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THE FIRST ETHICAL CONTROVERSY IN NEW ZEALAND ARCHAEOLOGY: JOSEPH HOOKER'S CONFIDENTIAL RULING IN THE HAAST V. MCKAY CASE

JOHN YALDWYN¹, ELLIOT DAWSON¹ AND JANET
DAVIDSON²

¹HONORARY RESEARCH ASSOCIATE, TE
PAPA, ²NGAKUTA BAY, MARLBOROUGH

Introduction

A controversy arose in New Zealand archaeology in the 1870s when Alexander McKay, one of two workmen employed by Julius von Haast to work at Moa Bone Point Cave near Christchurch, presented a report on the site before Haast himself could do so. Appeal was made to Joseph Hooker, President of the Royal Society in Britain, for a ruling on the ethics of the case. Hooker's report was not made public, but excerpts were published many years later by Haast's son (H. Haast 1948: 730–731) who noted that only a short extract had ever previously been published or divulged. A copy of Hooker's full judgement has been found in the archives of Te Papa. Although the key points were included in H.F. von Haast's biography of his father, the full text is of interest in these days when intellectual property rights and archaeological ethics still pose important issues.

Haast and his views on New Zealand prehistory

Johann Franz Julius Haast (1822–1887) was born in Bonn, Prussia, and trained in geology and the natural sciences at the University of Rhine-Prussia in Bonn. He came to New Zealand in 1858, and was appointed Provincial Geologist of Canterbury in 1861, then director of the Canterbury Museum in 1868, holding that position until his death 19 years later.

Haast received the title “von Haast” with the Austrian Order of the Iron Crown 3rd class in June 1875, although here we refer to him as Haast and his son Heinrich F. von Haast as H. Haast. Note that Hooker in his ruling refers to Haast formally as Dr. Von Haast (with a capital V). Haast received the CMG in 1883 and was invested with the KCMG in 1886, thus becoming Sir Julius von Haast, the name used as the title of H. Haast’s biography (1948). In 1886 he also received the honorary degree of Doctor of Science from Cambridge University.

In addition to his geological investigations, and his investigations of natural moa and other extinct bird deposits (such as Glenmark swamp), Haast carried out a series of archaeological investigations, including the first stratigraphic excavation in Polynesia at Moa Bone Point Cave (Anderson 1989: 103). He investigated middens and burials in the Sumner sand hills between 1865 and at least 1873 (Haast 1875a: 75–78, 85, 1875b); he reported on artefacts found at Bruce Bay, Westland, in 1868 (Haast 1870; Jones *et al.* 1997); he investigated the Rakaia River Mouth site, Canterbury in 1869 (Haast 1872a: 80–89; H. Haast 1948: 714–716); and the Shag River Mouth site, Otago, in 1872 and 1874 (Haast 1875c; Anderson and Smith 1996: 2–4). He organised the excavations at Moa Bone Point Cave in 1872 (Haast 1875a; McKay 1875) and reported on artefacts from the mouth of Otokai Creek, Brighton, Otago (Haast 1880; Anderson 1982). On the basis of these investigations he twice put forward sets of propositions about moa, moa-hunters and human occupation of New Zealand: 11 propositions in 1871 (Haast 1872b: 106–107) and 13 in 1879 (Haast 1879: 430). These two sets of propositions were conveniently listed together and abbreviated by H. Haast (1948: 717–718).

Haast’s archaeological work and his controversial views on New Zealand prehistory have been reviewed and summarised by many authors, including Duff (1956: 252–258), Davidson (1967: 206–209, 1984: 4–6), Law (1972), Green (1972) and Anderson (1989: 100–106). The background to the ethical controversy discussed here was that, by the early 1870s, Haast believed that “moa-hunters were a vanished autochthonous palaeolithic race of great antiquity who exterminated the moa. The Maori, coming much later, were a Neolithic people who lived mainly on fish and shellfish and knew nothing of the moa” (Davidson 1984: 5). In contrast, James Hector and Walter Mantell in Wellington (e.g., Hector 1872; Mantell 1869, 1873) and F.W. Hutton in Dunedin (e.g., Hutton 1876) believed that moas lived on into comparatively recent times and were hunted by the direct ancestors of the present Maori race. The excavations at Moa Bone Point Cave were regarded as pivotal by both sides.

Alexander McKay

McKay is regarded today as a legendary figure among New Zealand geologists. The following summary is based on Cooper's (2006) comprehensive assessment of McKay. He came to New Zealand aged 22, arriving in Bluff in 1863. He was entirely self taught as a scientist—his only formal education was attendance at a village school in his native Scotland to age 11.

