The Treaty of Waitangi was first signed on the afternoon of the 6th of February 1840, in the Bay of Islands at Waitangi.

It did not arise from warfare, as a Treaty of surrender, but was signed in a spirit of goodwill under the reigning conditions of Peace.

The Treaty was a Declaration of the traditional Maori rights of absolute authority over Aotearoa. Within this authority the signing Chiefs generously permitted the Crown a role. The Treaty document is a statement of this concession and forms the fundamental constitutional basis of the Nation.

The Treaty was signed by the representative Chiefs, in the belief that it documented the natural and inalienable Maori rights of land and resource ownership, self determination and the Maori way of life. Simultaneously the Treaty assured Maori of continuing authority and unrestricted access, over all natural resources of Land, Sky and Sea, including Forests, Lakes and Waterways.

Additionally, the Treaty guaranteed to Maori the same protection and rights as British citizens. It permitted the Crown to act as the sole agent in land dealings. It also required the Crown to establish a lawful and just system of shared Governance, in compliance with the Treaty conditions.

The Treaty of Waitangi re-stated and re-inforced the position and authority of the Chiefs. It confirmed their right to exercise shared control over the powers of Governorship granted to the Crown.
Far out! That Pakeha who shot and killed the Maori last week isn't even going to be charged!! Makes you think of Paul Chase and Dominic Kaiwhata...

And the prisons are full of Maori charged with murder and manslaughter. What happened to the 'one law for all bit?"
MOST PEOPLE FORGET THAT THE LAW IS A SET OF PEOPLE-MADE RULES BASED ON THE VALUES, BELIEFS, INTERESTS AND CUSTOMS OF A PARTICULAR GROUP.

MAORI LIVED WITH THE LAW...

Did our people have rules and laws before the Pakeha arrived?

We sure did-but it was very different from the Pakeha way.

LAW

MAORI LAW WAS BASED ON SPIRITUALITY, OUR TIKANGA RELATED TO OUR MANA, SECURITY AND STABILITY. THEY WERE PART OF OUR DAILY LIFE. IT WAS TIED UP WITH OUR RELATIONSHIP WITH WHANAU, TUPUNA, WHENUA AND ATUA.

OUR LAWS HELPED TO PROTECT THE NATURAL BALANCE OF THE WORLD WE LIVED IN.
How was Māori law enforced—did we have police, judges and courts?

No need—our beliefs were so ingrained. There was no need. Besides whanau acted as monitors in a way.

What about prisons?

What for? We had our own way of dealing with things.

The idea was to restore harmony not to treat people like animals and lock them up.
Tapu was an important force that linked te iwi to nga tupuna. The people were aware of the appropriate behaviour.

I understand.

It’s not tikanga to place food over a person’s head—the most tapu part of the ‘body’.

Everyone is linked to the same source...

Rahui involved a certain area or activity being placed under a restriction for a period of time.

For example, no fishing, bathing, or collecting of kai after a drowning.

A rahui on drugs.
If conflicts arose, several options existed to settle differences.

An immediate apology could be accepted...

Sometimes there is no hope of restoring a relationship so one party flees...

Or... This toonga I offer to you as compensation.

Or death occurs.

Or Muru could be carried out.

Better than being tortured or locked up for years!
THE TIKANGA 'MURU' WAS USED TO RESTORE HARMONY BETWEEN WHANAU.

SAY FOR EXAMPLE A HIGHBORN WOMAN WAS A VICTIM OF ADULTERY...

A runner was sent out...

THE VICTIMS TAU'A WOULD ARRIVE WITH A ROARING HAKA AND A LOT OF NOISE...

THEY WOULD REMOVE ALL THE PROPERTY OF THE OFFENDER AND HIS WHANAU UNTIL THEY HAD ENOUGH TO SATISFY THE OFFENCE.

THE OFFENDERS WHANAU WOULD SIT BACK QUIETLY... THEIR HONOUR RESTORED.


