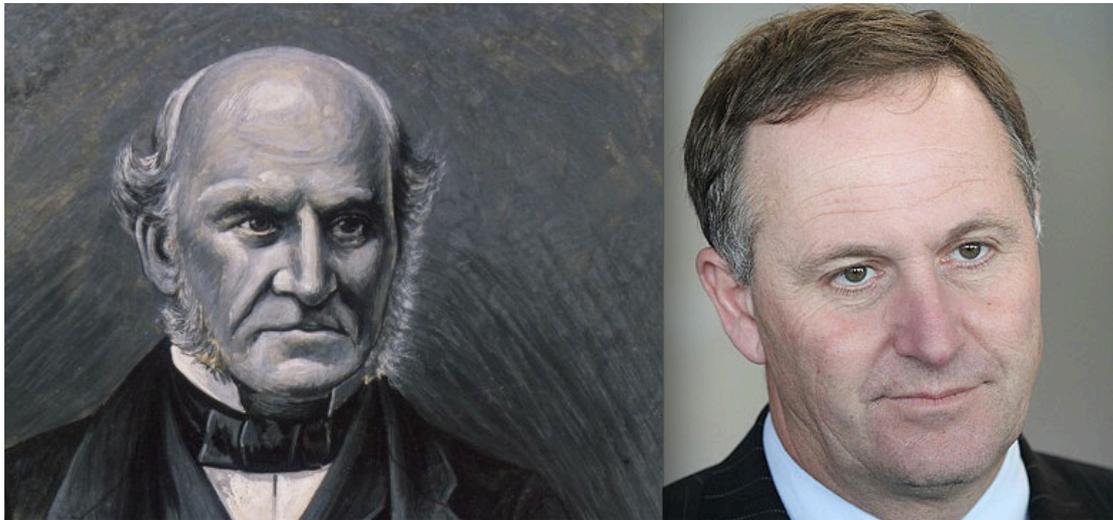


Corralling Consent:

An inquiry into the mythical beginning
of the New Zealand flag¹

by

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¹ This title takes its inspiration from the titles of Vincent O'Malley's "Manufacturing Chiefly Consent? James Busby and the Role of Rangatira in the Pre-Colonial Era", *Journal of New Zealand Studies*, 10 (2011) and Edward S. Herman and Noam Chomsky's *Manufacturing Consent: The Political Economy of the Mass Media* (New York: Pantheon Books, 2002, first published 1988).

1.

James Busby

Ten months before he held New Zealand's first vote on a flag, while he was still aboard HMS *Imogene* in the Bay of Islands, James Busby, the newly appointed "British Resident at New Zealand", devised what Baldrick might have called "a cunning plan" to encourage the "Chiefs of New Zealand" to confederate: he would give them a flag, he wrote Governor Richard Bourke on 13 May 1833, but not tell them why, while also giving it "the appearance of originating with themselves".²

When Busby was introduced as "His Majesty's Resident" to a large gathering of Māori and a small number of Pākehā at the Paihia mission station four days later, he kept the ruse to himself.³ Apart from an opening plea for peace between His Majesty's subjects and "the people of New Zealand", his speech was largely taken up with promoting the civilising opportunities afforded those having friendly relations with Great Britain.⁴ If they became "like the people of England" they would be "a rich and wise people".⁵

Ten months later, when the rangatira gathered to select one of three flags brought from Sydney by HMS *Alligator*, Busby obfuscated by implying that a flag was required for trade but without explaining why: "[The King of England] realizes that the ships that have been built in New Zealand have no flags of their own and therefore desires you the chiefs to accept this flag as a pattern for the flags for such ships so that such ships sailing the seas in flying for trade would fly the flag of the King of England. . . . When you have made your decision the Captain of the ship will bear your choice to the King of England signifying that the particular flag is the one you have chosen as the flag for New Zealand and

² Richard Bourke to James Busby, No. 3, "Instructions to the British Resident", 13 April 1833, in Henry Hanson Turton, *An Epitome of Official Documents Relative to Native Affairs and Land Purchases in the North Island of New Zealand* (Wellington: George Didsbury, 1883), 4; James Busby to Colonial Secretary, No. 3, 13 May 1833, qMS-0344 and qMS-0345, Alexander Turnbull Library (hereinafter ATL), 2/32.

³ O'Malley, "Manufacturing Chiefly Consent?", 36; Waitangi Tribunal, "The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry", (Lower Hutt: Legislation Direct, 2014), 122.

⁴ William Barrett Marshall, *A Personal Narrative of Two Visits to New Zealand, in His Majesty's Ship Alligator, A. D. 1834* (London: James Nisbet, 1836), 333.