After working briefly as a gold miner he spent four years exploring and prospecting in the Mackenzie Country. Here he first met Haast who employed him as a geological assistant on some surveys in North Canterbury and then to collect reptilian fossils in the Waipara River valley, before engaging him as a workman on the excavation at Moa Bone Point Cave in 1872. Later that year Hector employed him to collect fossils near Kaikoura and in 1873 McKay moved to Wellington, where he became a permanent officer of the Geological Survey until 1892.

Just as he was prepared to disagree with Haast's interpretations of Moa Bone Point Cave, McKay did not hesitate to record observations that conflicted with the views of Hector and others. However, his bitter dispute with Haast is the most notorious example of his fierce independence of thought and spirit. He is believed to have satirised the debate over Haast's views on the antiquity of moa and moa-hunting in a poem, *The Canterbury Gilpin*, published anonymously in 1880 (but see Anderson 1989: 104 fn. 3 on the authorship of the poem).

McKay is credited with “freeing New Zealand earth scientists from the strictures of a European-based ‘received wisdom’, enabling them to see, interpret and report the uniqueness of New Zealand geology” (Cooper 2006).

Haast and McKay: the controversy

The excavations at Moa Bone Point Cave took place over seven weeks in spring 1872 and resulted in New Zealand's first proper excavation report (Haast 1875a). Before Haast could present his report, however, McKay, who was the lesser paid of Haast's two paid workmen, prepared a paper which was read to a meeting of the Wellington Philosophical Society in August 1874 by James Hector. The ensuing controversy has been well described by Anderson (1989: 102–104). It is described fairly and in much greater detail by H. Haast (1948: 729–740).

Haast, who was at that time President of the Philosophical Institute of Canterbury, was outraged by press reports of the event. The Canterbury Institute protested formally to the Board of the New Zealand Institute (the overarching body of which the various provincial philosophical societies were branches) about McKay's behaviour in preparing a paper and Hector's,

as Manager of the New Zealand Institute, in approving its presentation and subsequent publication. The Board of the New Zealand Institute, advised by Hector, rejected Haast's protest and agreed to publish both McKay's and Haast's papers. Meanwhile, Haast had hastened to present his own paper to the Philosophical Institute of Canterbury, and had it published in full by the *Lyttelton Times* and then as a pamphlet while McKay's paper was still in press.

Early in 1875 the Canterbury Institute resolved to obtain an authoritative ruling on the ethical position and in September agreed to submit to Hooker a statement of the case drawn up by the new President of the Institute (Haast's resignation having been tendered, withdrawn and finally accepted). Hooker, as President of the Royal Society, was certainly an authoritative figure. He was also a long time friend and correspondent of Hector (Yaldwyn and Hobbs 1998).

Hooker's Report, 1875

The copy of Hooker's report on the Moa Bone Point Cave controversy in the Museum of New Zealand Archives, Colonial Museum/Hector papers, is handwritten (but not in Hooker's hand), 7 pages long, and is labelled top left on an angle "Copy" above and "Copy furnished to / Dr. Hector by Dr. Hooker. / on. application. / 2 April 1876." in 4 lines (as indicated) on an angle a little lower down in left hand margin. It is headed sideways on the back of the last page in two different hands (each different from that of the report itself) "To President of / Phil. Inst. Cant. / NZ" in 3 lines on the left, and "Sumner Cave Papers / Board. N.Z. Inst." in 2 lines at the centre. It is possible that the latter heading is in Hector's hand.

The report reads as follows (with punctuation, spelling, capitalisation and paragraphing as in original report, however line length differs, and use of inverted commas at beginning and end of each line of the three quoted questions is reduced to a single set of inverted commas at beginning and end of each quoted question):

Kew Decr. 8th. 1875

Dear Sir,

I have carefully examined all the documents which you have transmitted to me, with the view of giving you the opinion you request, upon the following questions submitted to me in your letter of Sept 3rd. 1875.

1. "Has a paid workman a right to publish his Employers discoveries, or theories arising therefrom, without his employers consent and knowledge, and prior to his publication of the same."

In answering this regard must be had to the following considerations.

Paid workmen are of two classes: they may be mere labourers, paid to excavate and collect materials which may be discoveries or may tend to discoveries:- of such workmen nothing further is claimed than the specimens and all such information as to their locality, superposition, aggregation and condition, as the employer may be able to extract from the workmen: or the workmen may be skilled assistants, and paid not only to excavate and collect materials, but to make scientific observations, obtain results and suggest theories—to the employer, all of which are the property of the employer.

In the case submitted to me, it is obvious that the workman was employed and paid as an ordinary excavator and collector, and was hence not bound to give other information to his employer than he did give. The fact of the employer having called for no report, from him, and of his having torn up as worthless a report which the workman volunteered to draw up and did draw up and give to the employer, is, as it appears to me conclusive on this head.

