Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part One: Raupatu Lands

A Report Commissioned by the Waitangi Tribunal for the North-Eastern Bay of Plenty Inquiry District
(Wai 1750 #A12)

Report Summary for Hearing

Jane Luiten

October 2024

In October 2020 I was commissioned to research and report on nineteenth-century Crown policy and practice with respect to Māori land within the North-Eastern Bay of Plenty inquiry district.[1] The research task was split in two: lands within the confiscation district and lands without. This report dealing with Māori land within the confiscation district was completed first, over ten months. My qualifications and experience are set out in the introduction. This summary draws on subsequent research for the inquiry: from my Part Two report and from other historians.

As directed by the project brief, this report is primarily about the Crown's 'return' of confiscated lands within the inquiry district to those from whom it was taken. It is about the way these lands were 'returned' and what happened to them for the remainder of the nineteenth century.[2] As far as possible, it is also about the impact of these arrangements on the people within the North-Eastern Bay of Plenty inquiry district. I was required, in addition, to consider land alienation predating the Crown's military invasion, namely Old Land Claims arising from ostensible pre-treaty land trading. As it turns out, these too, are an integral part of the confiscation story.

The Crown confiscated the Bay of Plenty in January 1866, by proclamation under the New Zealand Settlements Act 1863. Within defined boundaries, the district was deemed to have been in rebellion and at once declared taken for the purpose of settlement. Overnight, customary title was extinguished and the entire confiscation district rendered Crown land.

Confiscated land within the inquiry district was 'returned' to its former owners in two main ways:

- As Crown-granted 'compensation' for confiscated lands arising from successful litigation in the Compensation Court in 1867 or from direct settlement with the Crown's agent.[3]

[1] Wai 1750 #2.3.5.

[2] The report builds on earlier work about the implementation of land confiscation completed for this inquiry by John McLellan and strays into the early twentieth century when titles to most of the 'returned' land were finally issued.

[3] The New Zealand Settlements Act 1863 provided for monetary compensation (Section 7). Once confiscation encompassed whole districts, provision was made for compensation in land (Sections 9-10 New Zealand Settlements Amendment and Continuance Act 1865). Every court award was to be transmitted to the Colonial Secretary, with plans (Section 12), to be satisfied by the Governor's grant of such land (Section 14) to the person or persons specifically named in the Court award (Section 15). Under

Compensation was only available to those deemed not to have been in rebellion. Claims had to be lodged within six months of the confiscation proclamation.

- As Crown-granted or 'set apart' reserves under the Confiscated Lands Act 1867 for three categories of Māori within the confiscation district: for those poorly served by the Compensation Court (Section 2); for those who had preserved the peace and suppressed the rebellion, that is, 'loyals' (Section 3); and for those who had resisted but who had since submitted to the Queen's authority, that is, 'surrendered rebels' (Section 4).

Compensation was generally awarded to individuals, even when the claims were made on behalf of others as well. Compensation claims within the inquiry district were satisfied by the grant of around 82 surveyed land parcels to 48 individuals, together amounting to around 1,874 acres.[4] The exception was the court award of 9,458 acres to 'certain members of the Ngai Tai Tribe' – 150 of them – what became known as the Waiohoata Reserve.

The confiscation reserves under the Confiscated Lands Act 1867 encompassed both tribal and individual arrangements. By far the majority of 'returned' confiscated land within the inquiry district was comprised of communal reserves, ostensibly along tribal lines, together some 34,359 acres in 12 distinct reserves (or, if Waiohoata Reserve is discounted for the reasons above, 25,339 acres).[5] Over a six-year period, however, another 12 reserves amounting to about 439 acres were made under Section 4/1867 to individuals, most of them rangatira.[6] In retrospect, a few cases defy such categorisation altogether: are the small reservations made for the last of the 'surrendered rebels' in 1873 that I have treated as 'tribal' reserves more properly 'individual'

---

the Friendly Natives' Contracts Confirmation Act 1866, the Governor in Council was authorised to grant land in fulfilment of direct settlements reached between the Crown's authorised agent and compensation claimants.

[4] Table 17, Wai 1750 #A12, pp. 256-258.

