfere. According to MP Crosbie Ward, practically the only contact the Government had with Māori, was when the Government wanted to buy Māori land.⁵²⁹ Octavius Hadfield pointed out that for Māori, the only protection to be had was that provided by their own hands:

When Natives are told that they may carry on a war with one another, in order to protect themselves, I am not surprised that they may go up and down with arms in their hands, and that they should lose that respect for the Government which they otherwise would have had.⁵³⁰

It was this need for protection, which provided the impetus for the black economy in firearms and ammunition. It promoted the high prices offered to the smugglers.

At the 1860 Kohimarama Conference, Governor Browne complained to the Māori audience that the King movement would undermine the relationship that Māori enjoyed with the Crown:⁵³¹

...tribes dwelling to the south of Auckland have been endeavouring to mature a project, which if carried into effect, could only bring evil upon heads of all concerned in it. The framers of it are said to desire that the Māori tribes of New Zealand should combine together and throw off their allegiance to the Sovereign whose protection they have enjoyed for more than 20 years and that they should set up a Maori king and declare themselves to be an independent Nation.⁵³²

⁵²⁸ Commissioner Donald McLean, Evidence Taken in Select Committee on the Native Offenders Bill 26 July 1856, *AJHR* 1860 E-5A p.4.

⁵²⁹ Crosbie Ward (MP for Lyttelton) Native Offenders Bill Debate August 7 1860 *NZPD* page 211.

⁵³⁰ Octavius Hadfield Evidence before a Committee of the whole house, 14 August 1860, *BPP* 1861 [2798] p.333

⁵³¹ Address of the Governor to the Kohimarama Conference, *AJHR* E-9 1860 p.4

⁵³² *ibid.*

Browne's promise of protection from foreign powers overlooked the fact that the most pressing threat was posed by other Māori, and as Browne himself would help prove, the settler and Imperial Governments. Browne did not explain how any foreign power might endanger the Māori population any more than the Government of which he was a part.

Was Thomas Gore Browne acting in the interests of law and order when he sent troops to Waitara? Certainly this was the claim he made to the assembled chiefs at Kohimarama:

The circumstances which have led to the present disturbances at Taranaki have (at your request) been explained to you; and I think it right to repeat that I was forced into this war by the aggressions of Wiremu Kingi, much against my will; that I desire peace, but it must be peace based on the establishment of law and order, in the place of murder and outrage; peace which will enable the Pakeha and the Māori to live together in quiet, and without fear or distrust of each other.⁵³³

Browne expressed similar sentiments to the Duke of Newcastle.⁵³⁴ C.W. Richmond argued that the Governor had been motivated to put an end to the Māori violence in Taranaki, and that this was merely a continuation of Government policy in other areas: "The Governor's policy in Taranaki was new in so far as His Excellency deliberately announced his determination to put down Māori violence, but there was no other novelty about it."⁵³⁵ There was no recognition in Richmond's argument that the violence in Taranaki might have been part of a Māori social or political process.

Countering against the argument that Browne was upholding the principle of law and order was the fact, that once the Government had itself become involved in the fighting, it provided arms, ammunition and support to one side of the dispute. Shortly before the dispute Browne had publicly addressed the issue of the killing of Katatore. He announced that there would be no attempt

⁵³³ Thomas Gore Browne, Address to the Kohimarama Conference, Enclosure 7 in No. 39. Browne to Duke of Newcastle 28 August 1860 *BPP* 1861 [2798] Vol. XLI. p.120. Parenthesis in original.

⁵³⁴ Browne to the Duke of Newcastle. 29 August 1860. No. 40 *BPP* 1861 [2798] Vol. XLI pp. 121-122.

⁵³⁵ Memorandum by C.W. Richmond in reply to Sir W. Martin, *AJHR* 1861 E-No.2. p.10.

to apprehend those responsible for the killing. This despite the fact that Katatore had been killed within the boundaries of the settlement and the fact Katatore had been killed on the direction of the leader of the opposing faction, Ihaia.⁵³⁶ No attempt was made to bring the offenders to trial. Browne did not act in the interests of law and order, but rather he instead sought to criminalize the other idea of law. Richmond, quoting George Grey, argued that if Māori communities' power of coercion was to be eliminated, attempts at upholding Māori law must be criminalized:

I would submit therefore that it is necessary, from the moment that the aborigines of this country are declared British subjects, they should, as far as possible, be taught that the British laws are to supersede their own, so that any Native who is suffering under their own customs may have the power of appeal to those of Great Britain; or, to put this in its true light, that all authorised persons should in all instances be required to protect a Native from the violence of his fellows, even though they be in the execution of their own laws.⁵³⁷

Native Secretary Thomas Smith argued that the settlers had to be militarily powerful enough to resist any encroachment of Māori ideas of justice:

As the natives are brought more into contact with Europeans complications arise which cannot always be dealt with according to a New Zealander's notion of right and wrong, and the chances of misunderstanding are multiplied. To inspire due respect, our ability to protect ourselves, and enforce obedience to British law in our own settlements, should be sufficiently evident to preclude any attempt at resistance.⁵³⁸

Native policy had traced an arc from Normanby's instructions to recognise the customs of the Māori and Section 71 of the New Zealand Constitution Act through to the acquiescence of Māori autonomy through to outright war on that independence:

The question raised in the original dispute with Wiremu Kingi was one of authority and jurisdiction, and not a question of the title to a particular piece of land. Since the intervention of the Waikato King party it is past all controversy that the contest is not whether the land belongs to Wiremu Kingi's party or to Te Teira's, but whether the

⁵³⁶ See Harrop, p.49. See also Saunders, pp. 341-342

⁵³⁷ C.W. Richmond quoting Sir George Grey, Native Districts Regulation Bill Debate, 17 May 1858 *NZPD* p.443

⁵³⁸ Memorandum Thomas Smith Acting Native Secretary, 1 March 1856, Encl. in No. 82 Browne to Sir William Molesworth 4 March 1856. *BPP* 1854-1860 [2719] Vol. XLVI. p.192 (IUP p.466)

Governor has authority to decide between the two, and power to enforce his decision. It is the pervading fallacy of Sir William Martin's argument that he affects to treat as a question of title that which is in fact a question of sovereignty, and is so regarded by the Natives themselves. The question with them, is one, not of right but of might. One practical issue now being tried is, whether the Natives are in future to trust to the justice of the British Government for the recognition of their rights, or to force of arms.⁵³⁹

A Memorandum by Ministers expressing support for the Governor's actions at Waitara complained of the hardships faced by colonists living among Māori, that of cattle trespass, thistles and Māori dogs worrying stock. The Ministers complained that the settler could not get legal redress from a Māori for fear that enforcement of judgements would provoke retaliation. Yet Māori could approach the courts for legal redress against settlers at any time:

A missionary is wronged, and he submits, and there is an end of it. But the settler cannot do the like without loss of self-respect; and to him the petty provocations and injuries to which he is subjected are rendered galling by the sense that he is compelled to bow to the will of an armed, lawless, and insolent mob.⁵⁴⁰

The Bishop of New Zealand George Selwyn believed that the desire for firearms among Māori was practically universal:

Every New Zealander wishes to possess a gun: for the obvious reason, that the great majority already possess them. The immediate & daily object is to shoot birds. The possible and contingent object, is that he may be called upon at any time to join a “taua”, and would be ashamed to go without a gun.⁵⁴¹

After Hongi Hika had rendered the taiaha obsolete overnight, the possession of firearms had been essential for the maintenance of the Māori social order. The possession of firearms was essential for the maintenance of tikanga Māori. This was the key to the problem for those who wished to disarm the Māori population. Firearms were in great demand, they were essential for self-preservation, they maintained property rights and social order. As a result Māori purchasers were prepared to pay whatever it took to obtain them.

