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Our Truth, Tā Mātou Pono: The killing of Maketū Wharetōtara, and how it changed the course of history

Charlie Mitchell and Edward Gay · 16:50, Jul 08 2021

RYAN ANDERSON/STUFF

Hinerangi Himiona and Hone Mihaka tell the story of their tupuna who was the first person executed by the Crown in Aotearoa New Zealand.

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The Long Read from Stuff
The Trial of Maketū Wharetōtara

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changing the course of history. The execution still haunts the boy's whanaunga, a legacy to the disproportionate treatment of Māori in the justice system today.

Early one morning, a Māori teenager named Maketū woke to the sound of carpenters building the instrument of his death.



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For months, he had lived in a wretched, rat-infested jail cell on Queen St in central Auckland as he waited to stand trial. It was early in 1842, and the new colony's justice system was literally being built; the finishing touches were being made to the new Supreme Court building next-door while Maketū awaited judgment.

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The wooden jail was built on a swamp, bordering a stream that carried the new city's waste to the harbour. When it rained, the sewage flooded the jail cells, one of which was 10m² in area but held as many as 14 men at a time. With little else to do, Maketū left artwork on the walls; scratchings of a horse, a waka.

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When it was time, the boy asked to see a reverend.

Maketū was baptised and chose the name Wiremu Kīngi. He was said to have left a written confession, accepting his death as suitable punishment for his deeds. Shortly before noon, he emerged from his cell shrouded in a blue blanket,

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neck, “launching him into eternity”, as it was described by one newspaper at the time.

RYAN ANDERSON/STUFF

The intersection of Queen St and Victoria St West in central Auckland. It used to be a gaol, and was the site of several public executions.

Many years later, scores of people criss-cross the busy intersection where Maketū was killed. Today it is flanked by a Farmers, a Starbucks, and a bank. A glass-clad office tower now stands on the site of the wooden jailhouse; the filthy stream was long ago buried beneath concrete.

While no plaque commemorates the first of New Zealand's 85 legal executions, Maketū's memory lives on amongst his whanaunga, 179 years later.

His death marked the moment the extreme boundaries of British rule – the power to legally decide who lives and who dies – were imposed upon Māori, at a time when there was considerable uncertainty about whether doing so was within the law.

Maketū's death, and those of Māori after him, served as a clear statement that Māori lore – based on customs such as mana, utu, koha and whanaungatanga – had been replaced with the Queen's law.

Since then, that system has produced disproportionate outcomes for Māori, up to and including the present day, [data shows](#).

There have since been attempts to [either improve](#) – [or transform](#) – this system.

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Looking north down Queen Street in 1862. Fort Street is to the right; The Ligar Canal, to the left, is overflowing after heavy rain.

Murder on the island

The significance of Maketū's execution is less about the crime for which he was found guilty, and more about its aftermath.

Nevertheless, the crime forms important context. The official story – which is disputed, and primarily represents the views of the settlers – goes like this.

Maketū was the son of Ruhe, a Ngāpuhi chief and a signatory to the Treaty of Waitangi.

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At the age of 16, he was working on a farm on Motuarohia, in the Bay of Islands.

A settler named John Robertson had bought the island from several Māori chiefs. Soon afterwards, he drowned in a sailing accident. He left behind a widow, Elizabeth, and two children.

The picturesque Motuarohia features lagoons, beaches and majestic rocky cliffs but Elizabeth Robertson felt isolated and miserable. She described herself as living on an "inhospitable island in a cannibal country"; her tenure on the land was insecure, given her husband had bought the land, not her.



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A contemporary sketch of Maketū Wharetotara.

Some Māori believed the land should be returned to its original owner, as was custom. The land carried debt. Elizabeth Robertson did not know if she could pay.

She delegated management of the farm to Thomas Bull, a Pākehā settler.