⁵ *Ibid.*, 333 and 110.

such a flag will then be flown on the ships of New Zealand serving under His Majesty King William.”⁶

Busby gave no meaningful explanation to the hui because there was none to give, for by then there were 183 years of British shipping and navigation law including a Customs Act passed three years earlier by the colonial government of New South Wales that permitted New Zealand-built ships to trade freely with the colony provided they carried goods of New Zealand provenance, as Bourke and Busby would or should have known. Furthermore, New Zealand-built ships had been trading with New South Wales without any impediment since 1827. This, then, is a likely reason Busby’s speech lacked specificity as to the flag’s utility and why, as William Marshall, surgeon on the HMS *Alligator*, has it, Busby suppressed debate before the actual vote was taken, thereby denying the rangatira “an opportunity [it] might have been afforded of answering any objections as they arose, and, in that way, more completely satisfying the minds of the people as to the objects contemplated by our Government.”⁷

2.

“The History of the New Zealand flag”

If we turn to “[The History of the New Zealand Flag](#)”, a video produced by the Flag Consideration Project, we find that nearly every claim made at the start of its narrative is erroneous and/or misleading:

“In 1830, a Kiwi trading ship called the Sir George Murray arrived in Sydney Harbour. [Sydney Harbour, Australia]

She was carrying flax and timber, but missing something important: a flag to say where she came from. She was immediately impounded...and so began the history of the New Zealand flag. [History of the New Zealand Flag]

⁶ 17 March 1834 - J Busby [in Maori] – “Address to the Chiefs on the Occasion of the Adoption of a Flag” (p139) [Use copy Micro 6908] 1834-1834 Item ID: R4086291 AABS 8156 BR1 1/, NZ Archives.

⁷ Marshall, *A Personal Narrative of Two Visits to New Zealand*, 109.

She sat there for quite some time, which didn't sit well with the two prominent Maori Chieftains on board. [Patuone (pictured) and Taonui, Maori Rangatira]

This led James Busby, a British representative living in Waitangi to assemble 25 rangatira at his farm to choose our first flag. [James Busby, British Representative]”⁸

Let us examine this “beginning”:

- It is presentist to describe the *Sir George Murray* as “a Kiwi trading ship”. While it was built at Te Hōreke in the upper reaches of the Hokianga, when it first arrived at Sydney on 18 November 1830 it was owned by Thomas Raine, a British subject and merchant living in New South Wales, who also owned the Hokianga shipyard where it was built. More correctly, this 392-ton barque was not a “British-built” ship and was therefore classified as “foreign”.⁹
- The *Sir George Murray* was not “immediately impounded” for not flying a flag. Its two-week detainment in Neutral Bay was most likely occasioned by Raine’s personal bankruptcy, which afforded the trustees of his estate time to make arrangements to liquidate his assets, including auctioning the *Sir George Murray*, its duty-free cargo of flax and timber, and the shipyard at Te Hōreke.
- The *Sir George Murray*’s stay in Neutral Bay could not be the beginning of the New Zealand flag’s history because the reason it was anchored there had nothing to do with New Zealand. Besides, beginnings of this semantic type are metaphysical inventions created *a posteriori*.
- No one knows how Patuone and Taonui responded to this incident or even with any certainty that they were on board, although it is possible.

⁸ Flag Consideration Project, “The History of the New Zealand Flag”, accessed 29 February 2016 at: <http://www.mch.govt.nz/nz-identity-heritage/flags/answers-common-questions>.

⁹ Francis Ludlow Holt, *A System of the Shipping and Navigation Laws of Great Britain: and of the Laws Relative to Merchant Ships and Seamen; and Maritime Contracts* (London: Joseph Butterworth and Son, 1820), xv *passim*.

Perhaps because it was anchored across the harbour from Sydney Cove, the ship's passenger list appears not to have been published in the Sydney press, as was commonly the case for newly arrived ships. Writing 30 months after the incident, Busby states that there was only "the Principal Chief of the District where she was built, on board at the time."¹⁰ Thirty-five years later, he wrote, without noting their names, that "two native chiefs in whose district she had been built . . . had taken the opportunity of her first voyage to visit the colony of New South Wales."¹¹

- The *Sir George Murray's* two-week detainment could not have been the reason why Busby "*assemble[d] 25 rangatira at his farm to choose our first flag*" because the lack of a flag had nothing to do with that detainment.¹² His linking of the flag to trade was his ruse to manipulate the politics of place.¹³ Busby almost says as much in his unpublished manuscript: "Advantage was taken of this occurrence by the Resident to propose to Governor Sir R. Bourke, that the native chiefs should be invited in their collective capacity to adopt a national flag".¹⁴