⁵³⁹ Memorandum by C.W. Richmond in reply to Sir W. Martin. *AJHR* 1861 E-No.2. p. 4.

⁵⁴⁰ C.W. Richmond Memorandum of Ministers, 25th May 1860, *AJHR* 1860 E-No.1B pp. 5-6

⁵⁴¹ Emphasis in original. Evidence of the Bishop of New Zealand. Le 1 1858/8.

Although some wanted the Māori autonomy recognised, others considered it better to maintain the fiction of control than admit to impotence. The possession of arms was key to this debate. For it was the Māori ability to wield arms which prevented colonial control over Māori areas, and it was the ability to wield arms which ensured that the power of social coercion remained with most Māori communities. Firearms were a tool of law, they in fact defined the boundaries of the two coexisting systems of law. By seeking to stop the Māori from acquiring arms, the authorities sought to monopolise the power of the sword, it sought to monopolise the means of political force unto itself. It was the ability of the iwi and hapū to put warriors in the field to enforce collective decisions that gave substance to the debate over “tribal right”. It was the ability to acquire and wield firearms that ensured that the hapū and the iwi were political entities to be reckoned with.

Reflecting upon the fluctuations of the rights of Englishmen, Blackstone concluded that any government is better than none at all.⁵⁴² The New Zealand government's approach to the Section 71 of the Constitution Act indicated that this principle had been turned on its head; Māori communities in a state of anarchy were preferable to any form of governance not dominated by the settler parliament. There was a reluctance to recognise the legitimacy of Māori derived authority. Furthermore, as Alan Ward demonstrates, attempts to gain Māori co-operation and consent with Crown authorities and institutions in a policy of ‘amalgamation’ were poorly executed, patchy and above all short-lived. The possession of arms was central to this debate, for the policy towards Māori was evidently motivated by the belief that the Māori possession of the tools of coercion was undesirable. Many of the settlers would prefer that Māori were not in a position that required that their consent and co-operation be obtained. Ward argues that influential settlers doubted whether the kin-based Māori were capable of exercising an effective impartial justice system.⁵⁴³

⁵⁴² Sir William Blackstone, *Commentaries on the Laws of England*, (1862 edition). Vol. I. p.110. This section corresponds to the original version. See Sir William Blackstone, *Commentaries on the Laws of England*, (facsimile of 1783 version), Vol. I. p.127.

⁵⁴³ Ward, p.162.

These settlers believed that the recognition of Māori areas such as the Waikato would in effect leave large areas in a state of lawless anarchy. It is arguable that Browne's partial relaxation of the restrictions, given that his proposal to the ministers, which recommended the partial relaxation also recommended the formation of Māori militia and also recommended the recognition of a code of laws tailored to Māori feelings for Māori districts, was an attempt to "amalgamate" with, and obtain the active participation of the Māori communities.⁵⁴⁴ It is certain that his proposals were an acceptance of the Māori possession of the tools of coercion. On 9 November 1857, Governor Browne finally announced that he was going to present an act to enable himself to proclaim certain districts, where he and the Executive Council could make laws "as far as possible in accordance with the feelings and wishes of the natives." The phrase "At last" was noted in the margin of this despatch by the Colonial Office.⁵⁴⁵ However this was not the shape of the future race relations in this country.

Arms Control as Public Policy: Tilting at Windmills.

The restrictions upon arms and ammunition were initially conceived when the body politic of this country was in its extreme infancy. The early arms policies were conceived when the institutions which were meant to enforce them were only just being established and when those institutions lacked significant influence over much of the country. The primary motivation of the arms control measures from 1854 to 1861 was political. At no stage during the debates prior to the 1860 Arms Act were concerns raised about the settlers possessing or obtaining firearms. At no stage were the restrictions advocated as a crime control measure within settler communities. Throughout the period, settlers could obtain firearms for their own use and for the defence of themselves and their families. The settlers had a right to possess firearms for their own personal defence and throughout the period no serious threat to that right was ever offered. It was the Māori possession of arms which was

⁵⁴⁴ Browne Memorandum by the Governor. 28 April 1857, *AJHR* 1860 F-3. pp. 113-114.

considered undesirable. The debates centred on the Māori possession of arms and the threat that Māori offered to the settlers. Despite this, the restrictions sought to control the possession of the arms of the settlers, a group, which the policy makers did not object to having arms. The restrictions over the settler possession of arms were put in place solely in an effort to prevent settlers from on-selling their firearms to Māori. Concurrent with efforts aimed at controlling the importation of arms and ammunition to the settlers, were regulations, which were aimed at the mobilisation and arming of these same settlers. While the group, which the Government wanted to see practically universally armed, was subject to control, the other group, which the policy makers always wanted to disarm, was effectively exempt from the regulations.⁵⁴⁶ The aims and actions of the authorities were clearly very confused.

Why were Māori effectively excluded from the provisions of the Arms Act? Part of the answer may have been the fact that the settler parliament's right to determine matters of Native policy was then still disputed. Keith Sinclair and A.J. Harrop both argue that a key argument during this period was the debate about who should control native policy. However, the most compelling reason was that the authorities feared provoking Māori into opposition.⁵⁴⁷ Despite the fact that Māori were effectively exempt from the Arms Act provisions, the Act remained firmly within the broad "Native policy" framework –the sole aim of the restrictions was, and had always been ultimately aimed at Māori. The arms policies were at the heart of the debates about "Native policy". The most compelling reason to keep the control of native affairs with the home government was the fact that the home Government was going to foot the Bill

⁵⁴⁵ Harrop, p. 49 From CO 209/142

⁵⁴⁶ Section 59 "No aboriginal native shall be convicted of any offence under this Act except on the information or complaint of some officer duly authorised in that behalf by the Governor by writing under his hand." No authorisation to lay such a complaint was issued within the year after the passing of the Arms Act 1860.

⁵⁴⁷ Browne asked the Superintendent of Wellington to withdraw the Dog Nuisance Act, because of the risk of provoking conflict in the Hawkes Bay. Browne to Labouchere, 9 November 1857, No. 95. *AJHR* 1860 F-3. pp. 126-127. The Native Territorial Rights Act 1858 was denied royal assent because of the fear of provoking war: Keith Sinclair, *The Origins of the Māori Wars*, New Zealand University Press: Auckland 2nd ed. 1961 (photographic reprint 1974) p.98.

for any war which arose out of the implementation of native policy. It was the Māori possession of arms which gave substance to this debate.