Bull had been in trouble. A report in the *New Zealand Advertiser* in June 1840 shows he was charged with robbing a schooner of tobacco, checkered shirts, and three bottles of rum. It's not known what the outcome of the court case was. According to colonial sources, it was Bull who hired Maketū.

As the son of a Ngāpuhi chief, Maketū was a rangatira, and had mana. But Bull treated him poorly, castigating him for supposedly not working hard enough. He deprived him of food, and taunted him – by one account, he physically assaulted Maketū, kicking him. Maketū was said to have received verbal abuse from Robertson, too.

Amid this tension, a three-year-old named Isabella Brind came to live on the island. Her grandfather was a Māori chief named Rewa; her father was a settler.

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According to colonial accounts, Maketū was fed up with Bull and his abuse. The teenager snapped.

While Bull was asleep, Maketū brandished an axe and struck the man's skull, at least two times. While doing so, Robertson happened upon the murder; Maketū, killed her too, and two girls, her daughter and Isabella Brind. Robertson's 8-year-old son tried to escape, but Maketū caught him and threw him off a cliff.

Maketū returned to the house and burned it down, before going back to his village in a canoe.

The murders horrified Pākehā and Māori alike.

Maketū was not the first suspect; three Pākehā men were arrested and questioned, before word travelled that Maketū had confessed.

PSEUDOPANAX/SUPPLIED

Motuarohia Island in the Bay of Islands, where Thomas Bull, Elizabeth Robertson, and three children were murdered in 1841.

The incident came at a volatile time, just two years after the first signing of the Treaty of Waitangi.

In an essay on [Maketū's execution](#), the historian Paul Moon wrote that official policy at the time was unclear but suggested British law applied only to British settlers. Māori had not universally ceded sovereignty; a fact some settlers were starting to contest, as the Crown sought to assert jurisdiction more explicitly.

In that context, prosecuting Maketū would be an unprecedented intrusion into Māori affairs, at least on matters of justice.

Both Pākehā and Māori feared any action would cause an escalation from the other. The result was a brief standoff, as each side considered their next steps.

At the time, Maketū's guilt was not seriously in doubt. He was said to have confessed his crime to members of his whānau, who condemned what he had done. He was also said to have confessed to a Pākehā shop owner from Kororareka who took it upon himself to investigate the crime.



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A lithograph of Queen Street from 1852.

The case was further complicated by one of the victims, Isabella Brind, the mokopuna of Rewa. Her death risked inter-tribal conflict.

It was clear to all sides Maketū should be punished. The question was how, and by whom.

Around 20 chiefs met in the Bay of Islands to discuss the issue. All but Hone Heke agreed that British justice should be the method to resolve the matter.

“Maketū’s work is his alone, his own; we have nothing to say for him,” the chiefs wrote in a signed letter that was later published in the Auckland papers.

“That man is with you; leave him there. Do not bring him back here to us, lest there be a disturbance: leave him there.” Even Maketū’s father, Ruhe, was said to have agreed to give up his son, a decision believed to have haunted him for the remainder of his life.

Once Maketū was handed over, the justice system took its course. In the space of a week, he was tried, sentenced and hanged.

RYAN ANDERSON/STUFF

Hone Mihaka, a whanaunga of Ruhe, describes Maketū's hanging as the "lynching of an innocent young man".

A different story

"I think that Maketū has plagued our whakapapa since then, to be honest with you".

Sitting on the paepae of Parawhenua Marae, near Lake Omapere in the Far North, Hinerangi Himiona and Hone Mihaka reflect on the fate of their tipuna.

The cousins are descendants of Ruhe, Maketū's father, and live with the intergenerational weight of what happened to Maketū.

Maketū's father, Ruhe, was said to be overcome with grief. Two years after his son's death, he delivered a waiata to Hone Heke in Kaikohe, expounding upon his sadness: "Kaore te aroha mohukihuki ana, te panga mai ki ahau, me he ahi e tahu" (Alas, this all devouring grief, that burns within me like a flame.) Ruhe committed suicide in 1865.