We can also say that those who follow Claudia Orange on this matter—including Judith Binney, Manuka Henare, Merata Kawharu, Michael King, Gavin McLean, Anne Salmond, Matthew Wright, along with Heritage New Zealand, a growing number of bloggers, and the cut-and-paste technicians at Manatū Taonga The Ministry for Culture & Heritage—are also mistaken: New Zealand-built ships were not "liable to seizure" if they had no "acknowledged national flag", and no arrangement was needed" for trans-Tasman trade", as Orange has it, because no such need existed.¹⁵ Nor did the adoption of Busby's new flag accord New Zealand-built ships "the same duty-free access as British and colonial vessels" in

¹⁰ Busby to Colonial Secretary, No. 3, 13 May 1833, 1/31.

¹¹ James Busby, *The Occupation of New Zealand 1833-1843, Vol. 1*. (unpublished, MS 46, Auckland War Memorial Museum Library), 9. This manuscript was written on board the *Blackwall* on its voyage to England between February and June 1865.

¹² Flag Consideration Project, "The History of the New Zealand Flag".

¹³ See O'Malley, "Manufacturing Chiefly Consent?".

¹⁴ Busby, *The Occupation of New Zealand 1833-1843, Vol. 1*, 9.

¹⁵ Claudia Orange, *The Treaty of Waitangi* (Wellington: Bridget Williams Books, 1997, first published 1987), 19.

“Australian ports”, as Orange also claims.¹⁶ Indeed, flax and timber, the cargo the *Sir George Murray* was carrying on its inaugural voyage, had received duty-free access to New South Wales five years earlier.¹⁷

We can see this misconception concerning flags and trade playing out in an article written by Malcolm Mulholland, “Academic and flag historian” on the Flag Consideration Panel (the Panel): “The need for a state flag arose in the 1830s for New Zealand trading ships. The *Sir George Murray*, part-owned by northern chiefs Patuone and Taonui, flew a kaitaka (woven mat) at the masthead in lieu of a state flag. This was considered insufficient and the ship was impounded in Sydney.”¹⁸

To repeat, there was no requirement for New Zealand-built ships to fly a national flag in order to trade with Sydney “in the 1830s”.¹⁹ The barque was not part-owned by Patuone and Taonui as far as we know, and certainly not according to a letter of register they signed on 2 June 1831 for its new owner: “*Thomas MacDonnell, a Resident and Land holder in our Country, is the sole Owner of the Barque or Vessel called the Sir George Murray, whereof he the said Thomas McDonnell now is the Master, that the said Barque or Vessel called the Sir George Murray was built in our territories of our Timber.*”²⁰

As well, state flags, by which Mulholland presumably mean ensigns, were not flown from mastheads. An ensign was flown at the aft end of a vessel, whereas a house flag was commonly flown from its foremast.²¹ The *Sir George Murray* was not recorded as flying a kaitaka on 18 November 1830 as Mulholland implies, although it was recorded as flying McDonnell’s house flag on 22 August 1831,

¹⁶ Orange, *The Treaty of Waitangi*, 20.

¹⁷ 6 Geo. IV. c. 109 and 6 Geo. IV. c. 111 §10 (1825).

¹⁸ The Panel, accessed on 3 March 2016 at: <https://www.govt.nz/browse/engaging-with-government/the-nz-flag-your-chance-to-decide/the-panel/>; Malcolm Mulholland, 'Ngā haki – Māori and flags - Early national flags', Te Ara - the Encyclopedia of New Zealand, updated 14-Oct-15 URL: <http://www.TeAra.govt.nz/en/nga-haki-maori-and-flags/page-2>.

¹⁹ Ibid.

²⁰ A 109 Document 1817-56, Mitchell Library, Sydney and MS-Papers-0703, ATL; *The Australian*, 21 January 1831, 3/A; *Sydney Gazette*, 22 Jan 1831, 2/E.