If the laws were demonstrably ineffective it begs the question, why were they persisted with? Ever hopeful, in the modern parlance, the Governments hoped to “send a message”, a message of disapproval of the Māori acquisition, possession and use of firearms. It was the stark contrast between intent and outcomes that Daldy was pointing to when he said that he was “sorry to say that the present Ministry had trusted too much to paper legislation, as if they believed that writing and talking about new laws would effect the changes desired”.⁵⁴⁸ The belief that Māori independence was objectionable was shared by those who frequently argued for Māori interests. Alan Ward argues that many of the missionaries argued for the amalgamation of the Māori, believing that this was in their best interests.⁵⁴⁹ Although the Bishop of New Zealand believed that the restrictions would have little effect upon actual arms supply, he stated that they would have a “great moral effect in recording a standing protest against violence & bloodshed.” He justified the restrictions “however ineffectual” as a “standing protest against the native practice of taking up arms on every trifling occasion.” He expressed the belief that the restrictions should be lifted as soon as Māori settled disputes by “process of law”.⁵⁵⁰ The Rev. J. Whitely argued that the possession of arms and ammunition meant that the Māori were effectively outside British control and that this was highly objectionable:

I think it unwise and unconstitutional that the Natives as British Subjects should possess arms and ammunition at all, beyond what may be under the control of British law and authority; and that arms should be supplied to them to such an extent as to enable them to assume the position of a powerful foe, and that too by British Subjects I think is treasonable misconduct. Such illegal trading must of itself have a bad influence on the minds of the Natives. If such trading could be suppressed and the law be enforced against the ships of Foreign Nations so that the Natives should become convinced that our law was not a dead letter then I should say let the

⁵⁴⁸ William Daldy, Arms Bill Debate. 25 October 1860. *NZPD* p.762

⁵⁴⁹ Ward, pp.118-122.

⁵⁵⁰ Evidence of the Bishop of New Zealand Le 1 1858/8. He argues that the Māori have made a more rapid move to the rule of law than “any European Nation.”

restrictions be continued. The law is good and wise, and humane, and constitutional, and if it could have been enforced, would have had a universally good effect.⁵⁵¹

Despite the evidence presented, which demonstrated that the restrictions were ineffective, the Board of Inquiry came to essentially the same conclusion; that the ongoing violence among Māori justified the retention of restrictions. It is arguable that the basis for the arms restrictions was little more than Government posturing.

Evidently a perceived desirable feature of policy over Māori was that it would be simply understood. Several of those who responded to the Sale of Arms Select Committee questionnaire argued that further moves to restrict arms ownership should be imposed only after some clearly understood event or incident provided a reason or excuse for the move. The Rev. G. Kissling stated his view that “they would say there is no “take” (ground or cause) for a reimposition.” Donald McLean also was of the view that it would not be a good idea to suddenly try to re-impose the restrictions. Resident Magistrate of Russell, James Clendon, believed that any re-imposition of the restrictions would reduce trust in the Government. James Busby argued along similar lines. Even the Rev. R. Maunsell who held that the restrictions had not been a source of grievance believed that the re-imposition of restrictions would create suspicion. Francis Fenton also argued that it would be a bad idea to re-impose the restrictions. The Rev. J. Hamlin believed that the restrictions could be reinstated if it was done gradually. He reasoned that a monthly quota on sales could be imposed. The Rev. Robert Burrows similarly believed that any re-imposition of restrictions would cause suspicion and would lower respect for the Government.⁵⁵²

Even many of those opposed to the relaxation of the restrictions admitted that the Government should not re-impose them without cause. Although in favour

⁵⁵¹ Evidence of the Rev. J. Whitely, Le 1 1858/8. Whitely went on to state that since the laws were evaded it would make little difference if they were relaxed. Whitely believed that the authorities should only try to impose laws which it was able to enforce.

⁵⁵² Evidence presented to the Sale of Arms Select Committee 1858 Le 1 1858/8

of the restrictions, the Bishop of New Zealand opposed their re-imposition for fear of demonstrating to Māori “a vacillating policy”. He believed that a “firm and consistent line of policy in the name of Her Majesty” was needed. He pointed out that the Māori were governed by councils in which they are not represented, composed of men who desired Māori lands and that Māori were subject to great swings of policy with changes in the majority within those councils. Thus he argues that Māori suffered all the disadvantages of representative (and therefore fluctuating) government, yet enjoyed none of the benefits. He believed that the northern war had not in the least diminished Māori respect for the then Governor and that had the country been invaded, Māori help in resisting the invader would have been virtually assured.⁵⁵³

C.W. Richmond justified the original provisions of the 1860 Arms Bill by arguing that the Customs legislation had many onerous powers yet was English law, and the many onerous powers were used only against wrong doers. He argued that such powers could be trusted to a representative body because of the potential of replacement.⁵⁵⁴ He neglected to mention that the Māori population at this time did not enjoy the right to participate in the elections and did not therefore enjoy this protection. Policy over the settlers should be dynamic to their needs. Settlers were to participate in the development of that policy.

Few argued along similar grounds to that found in the modern arms debate. Very few commentators argued that there should be no civilian ownership of firearms. There were exceptions; the Native Affairs Minister C.W. Richmond for instance argued that he “would like to see no arms in New Zealand but what were the property of the Crown and liable to be resumed by it.”⁵⁵⁵ This point of view did not find its way into policy, ordinary settlers were able to possess arms throughout the Nineteenth Century and were usually able to freely import arms for their own use.

⁵⁵³ Evidence of the Bishop of New Zealand Le 1 1858/8

⁵⁵⁴ C.W. Richmond, Arms Bill Debate. 25 October 1860 *NZPD* p.757

⁵⁵⁵ C.W. Richmond, Arms Bill Debate. 9 October 1860. *NZPD* p.640.

Not one major figure suggested that settlers should be disarmed and rely solely on the Militia or Police or Army for protection. The chief perceived danger to the settler communities was Māori. Clearly the settler Government would try to put arms in the hands of their own people while throwing every barrier in the way of Māori communities doing the same. It was the obvious course to take. But this assumption that Government measures should move decisively in the interests of settlers illustrates something fundamental about the role of Government in the Colony. The arms control regime was symptomatic of the attitudes and policies of the authorities, which were steadily making a war between the authorities and Māori inevitable. If it is accepted that the races were inevitably on the path to war, then the control of arms and ammunition was the obvious course to take. In this context any relaxation, no matter how trifling might be considered a foolish act. The idea that the co-operation of Māori communities with the settler authorities might be obtained, and that the Māori possession of arms was not antagonistic, maybe even conducive to this co-operation appears to have occurred to very few settlers.

Postscript

As the wars expanded the involvement of Māori on the side of the Government grew. These so-called kupapa increased in importance as the wars dragged on. They were a highly important part of the Government's campaign during 1864-1868. Belich argues that without kupapa support the Government might not have won the campaigns against Titokowaru and Te Kooti.⁵⁵⁶ The arming of Māori allies was a totally different course to that offered to the settlers. The 'amalgamation' of Māori communities in the more benevolent meaning of the term required the consent and co-operation of politically important Māori communities and individuals. The arming of Māori allies was something more akin to the martial arts expert who can turn the strength and weight of their antagonist to their own advantage.