"To be labelled and tarnished ... to feel like somehow you're a part of what appears to be a wrong doing," Mihaka continues.

"Bullshit. I don't think he did it."

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This story does not seek to prove Maketū's innocence or otherwise. But serious questions surround the investigation and trial.

Officials were aware of the political implications: It seemed likely the first person to be judicially executed in New Zealand would be a young Māori, the son of a chief, convicted of an interracial murder.

Both Māori and Pākehā watched Maketū's trial. As the *New Zealand Herald* later reported, "the Court was crowded with natives, to whom the calm and unimpassioned procedure of English law must at that time have been a strange

ALEXANDER TURNBULL LIBRARY/SUPPLIED

William Martin, the first chief justice of the New Zealand Supreme Court, pictured in a lithograph in 1842.

Nowadays, a defence lawyer would be given the best part of a year to prepare a defence case against a charge of murder. They would sift through Crown witness statements and contemplate calling their own evidence. Maketū's lawyer, Charles Brewer, was afforded no such opportunity: he was appointed one hour before the trial began, and did not even have time to speak to his client.

Accounts of the trial, collected by [Victoria University's Lost Cases project](#), suggest the case hinged on Maketū's confessions; the first to shopkeeper Thomas Spicer, and to a coroner inquiring into the deaths.

In his evidence, Spicer acknowledged Maketū had initially denied committing the crimes, only admitting them after being pressed multiple times over the course of a day. Spicer also confirmed he spoke to Maketū in te reo Māori, a language he did not speak fluently.

"I will never totally know all the words in the Māori language, I don't remember what I said to the prisoner either," Spicer said, according to a report of the trial published in the Māori-language newspaper *Te Karere o Nui Tirenī*.

"But whether or not he admits it – I caught him."

In those days, Coronial inquests sat with a jury. Spicer was not only a witness at the inquest and the trial, he had been a juror at the inquest. It is also unclear if Maketū knew that confessing to a coroner could be used as evidence against him in court.

Today it is well understood that confessions can be coerced, particularly from young or otherwise vulnerable people. The [wrongful conviction of Teina Pora](#), a 17-year-old Māori teenager who falsely confessed to being at the scene of a murder, stands as a contemporary example, with echoes of the case against Maketū.

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RYAN ANDERSON/STUFF

Hinerangi Himiona, a whanaunga of Ruhe, believes it's possible Māketū was innocent.

The context of Māketū's confessions aren't entirely clear, but they occurred at a time when imprisonment – let alone execution by the state – was an unknown concept to Māori.

Māketū's lawyer said as much in his closing remarks.

"[S]upposing both concessions to be admissible, did the prisoner sufficiently understand the consequences of making them?" Brewer asked the jurors.

"Could he be aware that upon them he would be convicted, and that on conviction so heavy a penalty as death would follow?... Is it not possible that, not knowing the fearful results to himself of such admissions, he may not have told the truth?"

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The only written evidence of a confession exists in a letter, supposedly representing the thoughts of Māketū on the morning of his execution.

"I say it is true, it is right that I should die," the letter says.

"It is my own doing and for my deeds I am going to the place that is burning with everlasting fire," before going on to talk of religious salvation.

The letter is not signed, and is written in English, which Māketū did not speak. It is not clear who wrote it, or whether it accurately reflected Māketū's thoughts.

The remaining evidence was circumstantial; several Māori chiefs were called to give evidence, each saying Māketū possessed objects supposedly from the Robertson house, including an umbrella and a sack of rice with blood on it. None who testified saw Māketū leaving the island on the day of the murders, or had first-hand evidence he was involved.

"What other evidence is there against him besides his own confessions?" Brewer asked the jury. "None".



RUSSELL DUNCAN/HAWKE'S BAY MUSEUM

View of Motuarohia Island, known as Roberton Island, taken on July 19, 1915.

The jurors took just a few minutes to deliberate on their verdict. Chief Justice Martin decided Maketū deserved the harshest sentence.