[5] Set out in Table 19, Wai 1750 #A12, p. 307. The reserves at Opape (for Te Whakatōhea) and Ōhiwa (for Te Upokorehe) predated the 1867 legislation. Although included in Table 19 in the report, I have not included the reservation of lands for Ngai Tamatea exiles in this summary total as their allocation cannot be construed as a 'return'.

[6] Table 18, Wai 1750 #A12, pp. 262-4.

awards?[7] Such ambiguity is part of the 'returned lands' story. I have dealt with the 'returned' confiscated lands in terms of 'tribal' reserves (chapter by chapter) and individual grants (considered together in a single chapter, irrespective of legal basis). Doing so reflects the tension between two major strands in nineteenth-century Crown policy with respect to indigenous New Zealanders and their land: the idea that British appropriation should not leave them entirely bereft, and the idea that their salvation lay in British assimilation.

The report also considers the Crown's allocation of confiscated land to tribal groups who possessed no customary rights. Ngāti Hinemanuhiri of Wairoa, led by Te Waru Tamatea, were relocated by the Crown on 334 acres at Waiōtahe after their surrender in December 1870, on condition the refugees did not return home. This community became known as Ngai Tamatea, their allocation akin to other 'tribal' confiscation reserves. Confiscated land was also used to pay for the military service provided by Te Arawa in the district between 1868 and 1870, amounting to 1,702 acres in surveyed five-acre 'surburban' and 25-acre 'country' lots to be granted to each of the 62 enlisted men.[8]

The job of arranging the post-war resettlement was given to a young John Wilson Junior. Eldest son of CMS missionary John Wilson Senior, Wilson had grown up in the district, which may have been seen by the government as an advantage. His appointment as Special Commissioner for the Settlement of the Bay of Plenty Confiscation District, however, presented a significant conflict of interest. One of the first surveys Wilson oversaw was that of his father's Old Land Claim of 1,916 acres along the western bank of the Waiōweka River, encompassing the family's farm at Hikutaia his father had been unable to obtain title for prior to the military takeover. As Crown Agent, Wilson used his father's purchase deeds in the Compensation Court to defeat claims for homelands between the Waiōweka and Waiōtahe Rivers.

[7] I refer here to Lot 338 Parish of Waioeka, allocated to 12 persons of Ngāti Rua and Lot 340 Parish of Waioeka allocated to 21 persons of Ngāti Ngahere and Ngai Tamahaua, see Table 19, Wai 1750 #A12, p. 307, discussed at pp. 155-164.

[8] These military awards were also granted under the Confiscated Lands Act 1867, the precise clause left unstated.

John Wilson Junior was a piece of work: at once a stickler for rules, and a rule unto himself.[9] Prickly, manipulative and self-aggrandising, his shameless representation, in 1867, of the early CMS land claims as purchases amounting to 'upwards of 20,000 acres' is as good example as any of his delusory bluster.[10] A self-appointed authority on local tribal affairs, hapū within the inquiry district were stuck with Wilson for most of the nineteenth century: his appointment in 1866 as Special Commissioner and Crown Agent was followed post-resettlement by that of State Land Purchase Officer and then Judge of the Native Land Court.[11]

'Tribal' reserves

Blanket confiscation in train by 1865 presented the issue of where to put the dispossessed. A major component of the government's evolving confiscation policy was the concentration of the incumbent population within any confiscated district on 'reserves'[12] (although there was no statutory provision for such reserves until October 1867). Governor Grey's 'peace proclamation' of 5 September 1865, for example, declared his intention to 'at once restore considerable quantities' of confiscated land 'to those ... who wish to settle down upon their lands, to hold them under Crown grants, and to live under the protection of the law.'[13] Even as the government prepared to invade Ōpōtiki, however, any distinction between 'rebel' and 'loyal' New Zealanders

[9] Ironically, as set out in the Part Two report, many of Wilson's unlawful practices were so effective they were subsequently enacted, such as the restrictive clauses Wilson included in Crown lease agreements preventing owners from other dealing; advancing payments for customary lands prior to title investigation; and his piecemeal purchase of individual interests in memorial land post-title. (Wai 1750 #A25, pp. 73-87).