2. “Does the case of Dr. Von Haast and Mr. A. McKay come within the above conditions?”

It comes under the first head of the conditions.

3. “Was the publication of Mr. McKays paper by the Governors of the New Zealand Institute in the face of the evidence submitted to them justifiable?”

There again I must offer a few preliminary observations.

A scientific Society is bound to bring before its meetings papers worthy of this honour contributed to it for that purpose, except those be [sic] known, or strongly suspected, to be surreptitiously acquired, or forgeries, or plagiarisms etc: and if found to be worthy of publication, the Society is further bound to publish them. And with regard to reclamations from or by others that may have accompanied the paper, or have been forwarded to the Society after the reading of the paper: the Society's Officers or Council must use their judgement whether to publish these along with the paper or in order being received or not at all.

I have carefully examined Mr. McKay's paper, and compared it with Dr. Von Haast's reports, and having regard to Mr. McKay's employment and pay, and to the time that elapsed since the excavations were made, I have come to the conclusion that there are no grounds for regarding Mr. McKay's paper as otherwise than worthy of being

read and published, and I further think that the New Zealand Institute would not have been justified in the view of the author, and its members, and the public, in refusing to publish it.

As to the other points raised in your letter I have the following observations to offer.

I do not observe the discrepancies between Mr. McKay's Report published in the "New Zealand Times" of Augst/74 and the paper published in the Institute and which discrepancies are regarded by your Committee as serious; those that I have observed appear to me to be unimportant, but this may be from want of having had these more serious discrepancies pointed out to me.

Mr. McKay's paper appears to me to be very different in character, scope, and aim from Dr. Von Haast's, and not to diminish the value of the latter; it states at the outset that the excavations were made for Dr. Von Haast, to whom a Report (that was not called for) and the specimens were given; and of which Report the paper is stated to be an amplification with views of the author added. The discriptions [sic] are not "minute", but very general indeed, many of the important discoveries are not alluded to: and the theory adopted is very much what Dr. Von Haast had propounded some years previously, and is at variance with that adopted by Dr. Hector, through whom his paper was communicated to the Institute.

With regard to the change of title of Mr. McKays paper, except cause was shown for a contrary opinion I should regard this, and the placing it in order of printing after (though read before) Dr. Von Haast's paper, as judicious and entirely justifiable proceedings, calculated under the circumstances to remove any apparent subordination of Dr. Von Haast's labours to Mr. McKay's. The dates being given to all the papers no suspicion of deception is tenable, and I see no ground for the supposition "that the change was intended to make it appear that the subject of the paper is not the results of Dr. Von Haast's researches in the Sumner Caves." Mr. McKays statement at the very outset disposes of this charge.

Lastly knowing no reason why Mr. McKay should not have communicated to Dr. Von Haast his intention of publishing on the caves in the exploration of which he was employed by Dr. Von Haast I cannot but regard his conduct in so doing as either an inconsiderate act, or as evincing an absence of that consideration for the employers position that the employed should entertain.

(Signed) J.D. Hooker

Discussion

Hooker's judgement has been described as evasive and circular (Anderson 1989: 103). We do not think that the full text, as set out above, can be described in these terms. Hooker went to some pains to explain his opinion about the roles of "mere labourers" and "skilled assistants" and also about the responsibilities of a scientific society in publication, in order to answer clearly the questions that had been put to him. He pointed out the very real differences in the aims and contents of the papers and carefully considered the details of title and date that can still be important in controversies over scientific publication. Much of what he wrote seems sound today, although our expectations about prompt publication have obviously fallen considerably since the 1870s.

However, as H. Haast pointed out (1948: 731), in some respects Hooker missed the point about the first question. He concentrated on what information an employer was entitled to expect from a labourer, rather than on the duty of the employee not to divulge, without his employer's consent, information obtained in the course of his employment.

It is perhaps surprising that H. Haast, a leading lawyer of his day, did not venture his own legal opinion in contrast to the opinion of Hooker who, presumably, lacked legal training. Today, such an opinion might well begin with an inquiry as to the meaning of "workman", if this was the term used by Haast for his employment of McKay. In similar statutory interpretation, a dictionary definition of "workman" would be sought, followed by examples of common usage (cf. Dawson 1998) and an ensuing discussion of the expectations of a "Master" (Haast as the employer) and a "Servant" (McKay as the employee, or "workman" in this case).

One might argue as to whether McKay had a "skill" for this job—presumably Haast thought he had, since he had employed him on previous jobs—but what of the other workman Haast employed? Both men were employed for seven weeks: R. Lowman at £2-2-0 and McKay at £2-0-0 per week. Why the difference of two shillings? Did Lowman have more "skill"? Hooker's report distinguished two kinds of "paid" workmen: the second a skilled assistant who could, amongst other things, suggest theories to his employer (which remained the property of the said employer). Hooker decided that McKay was not of this kind, merely "an ordinary excavator", but McKay himself seems to have acted as if he was in the second category.