He showed little sign of wrestling with whether British law applied to Māori: “[T]his is also the law of England, who still reigns over the people of this land, no matter whether some are Pākehā and some are Māori.”

This was not necessarily the prevailing view of the colonial office at the time. In 1839, Lord Normanby – the British secretary for colonies – had appointed William Hobson to serve as first lieutenant-governor of New Zealand, tasking him with securing a treaty.

Normanby’s [written instructions to Hobson were clear](#): “The Queen, in common with Her Majesty’s predecessor, disclaims for herself and Her subjects every pretension to seize on the Islands of New Zealand, or to govern them as a part of the Dominions of Great Britain unless the free intelligent consent of the natives, expressed according to their established usages, shall first be obtained.”

At the time of the trial, many chiefs had not signed the Treaty of Waitangi, and some who had did not acknowledge the Queen’s authority over them.

These questions were not explored. And so the Queen’s law determined how Maketū should die; a cruel public spectacle, far from his whānau, in a country that was dramatically changing.

On the Sunday before the execution, Reverend Churton – the same Reverend who would later baptise Maketū – addressed his congregation, making Maketū the focus of his sermon.

As St Paul’s Cathedral was not yet finished, the service was held in the Supreme Court.

A who’s who of the burgeoning town was there – including Governor Hobson, the Chief Justice and the Attorney General.

Churton told the congregation that soon “there must be exercised our obedience, our fulfilment of the command of God, ‘that he who sheddeth man’s blood, by man shall his blood be shed’. Under the law we were forbidden to pity, under the merciful gospel we are not.”

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CHRIS MCKEEN/STUFF

Kingi Snelgar, defence lawyer and former Crown prosecutor.

Kakano of a poisoned tree

What happened to Maketū has reverberated through history; not just in the stories of his ancestors, but through the entire justice system.

Criminal defence lawyer Kingi Snelgar describes the case as a kakano – or seed – of a poisoned tree.

“That tree has now grown into a system of mass incarceration that treats Māori differently,” says Snelgar of Ngāpuhi and Te Whakatōhea.

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Snelgar, who is also on the newly formed Criminal Cases Review Commission, points to another early case with striking similarities to Maketū: the execution of his tipuna, Mokomoko.

Like Maketū, Mokomoko was a rangatira, a person of mana. In 1866, he was one of five Māori hanged for the murder of German missionary Carl Volkner at a church in Ōpōtiki.

Mokomoko said he was not involved with the murder, and had left the scene before it happened. He was convicted based on conflicting eye-witness testimonies; his memorable last words were “E mate hara kore ana ahau. Tēnā koutou Pākehā. Hei aha.” (I die an innocent man. Farewell Pākehā. So be it.)

It was not until 1989 that his remains were exhumed from an exercise yard in Mt Eden Prison. Three years later Mokomoko was formally pardoned, as was Kereopa Te Rau, another of the men hanged for the crime.

Together with the Native Land Courts, which drove the urbanisation of Māori, these early criminal cases have created a sense of deep mistrust of the justice system, a system that has proved an “epic failure” for Māori, Snelgar says.

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Kereopa Te Rau photographed shortly before he was hanged. Later pardoned, he was one of five sentenced to death in the murder of Carl Volkner.

Data shows Māori convicted of crimes are more likely to go to prison than Pākehā, even when accused of the same crime.

Snelgar says Māori are less likely to have police exercise their powers of discretion in their favour; less likely to be offered diversion, and once in the justice system, they are less likely to be granted bail and offered plea deals.

Māori make up 52 per cent of the prison population but only 16 per cent of the general population.

“The legacy for Māori has continued, and we are losing our culture in some ways ... we’ve lost lives but the modern day legacy is the loss of culture,” Snelgar says.

The use of the justice system as an imperial tool continues.

The trauma of that early collision of Māori and the British justice system carried on years afterwards.