[10] With respect to Wilson's land purchase operations in Gisborne, in 1876 Judge Rogan declared that Wilson was 'either insane or deliberately and intentionally making false statements for the purpose of deceiving the Government.' Wai 1750 #A25, p. 83. As set out in the Part Two report, Wilson's 'peculiar temperament and instincts' alienated virtually everyone who crossed his path, something the Native Department was aware of, Wai 1750 #A25, p. 75.

[11] Wilson displayed a proprietary hold over Te Whakatōhea's affairs as a result, see for example his 1888 cancellation of Ngāti Muriwai's partition of Opape 3A, which Heremia Hoera recalled as 'Judge Wilson then s[ai]d that no person other than himself had any right to meddle with these lands which he had given to the people.' Wai 1750 #A12, p. 102.

[12] Tribal reserves, of course, had been a feature of an earlier era of Crown pre-emption: the setting apart from any purchase of hapū lands sufficient area for their future needs – for good – an integral part of Crown purchasing – in theory at least.

[13] *New Zealand Gazette,* 5 September 1865, no. 35, p. 267.

in terms of resettlement had ceased to matter – the displacement of the resident population following confiscation applied equally to both.

Most of Te Whakatōhea had surrendered by November 1866. What became the Opape Native Reserve seems to have been initially envisaged as the sole reserve within the inquiry district, once the government had discounted deporting the population to the Chatham Islands.[14] As it happened, further reserves at Ōhiwa were conceded six months later when the Te Upokorehe community there refused to join Te Whakatōhea at Waiaua.[15] Three years later, the last of the 'surrendered rebels' among Te Whakatōhea, too, declined to join their whanaunga. Ngāti Ira obtained Waioeka Parish lands, at Te Rere and at the entrance of the Waiōweka Gorge. In December 1873, on the eve of the first Native Land Court sitting at Ōpōtiki, Native Minister McLean conceded further lands to Hira Te Popo and to those who had recently returned from their detention in Wellington.[16]

The origins of Ngai Tai's reserves illuminate the vagaries of the Crown's confiscation policy. Wi Kingi of Ngai Tai was an important ally in the Crown's military campaign of 1865 and while Ngai Tai's customary lands were included in the confiscation district as proclaimed, the government initially indicated it would 'abandon' confiscation beyond Tarakeha. The working confiscation line was shifted east to Tōrere during Compensation Court adjudication in 1867, however, in retaliation for Kingi's tenacity in asserting Ngai Tai mana as far as Tirohanga.

[14] Wilson was with Defence Minister Theodor Haultain, Agent for General Government, Auckland Daniel Pollen and Auckland Superintendent Frederick Whitaker when they inspected Waiaua for potential relocation, in February 1866, Wai 1750 #A12, p. 67. Te Ranapia Waihaku's recollection of being threatened with deportation related in my report is substantiated by Walzl's research, which confirms the military commander at Camp Ōpōtiki Colonel Lyon was advocating as much at the time, Wai 1750 #A30, p. 848. The decision to relocate Te Whakatōhea to Waiaua was made in April 1866.

[15] Tūhoe rangatira Rakuraku was credited with negotiating the reserves at Hiwarau and Hokianga Island, Wai 1750 #A12, p. 173.

[16] Ngāti Ira's additional parcels, Lots 337 and 393 Parish of Waioeka adjoined their existing reserves. Two other small parcels closer to town were allocated to 32 prisoners who had recently been released and who refused Wilson's allocation of land at Tirohanga. In my report I described Eru Waikape (aka Eru Nopenope) and this party, like Ngāti Ira, as the last resistance to 'come in'. Walzl since relates that these 32 were taken prisoner during the government attack on Waiōweka in April 1870 and committed under the Disturbed Districts Act 1869, Wai 1750 #A30, pp. 979-80. Walzl writes that all but one of these prisoners were deported to Wellington, where they presumably remained in detention until 1873. Eruera Waikapu and 10 others of Ngāti Rua obtained 11 acres at Te Ngaio (Lot 338 Parish of Waioeka) and 21 individuals of Ngāti Ngahere and Ngai Tama obtained 21 acres at Te Rere, beside Ngāti Ira (Lot 340).