²¹ My thanks to Mac Post and Les Smith for this nautical information.

mistakenly referred to in *The Sydney Herald* as “the new Zealand colours.”²² Furthermore, Allan Sutherland in his 1958 article, which is a likely source of Mulholland’s kaitaka claim, has the *Sir George Murray* flying both the Union Jack and a kaitaka in “Sydney Harbour” in 1834, but states, contrary to Mulholland, that “the Maori mat satisfied” “the Sydney harbour-master.”²³ This, however, would also seem unlikely given that the barque had been sold by McDonnell and was, by 1833, apparently based at Macao.²⁴

3. The fatal misconception

That New Zealand-built ships were required by British navigation law to have a British register in order to trade with New South Wales is the fatal misconception that informs the Panel’s narrative concerning the *Sir George Murray* and is found scattered like confetti through New Zealand historiography on the subject. This in turn is predicated on a further misunderstanding that British navigation law was a part of an international system of seafaring rules. On the contrary, British navigation law grew out of the British coasting trade, initially to counter the Netherlands, then France and the former American colonies, and was both municipal in nature and peculiar to Great Britain.²⁵ It was increasingly influenced by mercantile theory and designed to protect and promote British mercantile interests by granting British vessels certain monopolies in the colonial trade.²⁶

An important principle that would later permit New Zealand-built ships to freely trade with New South Wales and Van Diemen’s Land was contained in the first Navigation Act (1651), namely, that foreign (non-British) vessels were allowed

²² *The Sydney Herald*, 22 August 1831, 4/D.

²³ Allan Sutherland, “Flags of New Zealand”, *The New Zealand Numismatic Journal*, 9/4 (1958), 134.

²⁴ A 109 Document 1817-56, Mitchell Library, Sydney and MS-Papers-0703, ATL; Clifford W. Hawkins, *A Survey of the Commercial Sailing Craft Built in the Auckland Province and in Particular those Sailing OUT OF AUCKLAND with some Account of their Trade* (Auckland: Author, 1960), 25.

²⁵ Francis Ludlow Holt, *A System of the Shipping and Navigation Laws of Great Britain: And of the Laws Relative to Merchant Ships and Seamen; and Maritime Contracts. In Three Parts*, Second Edition (London: Joseph Butterworth and Son, 1824), 229.

²⁶ See Eli F. Heckscher, *Mercantilism, Volume One*, trans. Lars Magnusson (Abingdon: Routledge 1994, first published 1935).

to import goods into ports of British possessions provided that the goods for importation were from the same place or country in which the ship had been built.²⁷ This principle or prohibition would be repeated in subsequent British navigation acts. As an extension of the first Navigation Act, a system of registry was introduced in the second Navigation Act passed under King Charles II.²⁸ This customhouse system of identification was not intended to exclude foreign vessels but rather to grant privileges and advantages to British vessels and thereby enhance the overall prosperity of Great Britain. As explained by a British barrister in 1824: “A registry is not a document required by the law of nations as expressive of a ship’s national character. Indeed the registry acts are altogether to be considered as forms of municipal institution, and scarcely any traces of a like system are to be found in the laws of any other nation. So, likewise, a foreign built ship, British owned, is not required to be registered.”²⁹

4.

A New South Wales story

Unfortunately for the Panel, the *Sir George Murray* incident is not the beginning of the New Zealand flag’s history but more like the end of the road for a New South Wales merchant.

Having formed a business partnership with David Ramsay in 1823, by the following year Raine was a director of the Bank of New South Wales (BNSW).³⁰ By 1826 Raine and Ramsay were the bank’s largest debtor owing it Spanish \$107,243.35 with nothing for security save their signatures, and together with two other gentlemen owed the bank more than half its total assets.³¹ In October

²⁷ See Scobell’s Acts of Parliament, pt. ii, p. 176. See *Commonwealth and Protectorate*, ii. 147.][Cap. 22.] *Goods from Foreign parts by whom to be imported*, accessed on 27 January 2016 at: http://www.constitution.org/eng/conpur_ap.htm .

²⁸ William David Evans, Anthony Hammond and Thomas Colpitts Granger (eds), *A Collection of Statutes Connected with the General Administration of the Law, Vol. II* (London: Thomas Blenkarn, Edward Lumley and W. H. Bond, 1836), 89-98.

²⁹ Holt, *A System of the Shipping and Navigation Laws of Great Britain* (1824), 268.

³⁰ Margaret De Salis, *Captain Thomas Raine an Early Colonist* (Sydney: The Author, 1969), 66.