⁵⁵⁶ Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, p.213

The Arms Importation and Arms Ordinances were repealed in 1869.⁵⁵⁷ In 1869 the Arms Act was amended to be closer in line with that originally intended in 1860, with provisions for the registration of firearms. According to Joyce Lee Malcolm, the right to possess arms in England survived until the Twentieth Century, and that the elimination of the English right to bear arms in 1920 was politically motivated, and aimed at preventing revolution and disorder: “While the reverberations of the French Revolution left the English right to keep arms intact, the repercussions of World War 1 and the Bolshevik Revolution did not.”⁵⁵⁸ New Zealand’s arms restrictions were also tightened in 1920. The right to possess arms for the New Zealand white population was eliminated at a similar time to that in the home country and for similar political reasons. The motivation was not to remove the right to possess arms as a crime control measure, but rather, it was intended as a measure to reduce the risks of social disorder. David Kopel identifies the Boer conflict in South Africa, the International Workers of the World, the Irish Rebellion, the Waihi strike and the “red feds” as contributing to the decisions to tighten controls on firearms in New Zealand in the early Twentieth Century.⁵⁵⁹

⁵⁵⁷ Historical Table of the Legislation in New Zealand. Government Printer: Wellington. 1908.

⁵⁵⁸ Malcolm, p. 170. Malcolm argues that there was little truth behind the official rationale for the 1920 Arms Control Bill which was a rise in armed crime as very few crimes were being committed with firearms at this time (ibid. 171-172).

⁵⁵⁹ David Kopel, *The Samurai, the Mountie and the Cowboy: Should America Adopt the Gun Controls of Other Democracies?*, Prometheus Books: New York 1992. pp. 236-237

Conclusion

In 1854, two events occurred which would have far reaching consequences for the Colony of New Zealand. On 23 June 1854 the settler Parliament sat for the first time. In August, the Puketapu dispute erupted in Taranaki. The issue of arms control was addressed by the new Parliament and the Government used the laws, which had already been in place for nearly a decade, to try to stem the supply of arms and ammunition. The outbreak of the first Taranaki war added impetus to the efforts to control the supply of arms and ammunition to Māori. The motive for the arms control measures was political. Unlike modern arms control measures, the primary aim was not to try to prevent crime within the community, but rather it was to try to disarm rival communities. It was part of an attempt to monopolise coercive force to the settler authorities and an attempt to effectively criminalize the coercive power of the rival Māori communities. However the Māori response was widespread evasion of the restrictions, and it was this response, which was the key determining factor throughout the period.

The restrictions proved to be remarkably ineffective. Captain Fitzroy predicted many of the problems when the laws were first implemented. He argued that the Government was not then in a position to enforce a ban on the sale of firearms to Māori:

...the attempt to do so by a weak government might have caused an effectual resistance to its authority. Traders would smuggle and sell in a manner that might prevent the government from acting against them, without also acting against their customers, the natives, –which would tend to bring on hostilities; while the general feeling caused among the natives would be, that the object of the government was to disarm them gradually, so that they might become mere slaves, incapable of opposition.⁵⁶⁰

The traders did indeed operate in such a manner and the authorities could not act against them without risking conflict with their customers. The restrictions did provoke opposition from Māori, and were identifiable as one of the most

⁵⁶⁰ Fitzroy, p.44.

frequently voiced grievances expressed by Māori prior to the wars of the 1860s. The Government did not make slaves of Māori, but as the power of the Government over the Colony grew, so did the catalogue of breaches of the Treaty of Waitangi and the eventual dispossession of most of the property held by the Māori communities throughout the Colony.

Fitzroy also criticised the Arms restrictions because he believed that the colonial government was in no position to offer protection to the Māori communities:

Had Governor Hobson intimated the probability of firearms and ammunition being prohibited by the government, he might have sent the treaty of Waitangi about the islands in vain. That very treaty guaranteed to the natives, their rights, their freedom, and their accustomed privileges. How could these be maintained between numerous rival tribes in such a country without arms, unless indeed the local government could deal by force with all of them –and protect the weak or quiet against the strong or turbulent, –a matter hitherto physically impossible.⁵⁶¹

He argued that it was unjust to try to disarm Māori before the Colonial Government was able to enforce the rule of British law over the entire colony. He did not question whether the Colonial Government would govern Māori less well than Māori could govern themselves.

Among the settlers there were essentially two main bodies thought on the arms issue. One argued that the restrictions should be maintained as much as possible and at all costs, the other argued that it would be better to relax the restrictions rather than allow the whole legislative system to be brought into contempt. Browne on one side with Wynyard and Grey on the other represented the opposite extremes of policy during this period. A third identifiable strand of settler thought, the idea that Māori should be allowed exactly the same rights to possess arms as settlers was only expressed by a very few settlers, and never found its way into policy.

⁵⁶¹ *ibid.*

The key feature of the two main bodies of thought was the common assumptions held by both. Key to both points of view was the assumption that the Imperial power or the power controlled by the settlers was superior to that which Māori could exercise over themselves. It certainly appears that this was a reflection of the views held by wider settler society. Both sides agreed that in the ideal world Māori would not possess firearms. The two sides differed in so far as to the degree in which they were prepared to compromise their ideals in the face of the realities they faced. When Browne observed that the restrictions were being evaded, and faced with the fact that the Canterbury Province had fatally undermined the restrictions, he was prepared to compromise his vision of the ideal situation to avoid the risk of bringing the entire colonial system into contempt. This compromise was not a large one, at least with the sales of firearms, as only a trickle of legal weapons were sold to Māori under the partial relaxation. However Robert Wynyard, George Grey and those who shared the opposing view were not prepared to make even this compromise. They could offer no solution to the widespread evasion of the restrictions and they could offer no way of making the restrictions work in the short term. Yet they persisted in following their course. Māori opinion was able, albeit in a small way, to impact itself on Browne's consciousness. However Browne's opponents were dogged and single minded and unwilling to consider Māori opinion on the matter.

It is interesting to note that these same proponents of control were the most glowing in their praise for Sir George Grey's restrictions, the same restrictions that had proved to be almost totally ineffective. Perhaps this illustrates something of the *mentalité* of the settlers. The idea that the ideal should be proclaimed at all costs despite what the Māori might hope for, or even to the extent where reason is placed to one side. Considerable Māori resistance to the restrictions played a part in Browne's decision to ease the restrictions. The other side of the debate would not give an inch. Making the world England, or even a society better than that in England required imagination of what could be, and to the settler's mind what should be. Armed Māori individuals and more especially an armed Māori body or more accurately bodies politic had no

place in the settler ideal. To accept or to tolerate armed Māori independence implied an acceptance that the rules governing Māori communities were the equal of British institutions. Decrying Māori independence was an essential element in the assertion that the settlers could govern not only themselves but also govern Māori better than they could govern themselves. The attempts at restricting the trade went so far as to propose the relatively strict regulation of the settler population, which the authorities did not wish to disarm, and in fact sought to actively arm with separate legislation. This attitude would later find expression in Fenton's "1840 rule". In many areas of the North Island, this effectively meant accepting decades of settler-imposed anarchy. Māori were caught in a no man's land between the Government unwillingness to recognise Māori authority and the Government inability to exercise real authority over Māori dominated areas.