Waiaua had long been contested ground between Ngai Tai and Te Whakatōhea.[17] Kingi disputed the relocation of Te Whakatōhea on what he regarded as Ngai Tai land and the Special Commissioner's bullying to date – a threat to confiscate Ngai Tai's land for pre-1865 'rebellion' if Kingi persisted – had not deterred the rangatira from claiming compensation on behalf of Ngai Tai for the confiscation of Waiaua. In September 1867, Crown Agent Wilson made good on his threat: Kingi was awarded scrip for his Waiaua claim but was immediately forced to prosecute another claim for Ngai Tai's homelands now encompassed by an expanded confiscation boundary. Notwithstanding the general amnesty of September 1865, Ngai Tai now found themselves tarred as 'rebels' for their 1864 allegiance to the Kingitanga. In obscure Compensation Court manoeuvring between the two men, the bulk of confiscated Ngai Tai land – what became Waiohoata Reserve – was awarded by the court to the 'loyal portion of the tribe': women and children making up 85 per cent of the 150 beneficiaries. The smaller sliver of Awaawakino Reserve was subsequently awarded to Ngai Tai under Sections 3 and 4 of the Confiscated Lands Act 1867 – the disenfranchised 'rebel' menfolk included as beneficiaries in the smaller reserve.[18]

Individualisation of title

Many of the confiscation reserves within the inquiry district – the bulk of 'returned' land – were dressed as tribal provisions – for Te Whakatōhea, for Te Upokorehe, for Ngāti Ira, for Ngai Tai. To this end, any grant or setting apart of reserved land under the 1867 Act could be subject to restrictions as the Governor saw fit.[19] The gazetted reserves for Te Upokorere and Ngāti Ira were either 'inalienably assured by grant in trust' or 'absolutely inalienable', with named trustees. Ngai Tai's reserves were similarly entrusted, any alienation requiring the prior consent of the Governor in Council. In every case bar one, a list of named reserve beneficiaries was compiled

[17] The dispute had been subject to mediation in 1843 and played out in subsequent Native Land Court litigation over customary title to the inland Whitikau and other blocks, dealt with in the Part Two report, Wai 1750 #A25, pp. 264-270.
[18] Wai 1750 #A12, pp. 213, 216.
[19] Section 6, Confiscated Lands Act 1867.

by the government's commissioner on the ground.[20] On the one hand, the confiscation reserves were out of step with simultaneous reform opening the Māori land market elsewhere to private enterprise: there *was* no legal provision for the creation of reserves from the judicial title determination introduced in the 1860s, the 'propriety or otherwise' of restricting the alienation of tribal land emerging from the Native Land Court as certificates of title issued to no more than ten owners left to the court's discretion. On the other hand, the listed beneficiaries of the confiscation reserves pioneered the memorial of title applied generally to Māori freehold land from 1873. In terms of the individualisation of title, the confiscation reserves were cutting edge, even if the implications of this were not realised for another generation.[21]

Crown resettlement along tribal lines was expedient – the incumbent population existed as tribal entities – but it *was not,* it must be stressed, founded on tribal mana. The concentration of Te Whakatōhea at Waiaua was deeply *un*-settling precisely because both the concentration and the relocation transgressed mana.[22] For the colonisers, rather, the tribal tags attached to these reserves were little more than a useful administrative device, a 'hanga noa iho' as one beneficiary later put it, under which to arrange the displaced population.[23] The 'hapū' status of these reserves became increasingly strained as the century wore on. At Ōhiwa, Hiwarau and Hokianga Island were gazetted in 1874, for example, as 'inalienably assured by a Grant in trust to the Members of

[20] The exception being the 12-acre campsite near Ōpōtiki township (Lot 311 Parish of Waioeka) which Wilson set aside for Te Whakatōhea visitors from Opape Reserve, without listing the beneficial owners. Although Opape Reserve was never gazetted as such, it was listed in the same terms in Commissioner of Native Reserves Charles Heaphy's inaugural report of 1871, 'for the Whakatohea Tribe' under the Confiscated Lands Act 1867. Undoubtedly based on Wilson's records, the listing broke down 390 beneficiaries in terms of men, women and children of Ngai Tamahaua, Ngāti Ira, Ngāti Patu, Ngāti Ngahere and Ngāti Rua. AJHR 1871 F-4, p. 31.