Ooh! What an awesome MURU...

IF SOMETHING IS NEGATIVE, IT MAY AS WELL BE MAGNIFICENTLY NEGATIVE!!!
If a rangatira was seriously insulted—utu or punishment could be held off for a number of years...

Hey! Ya ugly old baldhead!!

I'll let that pass for now... it'll keep!!

Utu may be exacted years later...

Or the offender could be taken prisoner...

But often utu was swift... and violent.

Your koroua was a jerk to mine. I seek utu!!

...and often if you were a rangatira—life wasn't that bad.
I guess you knew what to expect anyway, eh Nan!!

I'll say! And the Māori system was based on kinship obligations. People had individual rights but collective responsibilities.

What's justice then?

Justice is described as making sure that those rules are applied fairly...

How just is it when one group makes up all the rules for everybody.

Hmm... there's a thought—where did the present legal system come from?
The English law was cooked up by the most powerful...

At first by kings and queens...

Then by parliament which was made up of the wealthy – aristocrats, wealthy landowners, and rich new businessmen.

Private property rights were divided up among all the wealthy men... (sounds familiar?)

And of course, under British sovereignty whatever parliament says... goes.

And women got the same treatment! We could not own property, vote, or get elected. Rape was an offence against the husband violating his property rights.

In fact, women weren’t even ‘legally’ persons till the end of last century...
LAW WAS USED AGAINST THE POVERTY-STRICKEN...

Thief! Cut his hand off! Hunger—what sort of excuse is that!!!

AND NEW LAWS WERE MADE TO PROTECT THE TRADERS & BOSSES

You've got wealth! Plundering your way around the colonies...
—think I'll reward you.

THE PEASANTS ARE IN REPELT! HORROR!—REASON! SEDITION! CONSPIRACY ETC. ETC.!!

OFF WITH THEIR HEADS!!

WHILE THE LAWYERS WORKED OUT WAYS TO KEEP THE POWERFUL IN POWER!!

An 'unholy alliance of LAWMAKERS, JUDGES, LAWYERS, BOSSES AND BIG BUSINESS — SOUNDS FAMILIAR
AND THEY CALLED THAT PERFECT CIVILISED LAW!!!

Hey! It was pretty cool if you were rich, white and male!!

How come our people bought into that?

We didn't just sit back when the Pakeha tried to use his law to deal with our people.

We didn't! The Declaration of Independence affirmed our rangatiratanga and our rights to make laws.

And of course, the Treaty of Waitangi guaranteed ritenga and tikanga in Articles Three and Four.

The Waitangi Tribunal said, even in English text, "the English presumptions of Common Law are nowhere apparent. They must've been apparent to English lawyers but they would not have been apparent to the Maori signatories had it in fact been the English text signed. Maori believed the Treaty of Waitangi promised them that Maori customary law would prevail.

Oh, c'mon - Govt allowed Maori assessors to sit alongside our magistrates.

But only 'til we felt secure enough not to need them anymore!!

YEAH! BY THE 1860S, THEY HAD IT ALL WELL TIED UP!!
So what was imposed on Aotearoa was the 'tried and true' British legal system with all its trappings intact.

That's my baggage over there. Cos I'm the Queen, don't worry about any tests. Put 'em straight thru!

INSTITUTIONS

CONCEPTS

Private Property
Individualism

Purposes

Values

Western Christian Doctrines

CAPITALISM, EXPANSION, MIDE POWER

Parliards

Courts

$
Basically - British Justice was still... justice for the British!
Actually, you don't even need to concentrate too hard to see that!!

Get it?!!

Heck! That's pretty blatant! How do you sell THAT?

Easy! You push an 'ideology' - you spin a yarn that changes the way people think about their reality.
For example: that the Law of Queen and England comes from two sources...

DIVINE and HUMAN

Well, everything comes from me!!

And some of us have a tight connection to the top.