Browne's argument that the restrictions might as well be partially relaxed was by far the most realistic. It was based upon the simple observation that the restrictions were having very little direct effect. Māori possession of arms was an emotive issue. Emotions clouded judgement. The arms control measures were something akin to the Emperor's new clothes. Pointing out the obvious fact that the restrictions were almost totally ineffective appears to have been unacceptable to the settlers. Even less acceptable was the obvious inference that the restrictions might as well be relaxed or discarded. This illustrates something about native policy. The settler policy makers would not take into account the realities of the impact of policies, which had been decided on matters of principle. It was the proponents of the righteous path of more rather than less arms regulation who ultimately won the debate. As the later Native Land Court legislation would soon illustrate, the settler government would demonstrate a willingness to act without consultation, without any examination of the far-reaching effects of its actions and most importantly without any empathy with those it was trying to govern. The conversion of Māori land titles into something better understood by English law would be assumed to be a beneficial thing. Although it was noted soon after the introduction of the Native Land Court legislation that it was leaving Māori land titles confused and

Māori communities complained that they had great difficulties retaining their land, a comprehensive solution to these problems was not formulated until many years later. Mason Durie has argued that the first real attempt to answer some of the problems which were caused by the Native Land Court process was Te Ture Whenua Act 1993. The Bill, which eventually evolved into Te Ture Whenua Act was delayed for over a decade, only becoming law in 1993.⁵⁶² In stark contrast was the example of the foreshore and seabed issue, which was brought to the attention of the Government in June 2003 and a legislative solution reached in November of 2004. Although, the solution was more drawn out than the Crown may have hoped, it is nevertheless true that the Crown implemented its solution to the unintended consequence of Te Ture Whenua within a year and half of the issue arising. ■

New Zealand did not follow the pattern set in the United States or Australia of frequent unlawful vigilante killings of the indigenous peoples. The reason being that the obvious outcome would have been the killing of more settlers than Maori. It was unlikely that the authorities would have acted with vigour against the settlers should unarmed Māori been subject to frequent vigilante attacks. Harrop argues that from 1854 the British Government was not prepared to spend money and employ troops for “purely native interests”. Had Māori not been in a position to defend themselves, stopping the unlawful killing and dispossession of Māori communities would have required the expenditure of British money. The authorities were having difficulty enough with the consequences of a relatively small number of instances of drunken violence, which occurred during the 1850s. By trying to disarm the Māori population, the settler government was potentially exposing Māori communities to the risk of unlawful violence of their settler neighbours. Had the Government’s plans not been so effectively sidetracked by Māori evasion of the restrictions, New Zealand could have easily followed in the footsteps of Australia or the United States. The arms issue and the later issue of Māori land

⁵⁶² Mason Durie, *Te Mana, Te Kawanatanga: the Politics of Māori Self-Determination*, Oxford University Press: Melbourne 1998. p.137.

titles would illustrate that native policy was not so much characterised by a body of thought, but rather, it was characterised by the absence of thinking. It was an absence of thinking through the consequences, an absence of examining the consequences as they occurred, the absence of listening, the absence of hearing, the absence of any comprehension of the long-term consequences of their actions.

Governor Browne had expressed doubts about the restrictions soon after his arrival in New Zealand. His decision to relax the restrictions was based primarily on the doubts of the effectiveness of the restrictions. After thorough investigation it had been decided to not to try to re-impose the restrictions. The Select Committee investigation largely confirmed Browne's argument that the arms restrictions were ineffective. Although some Members of Parliament profited from the subsequent legal trade in arms with Māori, there is no evidence that these politicians had any major hand in the decision to partially relax the restrictions. The tensions in Taranaki and the growing public criticism of the relatively relaxed regime led the authorities to tighten the restrictions upon the transportation of arms and ammunition and later to tighten the rules governing the importation and sale of arms and ammunition. The outbreak of war led the authorities to propose new legislation to gain greater control over the arms trade.

Soon after the Puketapu dispute erupted, it was reported that the restrictions on the sale of arms and ammunition were having an uneven impact upon the warring factions, and the land selling faction was unable to purchase ammunition in sufficient quantity. Despite the fact that the Government and the settlers clearly favoured this faction over the other, the Government did not allow this favoured faction to rectify the imbalance by allowing them to purchase arms and ammunition. Contemporary politicians occasionally denounced the fact that some "friendly" Māori were denied access to firearms while those who ignored the laws were given a relative advantage. Browne and McLean among others claimed that this in part motivated the partial relaxation in 1857. The 1857 partial relaxation was the golden opportunity to allow the

“friendly natives” to purchase arms for their own defence. However the archetypal “friendly Natives”, the land selling faction, in the Taranaki area, were excluded from obtaining arms importation licences under the partial relaxation, because of the fighting which was raging in this area. Māori who could prove the greatest need to possess arms for their own defence could not obtain them. By December of 1857 Donald McLean had recommended the tightening of the restrictions because he believed Māori were purchasing arms for “offensive and defensive purposes.” Māori were allowed firearms only for sporting purposes. This was very different to the terms under which the settlers could purchase arms.

From 1854 to 1856 a number of incidents, including the Puketapu feud, a series of fatalities in Auckland (including the Charles Marsden case), and the Kawau Island gunpowder raid, all illustrated the vulnerability of the settler communities. Not only the settlement of New Plymouth, but even Auckland, faced at least an imagined threat from the surrounding Māori population. At the heart of these threats was the military power of surrounding Māori communities. Key to this power was the Māori possession of firearms. Part of the solution offered by the authorities was to arm the settlers and mobilise them into either a militia or as volunteers. This was the very opposite of the policy directed at Māori. Not only were the settlers encouraged to bear arms, they were to be compelled to do so if required. Settlers had a far lower rate of arms ownership than Māori. Government actions did not so much try to address the imbalance but positively to reverse it.

Although both sides of the settler debate believed Māori should not have arms, countering this idea was the reality of the totally opposite situation. Although almost no Māori could legally obtain arms, nearly every Māori obtained them anyway. The key theme for Arms control policies during the period 1854-1861 is how the authorities reacted to this reality. Both sides of the settler debate argued that Māori with arms was a bad thing; settlers with arms were a good thing. The settler world view of the proper nature of things had been turned upside down. The settlers believed that they should dominate, that they as a

body should hold sway. However in many areas the settlers were compelled to abide by Māori ideas of right and wrong. The settlers were considered vulnerable when isolated, virtuous when prepared and able to defend themselves. Māori dangerous when armed, ruled both themselves and any settlers unfortunate enough to fall within their area of influence with the tomahawk. During this period there were two spheres of influence. One dominated by the settlers the other by Māori. Despite the fact that the Government had at its disposal the ability to define these areas they were never set out. Nevertheless the areas existed and it was the acquisition and possession of arms, which maintained and defined the Māori spheres of influence. The fact that Māori possessed so many firearms meant that they could not be governed in a manner which most settlers would have liked. However, the power and confidence of the settler communities was growing. The number and size of settler communities had grown considerably over the years preceding the 1860 Arms Act. Only a matter of a few decades previously, every settler who resided in New Zealand did so at the sufferance of a Māori community and had to abide by Māori rules. According to Thomson, the number of these so called Pakeha-Māori had reduced in the prior to 1860. Certainly their numbers as a proportion of the total settler population fell dramatically. During the period 1854-1861, the settler zones of influence increased markedly in the southern North Island and the South Island. The settler population first outnumbered Māori during this period, attaining the 50 percent mark around 1860. The settlers could see a time where no settlers would have to live by Māori rules.