[21] The 'Native reserves' reintroduced in the Native Land Act 1873 (provided for, but seldom subsequently created), borrowed from the confiscation experiment, see Wai 1750 #A12, pp. 28-31. The essential difference in this 1873 legislation between such 'reserved' land and non-reserved, 'memorial' land boiled down to the definition of relative interests. Title investigation of non-reserved land required the Native Land Court not only to determine the individual owners, but also the proportionate share of each, a crucial prerequisite for subsequent partition and alienation. Individual interests in the proposed 'Native reserves', by contrast, remained undefined: beneficial ownership seemingly falling short of any individual freehold property right.

[22] Ngāti Rua were compelled to make room within their customary rohe for others. For their part, Ngai Tamahaua's enduring grievance was that none of their customary rohe had been restored to them.

[23] Mu Te Hura's testimony in the 1898 Hiwarau Reserve definition of relative interests case, Wai 1750 #A12, pp. 192-200.

the Upokorehe Tribe …[24] Wilson continued to espouse the reserves as such. But the list of 56 beneficiaries, revised in 1871 after five years of unrest, was more accurately a record of those who were there on the day of arrangement, irrespective of Te Upokorehe whakapapa.[25] In Te Upokorehe's case, the implications for hapū mana of what was, in effect, individualised title were not felt until the succession of interests by 'tauiwi' from 1881 onwards rattled their understanding of these Ōhiwa reserves as 'a toenga of their land retd. to them by the Govt.'[26] Their bid, in 1898, to minimise the relative interests of unrelated beneficiaries making themselves at home at Hiwarau was not successful. On this occasion, the Court ruled in effect that Hiwarau had not been intended as a hapū reserve, but rather that 'Te Upokorehe' had been adopted 'merely to distinguish a certain set of people who had lived in the Ohiwa Waiotahe district, & for whom land was to be provided for settlement purposes.'[27] The relative interests were instead defined in terms of gender and age. The bitter dispute over entitlement led directly to the partition of the reserve, in 1904.

For Te Whakatōhea, the hapū labels attached to their post-war resettlement created other, enduring tensions. After more than a decade of conflict over the limited arable land at Waiaua where the bulk of the tribe had resettled, in October 1879 John Wilson, now Commissioner of Tauranga Lands, secured an 'Ekirimene' / an 'Agreement' from Te Whakatōhea to subdivide Opape Reserve along hapū lines at government cost, as the government saw fit. Ngāti Muriwai's sheep-farming enterprise had brought conflict at Waiaua to a head, the agreement to partition also coinciding with preliminary agreements to sell Whitikau and Whakapaupakihi Blocks bordering the Motu River to the government.[28] The survey of the hapū partition was completed in 1880. The lists of beneficiaries, organised by Commissioner Herbert Brabant in negotiation with Te Whakatōhea, took another three years to finalise.

From the outset, Special Commissioner Wilson had arranged the post-war resettlement of Te Whakatōhea in terms of the five hapū of Ngāti Rua, Ngai Tamahaua, Ngāti Ira, Ngāti Ngahere

---

[24] Schedules 13 and 14, *New Zealand Gazette*, 14 November 1874, Wai 1750 #A12, pp. 182-183.
[25] Of the 56 beneficiaries of Hiwarau Reserve gazetted in 1874, only 29 of them were regarded as 'true' Te Upokorere by 1898.
[26] Te Warana Mokomoko, 7 March 1898, Wai 1750 #A12, p. 185.
[27] Hiwarau Definition of relative interests judgement, 16 OPO 334-5, Wai 1750 #A12, p. 197.
[28] Wai 1750 #A12, pp. 78-79; Wai 1750 #A25, pp.119-127.

and Ngāti Patu. For reasons which are not clear, in his 1880 partition scheme for Opape Reserve Wilson included Te Upokorehe as a sixth hapū. His partition was a simplistic exercise of straight lines, the 20,789-acre reserve cut in the first instance to create a coastal belt and interior hinterland, both of which were then split six ways in varying portions for each of the six hapū.