³¹ *Ibid.*, 70; *Historical Records of Australia, Volume XII, June 1825-December 1826*, (Sydney: The Library Committee of the Committee of the Commonwealth Parliament, 1919), 296-309. In total the directors of the BNSW owed it more than Spanish \$565,000, which was more than the bank’s

1827, just 12 days after the Hokianga-built 75-ton schooner *Enterprise* first arrived in Sydney, the firm of Raine and Ramsay was dissolved, with Raine taking over all the debts.³² In 1828, Raine defaulted on a government contract of supply. When asked by Under Secretary Horace Twiss to explain, Governor Darling wrote back in May 1830 advising that he had suspended legal proceedings against Raine in 1829 on Treasury's advice, concluding thus: "It appeared to me that to have proceeded on Mr. Raine's Bond would have been nugatory. He was a Bankrupt at the time, and was without the means of making payment."³³

In short, the *Sir George Murray* was not seized for breaching British navigation law but was auctioned, along with its duty-free cargo and the Hokianga shipyard, on 21 January 1831 by the trustees of the Thomas Raine estate because, in Raine's own words, his "reduced circumstances had forced him "to suspend his payments in 1829."³⁴ Furthermore, had the *Sir George Murray* been seized under British navigation and Customs law and sold by agents of the colonial government, such an action would have necessitated the carrying out of strict formal procedures and a hearing in the Court of Record or Vice-Admiralty, all of which would have taken many months longer than the two months it took from the time of its arrival to being "put up to the hammer, and knocked down by Mr. Simmons for £1300."³⁵

Finally, had those responsible for the Panel's potted history of the New Zealand flag read McDonnell's petition to "the House of Representatives of the Colony of New Zealand", they might have come to a different conclusion about their beginning: "That your Petitioner, when at Sydney, New South Wales, in 1830, did

total assets of Spanish \$472,412 or £3,893,000, for which they had advanced only 10% of their personal capital.

³² *Sydney Gazette*, 12 October 1827, 2/A.

³³ Ralph Darling to Horace Twiss, *Historical Records of Australia, Series 1, Governors' Despatches to and from England, Volume XV, June 1829 – December 1830*, 535.

³⁴ Thomas Raine to Viscount Goderich, Memorial c.1834, as produced in De Salis, *Captain Thomas Raine*, 114.

³⁵ Sections 55-59 of "An Act for the general regulation of the Customs of New South Wales and its Dependencies", published over the first two pages of the *Sydney Gazette* on 1 April 1830 and effective from 5 April 1830, set out the strict procedures to be followed in the case of seizure and forfeiture, with Section 57 of the appended portion of 6 Geo. IV. cap. 111 requiring that such cases be prosecuted in a Court of Record or Vice-Admiralty; *The Australian*, 21 Jan 1831, 3/A; *Sydney Gazette*, 22 Jan 1831, 2/E.

purchase of Messrs. Jones and Walker, the trustees of Messrs. Raine, Ramsay, and Brown, then bankrupts, all their landed and other property in New Zealand, consisting principally of 'Te Horihe' and 'Rau Rau,' in the Hokianga district, with the buildings thereupon, a quantity of timber, and a new ship of 400 tons, built at 'Horihe.'"³⁶

6.

Conclusion

It appears, then, that the Flag Consideration Panel has been seduced by the utility of the *Sir George Murray* story for "The History of the New Zealand Flag". We can understand why: in terms of the national narrative it is about as good as it gets, rivalling Trevor Chappell's underarm delivery of 1981: Australian authorities impound "a Kiwi trading ship" without a national flag . . . insult Māori mana . . . halt national exports . . . before a rank outsider for the job of British Resident saves the day.³⁷ Despite his bad press, Busby is a man ahead of his time, and a model for John Key: he holds New Zealand's first vote on a national flag without any meaningful debate and "solves" the country's trade problem with a bit of jiggery-pokery.

In other words, this is a New South Wales story turned into a foundational fiction for settler New Zealand, which reverses in one fell swoop that annoying Australian habit of appropriating Kiwi icons such as the Pavlova, Phar Lap, Split Enz and Russell Crowe (a.k.a. Russ le Roq).

We might end this brief inquiry with a warning: beware video makers purporting access to "the past" and politicians who come bearing flags. Which is why, it seems to me, we need to think far more profoundly about this place and resist the platitudes and sound bites with which propagandists try to herd us into discursive captivity. For while we allow hegemonic power to consolidate around a flag and manipulate public discussion concerning it, we are unlikely to

³⁶ Petition of Thomas McDonnell 28 April 1856, National Library, Department of Internal Affairs, accessed on 27 January 2016, at: <http://atojs.natlib.govt.nz/cgi-bin/atojs?a=d&d=VP1856-I.2.1.80&e=-----10--1-----0--> .

³⁷ Flag Consideration Project, "The History of the New Zealand Flag".

explore genuine and innovative possibilities for a more equitable sharing of power that might better serve us all, not just the elite, and better honour te Tiriti o Waitangi while fully acknowledging the rightful place and position of tangata whenua in contemporary Aotearoa.