The most extreme punishment under the Queen’s Law, the death penalty, continued to be used against Māori. By 1900, more than a third of those executed had been Māori, even though the Treaty was in part created by the Crown to maintain law and order of its settlers.

WILLIAM FOX/NATIONAL LIBRARY

A watercolour painting by William Fox in 1848 depicting Guard's Bay in Marlborough. The grave in the foreground belongs to Rangihoua Kuika, who was murdered alongside her child by a Pākehā man.

If Maketū's fate was not enough to disillusion some Māori with the Pākehā justice system, another blow came within a year.

A Māori woman named Rangihoua Kuika was at her home in Port Underwood, near Nelson, when she and her infant son were violently murdered.

The suspect was a Pākehā whaler and escaped convict named Richard Cook.

Kuika, of Ngāti Toa, was related to Te Rauparaha and was the daughter of a chief. Māori wanted to exact utu on Cook, but were persuaded by a local missionary to allow the Crown's justice system to take its course.

If Cook was prosecuted, it would show the Queen's law could deliver justice for Māori, not just impose it upon them.

The evidence against Cook was compelling, but while the case was strong, the prosecution was weak. As one missionary who interpreted during the trial later described, the prosecutor was lacking in zeal – despite many other witnesses who could have been summoned, many of them Māori, only Cook's wife gave evidence.

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The prosecution assumed Cook and his wife were not legally married, which was wrong. In court, the defence argued, under English law, a wife could not testify against her husband.

The judge – the chief justice that sentenced Maketū, William Martin – agreed, and the case fell apart.

Cook was acquitted and faced no punishment for the murder of a Māori woman, despite a much stronger case than that which killed Maketū.

In its Treaty of Waitangi claim, [Ngāti Toa outlined the incident and how it had affected Māori.](#)

knew. It was also well-known that Maori had been executed in the colony for the murder of Europeans.

“Fairly or not, it appeared that the official legal system punished Maori murderers of Europeans but condoned the reverse.”

To make matters worse, Cook was [said to have confessed to the crime after his acquittal](#), before leaving the region. The failure of the justice system has long been cited as an indirect cause of the Wairau massacre, which occurred three weeks after Cook’s acquittal.

RYAN ANDERSON/STUFF

Parts of the many kaumatua and kuia at Parawhenua Marae over the years.

Back at Parawhenua Marae, Maketū’s whanaunga still feel pain when thinking of the way their tupuna was treated by the colonial justice system

Hone Mihaka leans on his tokotoko and declares his position.

“I don’t care what the rest of New Zealand says, I really don’t care ... To me it was just a lynching of an innocent young man, a man of mana, of integrity and of stature amongst his own, never to be forgotten, bro. Always to be remembered,” he says.

“It’s a crime what they did to him.”

Mihaka and his cousin, Hinerangi Himiona, believe it’s possible Māketū was innocent – or, at the very least, the case was more nuanced than the historical account would suggest.

But even if the pākehā account was correct, the prolonged trial, incarceration and subsequent hanging would have been overwhelming to the young man, Himiona says.

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“Any opportunity where he had to challenge the authority that was imposing itself, he took,” she says.

“And of course he could see that as soon as we gave into anything it would be a step in the wrong direction.”

Those fears came to fruition. Once Maketū had been tried and executed under the Queen's law, the precedent had been set.

Several years after Maketū's execution, Heke became a key figure in the northern war, in which Ngāpuhi tribes fought each other, as well as British troops. Maketū's execution was one of several factors leading to the conflict.

“It resulted in tribes warring with one another and aligning themselves both for and against that same authority and power four years later,” Hone Mihaka says.

“There's no greater message to send to a people: 'Your land can be seized, you can get that back eventually. Your resources might be seized and you can fight to get those back. But no amount of fighting can bring Maketū back to the table and sitting with his family again'”.

By capturing his tupuna and killing him in public, the Crown was saying something ominous.

“Put it this way: 'I am now your god'.”



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