There is much about the Opape Reserve partition that remains shrouded. The evident winners, receiving the prized Waiaua lands, were Ngāti Rua, who had resisted the partition of Waiaua among Te Whakatōhea for the past decade. Ngai Tamahaua Rangatira Rewita Niwa later claimed that Wilson's handiwork had been an unpleasant surprise, the subdivision presented to Te Whakatōhea after the fact by Commissioner Brabant and Assessor Wi Kingi, in October 1881.[29] No one, Niwa later told Premier Seddon, would have knowingly agreed to receive Opape 1 or 2, land 'tenanted by ghosts'.

Wilson appears to have calculated the hapū portions based on an estimated per-head, equal share formula but, again, the fact that the partition survey was completed *before* Te Whakatōhea were consulted about beneficial ownership begs the question as to what extent these arrangements, too, were influenced by predetermined parameters. Certainly, Te Whakatōhea beneficiaries now had to choose which one hapū they identified with. In terms of beneficial ownership, Wilson's 1867 tally of 389 beneficiaries had increased to 690, the revised 1883 lists now including 'the whole tribe'.[30] That is, in addition to the Te Whakatōhea community who had been relocated there between 1866 and 1870, entitlement to the hapū partitions now included 'surrendered rebels' who had obtained reserves in the Parish of Waioeka and 'loyal' tribal members who had been awarded land via the compensation process. More puzzling still was the inclusion of people wholly outside of the district, whose inclusion Te Whakatōhea later came to rue. Such 'fattening' suggests an awareness of the per-head basis of partition but not, as yet perhaps, the implications

[29] Shortly before the Whitikau title determination, in December 1881, spearheaded by Ngāti Rua, see Wai 1750, #A25, pp. 125-133.
[30] Brabant, 22 January 1883, Wai 1750 #A12, p. 85.

of this: ‘The lists were compiled with the consent of all parties but not with the view of a division of the land.’[31]

The alleged conflation of hapū identity (and the inclusion of Te Upokorehe) remains a source of ongoing controversy today. It is not that the Special Commissioner made these hapū up – they existed – but rather the extent to which, for the purposes of his resettlement scheme, this six-hapū model became something of a socio-political straight-jacket imposed on Te Whakatōhea. Wiremu Rangihaerepo’s recollection of how the ‘Te Upokorehe’ list for Opape Reserve came about scarcely points to any basis in whakapapa.[32] Wilson and his fellow government officials on the ground were alive to the presence of smaller, constituent hapū (what they referred to as ‘subhapus’) as the preferred basis for subdivision at Waiaua. Brabant initially opposed Ngāti Muriwai’s partition because of the precedent it would set, arguing that further hapū partition could occur once title had issued, when the owners themselves would be liable for the survey costs. Ngāti Muriwai obtained their partition from the larger Ngāti Rua allocation at this point primarily because they undertook to pay for the survey. Ultimately, Wilson’s six-way split was seen as the simplest, least costly solution. It also concealed the fact, as Resident Magistrate Bush admitted in 1886, that closer settlement at Waiaua was unfeasible because of the lack of ‘sufficient good land’ to go around.[33]

The 1883 partition of Opape Reserve only served to reinforce the tribal status of these reservations. The ground had shifted, nonetheless. Gone was any explicit trusteeship. And although the relative interests of beneficial owners were left undefined, Ngāti Muriwai’s partition heralded the first inkling that beneficial ownership denoted a defined, *deductible* share of the tribal endowment. Talk of leasing the ‘bush blocks’ at this time, too, quietly reduced the notion

[31] Te Ranapia Waihaku, 13 December 1888, Wai 1750 #A12, p. 102. Resident Magistrate Bush’s 1886 reference to Ngāti Rua having included certain persons and ‘got land on their account’ speaks to some understanding on Te Whakatōhea’s part of the acres-per-person determinant, Wai 1750 #A12, p. 99.
[32] Wiremu Rangihaerepo, 11 November 1909, Wai 1750 #A12, p. 90. There are subsequent references in Native Land Court testimony to an imposed hapū model for ‘convenience’, see for example Heremia Hoera, 17 October 1895, Wai 1750 #A25, p. 328; or Te Hautakuru, 22 November 1895, Wai 1750 #A25, p. 333.
[33] Wai 1750 #A12, p. 93.