The arms restrictions within the Colony of New Zealand have only excited a limited interest among historians. Most of those who have examined the issue have echoed the contemporary criticism of the partial relaxation of the restrictions in 1857. To severely criticise Browne and his advisors over the partial relaxation is to imply that these restrictions were effective. Seemingly supporting their conclusions were the arguments used by the very same politicians who had relaxed the restrictions three years previously. However there is a strong case to argue that the restrictions that existed from 1851 to

1857 had been extremely ineffective, the partial relaxation had only a relatively limited effect and the 1860 Arms Act would be no more effective than the restrictions that had been in place prior to the partial relaxation. The 1860 Arms Bill was a part of a number of measures implemented from mid 1859 to try to stem the supply of arms and ammunition. The proponents of the 1860 Arms Bill used arguments similar to that used by their rivals, who had been vocal in their opposition to the previous partial relaxation. Clearly the proponents of the Arms Bill would not have argued that their proposed law would have had little tangible benefit, at least if the desired outcome was a disarmed Māori population. If the Government Ministers who proposed the restrictions outlined in the 1860 Arms Bill genuinely believed that the restrictions they proposed were going to be effective, they shared a delusion with their key opponents during the previous debates. A much more plausible explanation would be that the continued relatively liberal regime had become politically unacceptable and the increased restriction promised little more benefit than that initially anticipated by George Grey when he first enacted the first round of restrictions over fifteen years before. That is, that they would spare the Imperial and Colonial soldiers the spectacle of Māori openly purchasing arms and ammunition in the towns and cities of the Colony.

Policy over Māori issues was initially determined by the British Government, later by a Crown representative with advice from advisors and later still, after some debate by representatives of the settlers. The Arms Act was one of the early Acts of the settler Parliament and was one of a number of early Acts, which was within the realm of “Native policy”.⁵⁶³ Some of the key themes, which would be evident in much of the later legislation of the settler Parliament, can be seen in the Arms Act. Policy was determined by the settlers and was ultimately determined in the interests of the settlers. Māori were not participants in the policy making process, nor were Māori participants in the imposition of the policy. Policy over Māori was something akin to a “Just So”

⁵⁶³ Other acts which received royal assent included; Native Reserves Act 1856, Native Circuit Courts Act 1858, Native Districts Regulations Act 1858. Sinclair, *The Origins of the Maori Wars*, p.89.

story. It was to be presented to Māori in a manner, which was to be easily understood. The role of Māori was to understand that the policy was ultimately for their own good. Māori were not to participate in the arguments about how their own good was to be determined or defined. It is interesting to note, as Alan Ward has shown, that the Māori were supposed to enjoy the benefits of modernity, but when the settlers expressed their conceptions of their own important rights, they emphasised their ancient and traditional character. The first address to the Queen from the House of Representatives of 23 June 1854 wished to “express to Your Majesty our gratitude for the restoration of our ancient constitutional privileges...”.⁵⁶⁴ The right to possess arms was one of a number of rights which was believed to be an ancient right.

Māori opinion of the restrictions entered into the debate through the evidence provided to the Board of Inquiry and the Kawau Island gunpowder raid. At the individual level, Māori evidently believed that the possession of arms was essential, whereas the settlers evidently did not to the same degree. The reaction of some sections of the settler community to the partial relaxation of the restrictions in 1857 illustrated the popularity of the restrictions. Where an opportunity was given, most Māori who expressed an opinion on the restrictions were opposed to them. The restrictions were an identifiable source of grievance for Māori. The settlers were in a position to have their views taken into account, Māori were not. Māori opinion was unable to impact upon the formation of policy; however it did greatly impact upon the effectiveness of the policy. The reality was that Māori desired firearms, quite possibly ahead of any other imported item available. This desire led to the willingness to pay whatever sum was required to procure these items. This was the engine, which powered the smuggling trade that effectively negated the restrictions and the arms control policies in general.

⁵⁶⁴ House of Representatives, Address to Her Majesty the Queen. 23 June 1854. Sub-Enclosure to Enclosure in No. 22. Acting Governor Wynyard to Duke of Newcastle. 8 July 1854. *BPP* 1854-1860. [2719] p.40 (IUP p.314)

According to C.W. Richmond Taranaki Māori were independent and dangerous:

It need scarcely be said that the occupants of these Pas [near the settlement of New Plymouth] do not regard themselves, and practically are not, amenable to British jurisdiction. Since 1854, they have been in continual feud amongst themselves, and there has been a succession of battles, and of murders, in close proximity to the settle territory. A chief has been slaughtered on the Bell Block; skirmishing natives have sought cover behind the hedge-rows; and balls fired in an encounter have struck the roof of a settler's house.⁵⁶⁵

Although the settlers accused the Māori communities of ruling with the right of might, there were very few incidents of violence against the settlers in the decade prior to the outbreak of the first Taranaki war. Significantly, some of the incidents which did threaten the peace, such as the Charles Marsden case, were sparked by acts of violence by settlers against Māori. The settlers did not blame themselves collectively for these incidents, or as Thomson put it the idea that “the obscure villany of some ruffian might involve the colony in a war of races...”.⁵⁶⁶ Both communities policed their ideas of right and wrong with violence. The settler institutions arrested suspects, occasionally injuring or even killing the suspect in the attempt. The settler authorities on occasion executed criminals. The settlers could see an ongoing and on occasion bloody dispute among the Puketapu hapū, but did not see the workings of a rival political system. The settlers believed in the rule of law, and the institutions, which tempered and gave control to the acts of violence of the state against wrong-doers. The settlers did not appreciate that the Māori communities also had institutions, which also operated to give direction and control over the use of the violence exercised by Māori communities. The settlers as a whole did not appreciate or acknowledge that their Māori neighbouring communities’ efforts of policing their own communities were in their way as effective as that of the settlers. In fact, the evidence of inter-racial violence prior to the outbreak of war in Taranaki indicates that if anything, the Māori communities were better at policing their own countrymen against perpetrating acts of violence

⁵⁶⁵ C.W. Richmond. Memorandum. 27 April 1860. Enclosure in No. 7. Browne to Duke of Newcastle. 27 April 1860. *BPP* 1860 [492] Vol. XLVII. p. 167. (IUP p.183)

⁵⁶⁶ Thomson, p. 179

against the other ethnic community than the settlers. Settler commentators were long on the rhetoric of the threat that the armed Māori communities offered to the settlers. However they were very short of examples of where Māori actually harmed the settlers. The settler politicians did not have examples of incidents where Māori had used firearms to shoot settlers during the period 1854-1859 prior to the outbreak of war in Taranaki.

The arms restrictions were politically and racially motivated. The very reason the restrictions were not effective was the very reason they were desired. The settler authorities simply did not hold authority over a large swathe of the countryside, and equally important, a large swathe of the coastline. The restrictions could not work because the object at which they were aimed, the control of Māori by Pakeha could not be achieved until the authorities had invaded, or negotiated their way into the Māori areas and occupied those areas. Arms control was like the chicken and the egg, the settler authorities could not control Māori areas or prevent Māori areas from being supplied with arms because most Māori owned firearms and could resist that encroachment. The restrictions upon arms and ammunition were essentially fanciful. This did not mean that the restrictions were historically meaningless. It is the fancy of the settlers; the evidence of what it was which the settlers wanted in their ideal world which is so revealing. The settlers did not want a world without firearms; there is no evidence to support that. The settlers did not want to have to deal and to negotiate with an armed Māori body or bodies politic, they wanted the Māori ideas of right and wrong and the means to enforce them extinguished or at the very least pushed to the margins. James Belich described two zones, one dominated by Pakeha, the other by Māori. According to Belich, the story of Nineteenth Century race relations is the story of the expansion of the settler zone and the contraction of the Māori zone of influence.⁵⁶⁷ It was firearms which defined these two zones. The Māori areas, the Māori political zones were in effect defined by the possession of arms.