DIVINE LAW WAS GIVEN TO BISHOPS, MINISTERS AND TEACHERS

Were we mission from God!!

HUMAN LAW WAS GIVEN TO THE KING OR QUEEN AND...JUDGES AND POLICE...

God of earth, you might say.

It's a pretty good way of justifying our power, eh?

Perfected law versus native law... humm!!
"A wise and generous people, the English have settled in this land... and this people are willing to teach him and guide him, in the wellmade road which they themselves have travelled for so many generations; that is, in the path of the perfected law... in the path by which they themselves have attained to all the good things which they now (the Pakeha) possess..."

Wisdom! Property! Quietness! Peace! Power, glory and other good things!!

Don't doubt us! Don't hesitate! Be patient - follow us. We've been appointed to show the right and the finished path!!

You don't have to look too hard to find examples. Look what happened in...
Remember Parihaka... under the peaceful leadership of Te Witi and Tohu, the people of Taranaki resisted the Pakeha invasion when surveyors pushed into the area.

We’re surveying here — we want this land!!

In 1879, forty ploughmen were convicted of malicious damage to property in Taranaki.

The first batch were sentenced to two months’ jail, and binding orders of £200 each. If unable to pay that amount they were imprisoned for a year.

**July**
- More arrests
- Govt announces that trials would be held in August.

**Aug**
- Trial postponed (Maori Prisoners Trial Bill)

**Sept**
- Trial will be in Feb. Then delayed till April.

**Oct**
- JAIL
- GVT: We’ve got the matter under consideration. A Bill was passed postponing the trial.

**Nov**
- JAIL
- GVT: Trial will be July.

**Dec**
- JAIL

**Jan**
- JAIL

**Feb**
- JAIL

**Mar**
- JAIL

**Apr**
- JAIL

**May**
- JAIL

**June**
- JAIL

**July**
- JAIL

**Aug**
- JAIL

**Sept**
- END OF THE FARCE: MAORI PRISONERS BILL
  - All those in custody were deemed and taken to have been lawfully arrested and to be in lawful custody and maybe lawfully detained.

Get the picture...!
Bryce: It was a mere farce to talk of trying these prisoners for the offences of which they were charged. Now we drop that provision altogether. We consider that to be a mere sham.

Grey: The Bill amounted to a general warrant for the arrest of all persons of all ages and sexes for offences which were not named at all—indeed they may be arrested for no offence.

1880—Cripes! We let them out and now they're putting up fences across the roads.

Bryce: I'll fix 'em—how about this—anyone who damages a peg, wrecks a fence, or annoys us—goes to jail.

Pyke: Man! This is despotic—completely unconstitutional and were meant to be a parliament of free men!

What does he mean? Unconstitutional! No way!

We've done everything by the book—just happens to be our book.

We're not asking for much—just to live in peace on our land.

Don't think we can let you do that.
Finally, in November 1881 2500 armed men led by Bryce marched into Parihaka and burnt, looted and razed it to the ground.

And yet another act—WEST COAST PEACE PRESERVATION ACT—was passed to legalise the indefinite imprisonment of Whiti & Tahi and re-arrest at any time without charge.

All meetings at Parihaka were banned and entry to the village was by PASS CARD ONLY!! — sound familiar?

Once more, the women, the children and the men offered only peaceful resistance.
Then there was Te Kooti. Te Kooti was fighting on the side of the Pakeha...

Bang! Bang!

That Te Kooti's a gun fighter. I'll say!

Well... when am I gonna get out of here!!

Hang on! He's using fake bullets!

Tiatora! He's doin' it!!

Te Kooti was acquitted of the charge in court...

But exiled to the Chathams for two years with 200 other 'rebels'.

Two years passed...

Meanwhile back on the mainland...

Um—you'll be here indefinitely.

Sorry T.K. you just missed out!!

New land laws! If you're not in court to defend your land claim—anyone else who claims it—wins.
When Te Kooti escaped, Whitmore chased him all around the Motu...