Case law abounds with the relationship of Master and Servant with regard to duty of care, safe working conditions, and so on. However, the "expectations" of a Master of the Servant might require a new approach. It seems evident that the Servant is employed to pursue the needs of the Master—in

this instance, the careful excavation of the site and the retrieval of artefacts and so on. Without other evidence, we do not know how much, if any, detailed recording or written evidence Haast expected of McKay. H. Haast (1948: 731) did note “But although text-boks [sic] on the Law of Master and Servant refer to trade and not scientific disclosures, the rule that a servant is not entitled to divulge his master’s trade secrets applies no doubt to scientific secrets as well.”

H. Haast suggested that McKay’s reports were aided and abetted (and probably actually written) by others, most evidently by Hector in a convenient attempt to score over a rival, Haast. Be that as it may, it does not alter the question of whether McKay was exceeding his duties as Haast’s “workman.”

From an ethical point of view, we must agree with H. Haast that McKay had a moral obligation to discuss his views on the results of his work with Haast as his employer. Today, such a matter can be quite commonplace. A student, research assistant or laboratory technician may well see something in the work he/she is employed to do that he/she would want to discuss with the leader of the project. Whether or not that leader would be willing to listen, let alone offer joint publication, for instance, still depends very much on the personalities involved, even if the ethics of the situation are above question. Haast is reported to have torn up the notes that McKay initially offered him—perhaps an expression of effrontery that his protégé or neophyte could challenge his authority, especially in view of the encouragement he had given McKay to “better” himself in matters scientific and literary. H. Haast (1948: 739) reported, for instance “...Haast, as the work progressed, explained fully to McKay the inferences to be drawn from the sequence and demarcation of the various deposits.” But did McKay merely listen as a humble student or did he discuss, or volunteer opinions, particularly to the contrary (as he so well expressed them in his paper)? Did he then summon up courage, write up his conclusions and offer the notes to Haast? It would surely have taken a brave junior to stand up to Haast. Maybe it was the determination of a Scot against the loftiness of a Teuton, or just McKay’s innate tendency to question received wisdom. But then Hector was a Scot too and, no doubt, he too would not have countenanced a junior standing up for his own opinions, especially in his later years as general factotum of New Zealand science. The syndrome is not unique to nineteenth century science and has been seen more recently in both archaeology and the museum world.

The argument that Haast had had long enough to write up his results also has its ethical parallels in today’s world of science. An example is that of a student who has left the scene after not publishing anything from a thesis, when, after a reasonable lapse of time, the results are subsequently written

up by the supervisor. Again, questions of intent and friendly discussion are involved.

Today, also, we have instances of junior members of expeditions or field parties speaking to the news media without reference to their leaders, unwittingly giving rise to a subsequent “press release.” Sometimes, admittedly, the fault lies with the media, who may have amplified a casual remark made on site. Much more rare, perhaps, are instances of separate or pre-empting publication, or even of direct plagiarism which, in at least one instance (Dawson 1974) caused a rift between a neophyte and his teacher.

It is highly unlikely that a paid workman on an excavation today would be able to publish a site report unknown to, or against the wishes of, the director (although, since prompt publication is no longer the rule in New Zealand archaeology, some might wish to do so). It is almost inconceivable that a dispute amongst archaeologists would stir up provincial loyalties, involve the Council of the Royal Society of New Zealand, or result in an appeal to higher authority in Britain. In some respects, therefore, the Haast/McKay controversy is just a quaint piece of history.

Nonetheless, issues about publication are still very much with us, particularly (although not only) the question of who has the right to be the author or senior author of publications resulting from group or team research (White 2006). Haast was outraged because he thought his reputation was being undermined by a junior nobody he had befriended (McKay) and a leading figure in the scientific world of the time (Hector). Today, the stakes might involve ability to secure further research funds. Ethical considerations over authorship, plagiarism and the management of academic publication have not gone away.

But perhaps the most interesting aspect of the controversy, apart from Hooker’s judgement itself, is McKay’s willingness to challenge a European-derived interpretation of New Zealand prehistory, just as he did for New Zealand geology.

Acknowledgements

The late John Yaldwyn was delighted when Eamon Bolger drew his attention to the copy of Hooker’s judgement in Te Papa’s archives, and began writing a paper about it. His enthusiasm was somewhat dimmed when he found that the key points had in fact been published by H. Haast. However, he was still keen to publish a less ambitious version of the paper. We have completed it for him as best we can.

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