⁵⁶⁷ Belich, *The New Zealand Wars and the Victorian Interpretation of Racial Conflict*, pp.302-310

Arms control during this period was not aimed at controlling crime per se. There were no concerns expressed that the settlers might misuse their firearms in any way other than that they might sell those firearms to Māori. Instead the restrictions were a political measure aimed at disarming a part and only a part of the population. At the beginning of the period in question the idea of armed Māori had to a degree already been accepted. A certain willingness to accept non-white bearers of arms had been evident since very early settlement. The very early settlers had to face the reality that they were settling in a land peopled by an armed indigenous population. Armed Māori militia or police had been employed before the outbreak of war in Taranaki in 1860. Despite this, there were apparently strands of opposition to the arming of Māori under any circumstances. The period 1854-1859 was perhaps the nadir of the official acceptance of the Māori possession of arms. The new settler Parliament evidently preferred that Māori did not possess arms and the new provincial authorities rapidly rid themselves of their armed Māori police, and without any major conflicts there was little need to arm Māori allies. Very few Māori were officially allowed arms by the Government for any reason other than sport during this period. During the period 1854-1859 the Government did not arm any Māori communities, but once war broke out it showed that it would willingly supply arms and ammunition to Māori communities allied to the interests of the Government. Beyond this there was a bigger question. While armed Māori might be tolerated when they were complimentary to settler institutions, armed Māori exercising power of coercion, enforcing rules determined by Māori social groups over Pakeha or even other Māori was far from welcome. Māori trigger fingers commanded by Māori minds, acting upon Māori ideas of right and wrong was something quite unacceptable to the settler sensibilities.

The examination of the arms debate is perhaps an examination of the very obvious. A war was looming between settler and Māori. Of course the settler-dominated parliament would seek to arm the settlers and disarm the Māori opponents. Of course the authorities would seek, by way of the organisation of

the militia to arm the settlers as a body, and only arm the Māori allies. If the Government feared and apprehended an immanent conflict with Māori it surely would not seek to arm these very same potential enemies and would in fact put every measure possible in the way of the Māori acquisition of arms. Behind these obvious facts were some key assumptions about who should govern whom.

Beyond the arguments over whether the restrictions were effective is the question of whether the restrictions were just. The Arms Act and the previous restrictions were intended to provide different outcomes for Māori and Pakeha. Even at the height of the restrictions, settlers who wished to possess arms for their own personal defence faced no legal impediment. In contrast, even when the restrictions were at the most liberal, Māori could not possess themselves of arms on similar terms. The Government sought to throw many impediments in the way of Māori obtaining firearms, however it did not seek to similarly disarm the settlers. The Government could not reasonably expect the settlers to base themselves outside of the towns without arms. Settlers had an effective right to possess arms. This right was based upon the right to possess for the immediate protection of the settler and their family. Settlers also had a duty to protect their own community. Few appear to have argued that the settlers had a right to possess arms to fight off any potential attack by their own government, though this appears to be suggested by MP Alfred Brandon when he asked during the Arms Bill debate; “Is it necessary to tie the hands of Europeans against the Government or each other?”⁵⁶⁸ Of course there was little suggestion that the government might arbitrarily seize the property of the settlers, or seek out to destroy the community institutions of the settlers, or that the Government might at some stage physically attack the settlers. However when contemporary historians, such as Macaulay, looked at their own history and conceptualised the reasoning behind the declaration of right they reasoned that there was indeed a right to resist unjust Government.

⁵⁶⁸ Alfred Brandon, Arms Bill Debate, 25 October 1860. *NZPD* p.758.

The self-defence issue and the issue of participation in political representation and the issue of recognising the autonomy of Māori areas indicates that Māori were regarded by the authorities as something less than “people”. Writing of a different people and of a different time Christopher Hill, wrote of the situation in the post civil war England, where the lower orders of society had been armed by the elites to fight in the English Civil War.⁵⁶⁹ He argued that these mobilised commoners became politicised and challenged the established social order. The Māori population like the lower orders of post civil war English society thrust themselves into the political radar screens precisely because they were armed and dangerous. Māori opinion mattered, chiefs needed to be courted and the authorities often sought to avoid conflict because of the disturbing reality that the Māori population endangered the settlers and the authorities. The fact that the Māori population was armed had implications that went to the very core of government policy during this period. Of all the arguments for continued home government involvement in Native affairs, the most compelling was that as the home government would foot the bill for any war, the home government should maintain a controlling interest in the matters most likely to precipitate a war, in other words Native policy. The fact that Māori were so heavily armed ensured that any conflict would have been costly, requiring of Imperial support. It was the fact that Māori communities endangered the settlers, which gave the substance to the debate. The Māori, whether tribally or in “unlawful combinations” were a people. Denied a voice in parliament the wishes of Māori still mattered; “What would the Natives think?” The Māori population periodically loomed large on the political horizon precisely because it was an armed population. Māori were not the only members of the genus *Homo Sapiens* effectively excluded from the contemporary conceptions of the “people”. Perhaps at least as thoroughly excluded were women, and the very young. The wives and children of settlers did not enjoy the political rights of adult male settlers, however they enjoyed

⁵⁶⁹ Christopher Hill, *The World Turned Upside Down: Radical Ideas During the English Revolution*, Maurice Temple Smith: London 1972. pp. 19-20, 26. Hill argues that the accessibility to printing presses and the lack of censorship were important elements in the radicalism.

many of the benefits of the settler economy, even if they had relatively limited ability to control their involvement in that economy. Māori on the other hand were systematically excluded from participation in the settler economy, and the basis for the independent or autonomous though interdependent Māori economies was later removed by the operations of confiscation and the Native Land Court.

McLean had suggested that the land selling faction should be allowed firearms under certain conditions. However this suggestion was not acted upon and this particular group would not be allowed to purchase firearms even after the partial relaxation of 1857. They were finally given firearms when the Government went to war with Wiremu Kingi and his allies. They were armed as allies to the Government. The Government would argue that Māori should be disarmed and accept the protection of the government. However the Puketapu feud illustrated that even where a Māori group publicly stated and held to a course of action favoured by the Government and lived in a very close proximity to a major settler settlement, that group could not expect support or protection from the Government. The friendly faction themselves demonstrated by hacking Katatore to pieces on Devon Road that no Māori could rely upon the settlers for protection or even posthumous justice. Furthermore, even the infinitely more favoured outlying settlers could not expect protection in any active form from the Government, and were expected to provide for their own protection. In the years 1854-1859 the great majority of the victims of Māori violence were Māori. For five years the Government did not lift a finger in support of the land selling faction in Taranaki and only helped this group with the supply of arms and ammunition after the settlers were themselves engaged with Wiremu Kingi.