Six years later, T.K. decided to visit the East Coast with a few Rangiwha following.

Pakeha vigilantes got up in arms

and

Govt got the courts to order T.K.'s arrest

... because the Pakeha were likely to breach the peace!!

In 1886, Te Kooti was pardoned.

Te Kooti fought back!

I forgive ya!

You are bound over to keep the Queen's peace

- Pay up a $500 bond

or go to jail for 6 months.
"A Maori Prophet - and a drunken one to boot..... no man in the country has a worse name than Te Kooti."

But the Governor’s pardon cannot change a man’s character or memories of the past.
IT WAS HUMAN NATURE THAT THE SETTLERS WOULD JOIN TOGETHER TO DEFEND THEMSELVES!!

(Supreme Court Judge Richmond)

Kei hea te tikanga maori me te tino rangatira kango?

Wonderful thing this rule of law eh?
RULE OF LAW
1911
FIVE CHARGES
LAID.
CONVICTED AND
FINED.
One charge suspended so it could be used against him anytime.

1915: ARRESTED FOR 'SLY GROGGING'
SENT TO PRISON ON THE 1911 CHARGE.
1915 CHARGES WERE HELD OVER.

1916: SUMMONED TO COURT ON THE 1915 CHARGES.
Because Rua said that the war had nothing to do with Maori people, he was called a 'Maori Kaiser'.

A WARRANT FOR HIS ARREST WAS IGNORED BY RUA.
He was sentenced to three months imprisonment - in his absence!!

So, me & the boys trooped on up to Maungapohatu to arrest him.

MAORI TALLY
2 killed
2 injured
31 locked up
6 arrested for trial
(there were only 48 males at the settlement anyway!)
CHARGED WITH ASSAULT AND SEDITION

The jury found Rua guilty of offering moral resistance .......

BUT THAT WAS ENOUGH FOR THE JUDGE!
YOU ARE HEREBY FOUND
GUilty OF RESISTING
ARREST.

that's twelve months
in prison and
eighteen months
for reformation purposes.

LAW TRIUMPHS

"We have heard a long
history of defiance of the law—
and now you have learnt that
the law has a long arm, that it
can reach you no matter how far
back into the recesses of the
forest you may travel. In every corner
of the great Empire to which we belong,
the King's law can reach anyone who
offends against him. This is a lesson
which your people should learn
from this trial."

Auckland Star 1916.
(Judgement of Chapman J.)

AND WHAT WAS WORSE....
Rua & His Followers had to
Pay the Govt the £100 Cost of
The Armed Expedition
AND £1,100 Court Costs!

THE COMMUNITY WAS RUINED!!

 hangs on! that's not what we meant.
"Maori customary law is the opposite of English Common Law which considers that harbours belong to the Crown. The Maori people believe the Treaty of Waitangi promised them that Maori customary law would prevail. King Tawhiao was of this view in the 1880's when he vigorously opposed the presence of Government vessels in Kawhia Harbour.

When pressed to produce evidence of his title to the harbour, he replied "I have title - the Treaty of Waitangi. They see "the anger of the law" as something that merely deprives them of what is theirs. It is on the Treaty that they pin their hopes; the hope that the Treaty will be upheld as the supreme law."
In 1978 the Crown sought an injunction against occupiers of Ngati-whatua land, the very last few acres of which were under threat of 'development.' 222 people were arrested on trespass.

In 1978 twelve people were arrested at a protest on land taken by the Crown for 'defence purposes' in 1941 and leased by the Crown to a golf club in Raglan...

I cannot go behind the certificate of title. This title vests ownership of this land in the Housing Corp of New Zealand. I'm here solely to interpret the rights of the legal owner.

You're acquitted because there is doubt about the title. The sanctity of the contract must however be respected and upheld.

I know the lease was recognised as illegal under the Land Settlement Promotion and Land Acquisition Act—under the Illegal Contracts Act—its now valid.
And in 1979... He Tāua used force to end an obscene haka that Auckland Uni. Engineering students had performed annually for ten years at capping time...

In spite of a massive protest over the decade.

Petitions

Letters

Charge! Intent to cause bodily harm and riot.
We have a cultural defence - our haka are precious to us.

We are one people of differing religious beliefs, cultural heritage and racial background. We are governed by one law. Every civilised society has rules by which it lives and it makes those rules of necessity so that the society may survive. Without those rules, the law of the jungle would operate.

We refer to it as the Rule of Law, and it is the duty of the Court to uphold the rule of law.

Every citizen of this country, irrespective of his colour, creed, sex or status, is equal before the law, but is equally subject to that law. There cannot be one set of laws for example, for one ethnic group, and another set of laws for another. If the rule of law is not upheld, we have anarchy. Then civilised society will perish.

Judge Blackwood.
During the years 1983 to 1985, the Waitangi Tribunal developed in its own exciting way:

The procedure of the hearing was very much based on tikanga and marae kawa...

The tribunal stated that there was no cession of sovereignty.

There was no recognition of British laws.

The claimants acted for themselves.

It became a source of hope to many Maori.

The tribunal stressed the need for justice to be done as opposed to emphasizing procedure and technicalities.
BEHIND THE SCENES THO', THERE WAS LITTLE ROOM FOR OPTIMISM...

In February 1984, Labour promised to:
- Expand the Tribunal to seven
- Give the Tribunal the power to look into claims back to 1840
- Hand over more resources...

...the bill wasn't passed till December 1985!

You think that's slow?
Heck— it took till July 1986 to finally appoint the new members!!

Because there was only one member retained till the new appointments. In fact, the Tribunal didn't even legally exist for seven months!!

The first hearing of the expanded Tribunal wasn't held until November 1986— after the S.O.E. case. The Orakei report spoke of that decision being binding on the Tribunal. Then began talk of 'a cession of sovereignty'.
In December 1987, once again the government promised an increase of tribunal members—and more resources.

We will move quickly! We promise a better set-up.

Huh! It took a whole year before the Bill was finally introduced, another six months before it was passed, and three extra months before we got the new members!!

That Bill paved the way for some of us Pakeha who are totally ignorant about the Treaty, to end up on the Tribunal...

Yip—no need for a Maori majority. What’s ever will be talking about “partnership”?

Actually—some of the power I started to sluff away from Maori control. The only full-time Tribunal member was a Pakeha former Secretary of Justice. The acting Chair was the Pakeha Land Court Judge!!

The Mangonui Sewage Case was the first rejection of a claim by the Tribunal. It spoke of a cession of sovereignty which cannot now be denied.
THE FAMOUS CORPORATISATION CASE NZINC GOVERNMENT WAS HAILED AS A VICTORY FOR MAORI!

COURT ORDERS GOVERNMENT TO NEGOTIATE WITH MAORI IN ORDER TO PROTECT CLAIMS OVER LAND WHICH THE GOVERNMENT WANTED TO TRANSFER TO THE S.O.E.S.

Well... Who said it was a victory? The end result of it all was only that the Government must give land back - if the Waitangi Tribunal says so!

You mean -- we didn't actually GET anything??

Well - we did get the Courts version of the Principles of the Treaty which goes something like this....

WITHIN THE CROWNS RIGHT OF SOVEREIGNTY THERE EXISTS A PARTNERSHIP

For us it means actively protecting Treaty Claims through mechanisms like the Tribunal.

It also means that informed decisions must be made on the impact of policy on Treaty claims.

We can consult but we do make the decisions.

THE PARTNERS OWE EACH OTHER A DUTY OF ‘REASONABLENESS’ AND ... GOOD FAITH!

TE TINO RANGATIRATANGA - WHERE'S THE VICTORY ???
WHERE'S THE LAND ???
But - the petrocorp case showed how little had changed.

However, in 1987...