At the outbreak of war in Taranaki settler militia armed with smoothbore muskets were pinned down and hopelessly outranged by Māori with rifles. The rest of the wars were another story, the reverse was generally the case. Māori were predominantly armed with the short ranged musket, the settlers were increasingly armed with rifles and proper ammunition. Indeed the pick of the

settler forces were eventually armed with the cutting edge military technology, such as revolvers, revolving rifles and early breechloaders. Of all the aims of the restrictions, the only one which appears to have met with success was the restrictions on the latest technology. Rifles offered such an important advantage to the shooter, that it would be difficult to imagine that Māori purchasers would not have purchased them in quantity had they been able to. The extent of the benefit which the Government derived from the restrictions was the extent to which the restrictions pushed up the prices and slowed the uptake of the newest technology. On the other hand, a point made by several of the settler commentators, was that the trade in arms and ammunition forced Māori into an illegal trade and required Māori to maintain an independent contact with the outside world. These contacts may well have proved invaluable when widespread conflict between the settlers and Māori erupted during the 1860s.

The level of Māori firearms ownership was very high. Many commentators believed the population to be practically universally armed. The cessation of slavery had meant the removal of the need to keep a part of the population disarmed and in many Māori communities, firearm ownership was practically universal. It is possible that Māori population at this time may have had one of the largest, if not the largest proportion of firearm owning individuals of any people in history. Certainly the level of firearms ownership among the Māori population at this period in New Zealand history far exceeds the rate of firearms ownership of many modern countries. The primary motive for the Māori ownership of firearms was social and political rather than for a means of sport or sustenance. The main purpose for the Māori possession of arms was for the potential use against people rather than for the use on animals, although the hunting of pigeons (and possibly also pigs) with firearms appears to have been important.⁵⁷⁰ A strong cultural imperative was also evident. Māori

⁵⁷⁰ A number of Missionaries reported that Māori complained that the restrictions limited their ability to gather pigeons. This was also a complaint expressed at the Kohimarama conference. Although kereru had clearly been gathered before the arrival of firearms, it appears that these birds were largely harvested with firearms by this time. Perhaps the techniques for the traditional harvest of kereru had been forgotten or were simply too time consuming.

warriors had always carried arms and firearms were the most effective modern weapons available to the warriors. The basic definition of law is socially sanctioned violence. Alex Frame argues: "...law exists where it is found that *reasons conventionally known and approved, are needed for adverse treatment of others.*"⁵⁷¹ In Māori communities this power, the power of law, lay with the taua. The very high level of Māori firearms ownership went hand in hand with the continuation of the practise of the taua, for the coercive power of Māori communities remained with those who possessed the means of coercion, the community itself.

By way of the arms restrictions the settler Government sought to attack the alternative and rival political systems. Actions for which the New Zealand body politic has since been compelled, on a number of occasions, to apologise. If the invasion of the Waikato was unjust, if Government actions in Taranaki were unjust, then surely the measures, which had attempted to limit the Māori ability to resist those actions were also unjust. The goal of the restrictions was to save the lives of settlers. Poor quality homemade gunpowder, with the risk of misfires, poor trajectory, accuracy and terminal ballistics (the effect of the bullet on the target) reduced the effectiveness of the Māori resistance to the Government. It is likely that the restrictions did save the lives of a number of settlers. It is equally likely that it cost the lives of numbers of Māori who tried to resist the Government.

When settlers wrote of Māori greeting rituals in the 1850s they often described volleys of musket fire.⁵⁷² In the 1850s, visitors were greeted with a display of up to date, or largely up to date weaponry. Today the wero is performed with a taiaha, which has not been a true contender in any potential conflict within New Zealand for the better part of two hundred years. Although many who observe the wero today speak of the awe which the greeting can convey, this

⁵⁷¹ Italics in original. Alex Frame "Colonising Attitudes Towards Maori Custom", *The New Zealand Law Journal*, 1981 p. 106. Māori 313 Book of Readings. Victoria University: Wellington 1995. p.1.

⁵⁷² See for instance evidence presented to the 1858 Select Committee inquiry. Le 1 1858/8

nevertheless implies a certain suspension of disbelief on the part of the observer. A certain suspension of disbelief that a few bursts of automatic fire from an AK-47 would not require. Before colonisation the wero was an embodiment of the ihi of the community and the feeling of wehi and awe, which that community conveyed to others. Today, if the wielder of the taiaha was to actually use that weapon on anyone, they would be charged with assault. Colonisation is about denying a culture the power of coercion, the power of the sword. It is the criminalization of the alternative notion of law, of the alternative efforts to impose ideas of right and wrong, and of the alternative efforts to protect property. The Treaty of Waitangi guaranteed Māori the right of tino rangatiratanga. The rangatira had power over people and land. This power was based upon the use of firearms, which were already universal before the treaty was signed. Firearms had become the primary weapon of war more than a generation before the first restrictions were introduced. According to Mao Tse Tung, political power grows out of the barrel of a gun.⁵⁷³ Colonisation is the process of denying a community political power. In New Zealand, colonisation was the process of denying Māori communities the ability to use and possess firearms as tools of law.

The 1860 Arms Act when it was finally passed showed evidence of arms control issues, which had shown themselves over the previous fifteen years. The Act never achieved the goal set out for it. In its original inception the 1860 Arms Bill was a radical innovation, but by the time it was passed into law it was more a consolidation of previous policies and experience. Despite its unwelcome beginnings and the apparent reluctance of the authorities to implement the act the 1860 Arms Act had a relatively long life. The Act was continued repeatedly until 1869 when it was finally amended to a permanent statute. With the benefit of some nine years of hindsight one of the key promoters of the 1860 Arms Act, J.C. Richmond had come to the conclusion:

...if the demand for arms was very great, arms could be smuggled into the country despite anything we could do at present as to watching the coasts. However the

⁵⁷³ *The Oxford Dictionary of Quotations*, Revised 4th Edition. Oxford: New York 1996. p.446.

operation of the Act would no doubt make greater the danger of supplying arms to the Natives, and would so increase the cost of that supply, which would be an advantage to the Colony.⁵⁷⁴

Richmond concluded that the only benefit the Government could expect from the Amendment Act was the fact it would force Māori to pay high prices on the black-market for arms and ammunition. After six years, several important inquiries and a new Arms Act, firearms policy at the end of 1861 was materially little different to that at the beginning of 1855. The arms restrictions were largely ineffective in 1855 and they remained so in 1861. The 1860 Arms Bill promised a substantial tightening of the arms control regime. However the major innovative features of that Bill were pruned in the Select Committee and the 1860 Arms Bill offered few new tools to police the arms trade. In any case, the innovative proposals of the Bill could not offer any solution to the main source of the illegal supply the coastal trader who would continue to operate with impunity. Despite the fact that Māori were almost totally excluded from the decision making process, Māori opinion continued to matter. To a modern observer it may seem a contradiction that Māori were in part able to enjoy at least some of the benefits of the rule of law because Māori were able to resist those who were employed to uphold the law of the land. Such an apparent contradiction however accorded well with the Whig ideas about popular weapons ownership. The continued defiance of the arms restrictions and continued possession of arms proved to be a better guarantor of the rights to property and rangatiratanga promised under the Treaty of Waitangi than the reliance on the settler controlled Government. A gun in the hand was already proving to be worth more than a promise on paper.

⁵⁷⁴ J.C. Richmond Arms Act Amendment Bill Debate 1 September 1869 *NZPD* p.908.

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