Gee, I think we'll have a garage sale to raise a quick buck. Petrocorp might scrounge us a few dollars...

The government was back in the dock again... however -

In 1987, Taranaki bought a claim to the tribunal -

We claim our rights over all the oil and gas resources.

Look! There's no law that says the Treaty applies to Petrocorp - I can't consider it - nothing I can do.

It might look unjust to Māori, but the law is the law...!!!
Oh dear! It looks like we need a bit more quick cash....

Hang on! You promised us that we could negotiate on the Raupatu claims — especially, the coal.

What else can we sell off? How about Coalcorp?

Anyway — we’re not selling the coal — just coal licences!!

BACK TO THE COURTROOM.

We can’t accept the Government’s argument... The coal should be treated in the same way as is land and trees.

It should be returned to Maori if the Tribunal says so or Govt agrees to hand it back.

But!!!

So — Where is the Coal?

Where’s Te Tino Rangatiratanga?
And the Fisheries was hardly a victory!

THE QUOTA MANAGEMENT SYSTEM WAS SET UP BY GOVERNMENT TO CREATE 'PRIVATE PROPERTY RIGHTS' IN FISH - CALLED QUOTAS.

The Government said the aim of the Bill was to prevent overfishing.

But somehow we big companies responsible for exploitation ended up with 70% of the quota!!

THE TRIBUNAL WAS ON THE BALL - AND TOLD GOVT. .......

This QMS system is in breach of the Treaty and...

Huh! Wouldn't worry about that!

BACK TO COURT.

There is a conflict here, between Maori rights and government action... you both need to negotiate.

But Govt. still has the final say

MAORI FISHERIES BILL

LOOK - well offer them some cash and maybe a share of profits in a fishing company...

$110 million seems fair - the fisheries is only worth $15 billion. A few years of Maori paying fish rentals & we'll have it all back!

35
As for the forests?
June 1988: Hmm... might get rid of the state forests...

No! I've worked this out! We'll keep the land - but we'll sell the trees! Then we won't be breaking our agreement to protect claims over land!

Not a good idea! We'll end up back in court again!!

Yeh. But govt. still has the last word and in the end... We're still dependent on the Tribunal. And we still got no trees!

Out of all these cases, Maori got nothing except a redefined Treaty and reinforced rights of government to hold power and to pass laws saying whatever they wanted.

Separate the trees from the land? Sounds a bit strange!
The government has clearly set down its framework for the future and quite clearly—Maori even have to negotiate to find a 'place' within that.

Look what we've done!!

Well, we might let you in— but you're not to do what we want!!

There's a bit of room down there...

Cee, they're left me out!

That's not fair!

...and I had to fight for that!!

The governments and courts aren't helping. How do we retain and regain our Whenua and taonga—and our tino rangatiratanga.

We only need look at two valuable reports which were the result of countless hui—In Whainga 1 te Tika and Te Whaipapa Hou, many issues and solutions were raised by te iwi Maori.
We must continue to push Te Tiriti o Waitangi — as a covenant defining behaviour and relationships between Crown and Maori. And a reaffirmation of Te Tino Rangatiratanga.

Te Reo Maori must be promoted as the carrier of values and ideals.

A cultural research centre and Iwi Wananga must be supported.

The economic development of Te Iwi must be addressed.

The whanau must be strengthened as a unit.

A parallel education system must be instituted.

Maori legal service centres should be set up.

An autonomous Maori law commission must also be initiated.

12 + 4 = 16
And what about the idea of an autonomous, parallel criminal justice system. It would use different procedures based on traditional understandings.

A system developed, implemented and controlled by Maori.
Gee, Nan, it's pretty clear. The answers do not lie in the Pakeha law, in the Courts, or the Waitangi Tribunal.

Oh Moko— the price of playing the Pakeha way is our tino rangatiratanga. We simply can't win!

The REAL source of justice for our people lies in our own ways, with Tikanga & ritenga Maori and the affirmation of our TINO RANGATIRATANGA.