of Te Whakatōhea's inalienable reserve by half.[34] More ominously, two weeks after finalising the partition, Commissioner Brabant forwarded the survey costs tabulated against each block – together amounting to over £1027 – to Head Office, suggesting they be registered as liens, to be recovered at the point of future alienation.

Applications for the definition of relative interests in the confiscation reserves, a prerequisite for both partition and alienation, did not proceed until the mid-1890s. By this time, Te Whakatōhea were alive to the ramifications of individualisation: definition of relative interests in 1895 in the case of three Opape hapū subdivisions sought to undo the fattening of ownership lists 12 years before. In the case of the 'Te Upokorehe' partition of Opape Reserve, the 17 beneficiaries reduced to a one-eighth share at this time appear to have been the 'true Upokorehe' of Ōhiwa.[35] In 1896, Crown applications for charging orders for the partition survey liens incurred more than a decade before were dismissed by the Native Land Court.[36] Ngai Tamahaua and Ngāti Ira were the first to partition their reserves in 1898, the latter subdividing only the arable portion and keeping the bulk of Opape 6 as commonage. Ngāti Rua put off partition until 1904, which was surveyed in 1910. Despite having already paid for the private survey of their partition in 1883, 31 years later Ngāti Muriwai were forced to pay again for the government survey of Opape 3A.[37]

Present and future needs

Part of John Wilson's preoccupation with tribal head-counting related to how much land to set aside, but just what the Special Commissioner was working to is not clear-cut, other than the bare minimum.[38] His early estimate of Hiwarau Reserve for a Te Upokorehe community of 'about 30' works out at 50 acres per head. Five 50-acre parcels were awarded to certain Te Whakatōhea men 'for good behaviour'. A 50-acre formula coincides with the 'minimum'

[34] Native Department Under-Secretary Thomas Lewis informed Brabant that Crown grants 'with absolute restriction on alienability' would now issue for the coastal partitions Te Whakatōhea occupied, the inland partitions to vest in the Public Trustee, Wai 1750 #A12, p. 86.
[35] Wai 1750 #A12, pp. 105-6.
[36] On this occasion, Judge Wilson's long history worked in Te Whakatōhea's favour: 'It was understood that the Govt not the natives were to bear the expense.' Wai 1750 #A12, pp. 103-4.
[37] Wai 1750 #A12, pp. 128-130.
[38] Wilson later admitted that 'there was no set scale of allotments' but that 'each case was decided on its merits.' Wai 1750 #A12, p. 307.

sufficiency for each man, woman and child in the 'Native reserves' envisaged by the Native Land Act 1873.[39] On the other hand, in 1871 only 10,895 acres were officially deemed 'necessary' for Opape Reserve beneficiaries – working out at 28 acres per head.[40] By 1871, too, the upwards revision of Hiwarau Reserve beneficiaries to 56, coupled with a post-survey reduction of area Wilson refused to deviate from, reduced the allocation to 19 acres per head, not 50. (The Crown Agent had also deducted from Hiwarau Reserve two compensation awards he had been unable to otherwise defeat in court – locating the two 25-acre parcels on the ridge in the middle of the reserve, for good measure).[41] The greater part of Hiwarau Reserve was steep hillside, and much of the flat land below was swamp. In 1912, the Crown took more than 48 acres of Hiwarau A – what was left to Te Upokorehe beneficiaries of their supposedly inalienable reserve – under the Public Works Act for scenery preservation.

Opape Reserve, at 20,789 acres, was represented on occasion as proof of government magnanimity.[42] In truth, as government officials well knew from the outset, most of the reserve was steep broken hill-country. The 'bush blocks' of Wilson's 1880 partition – half of the reserve – remained just that. As alluded to above, even as Resident Magistrate Bush extolled the individualisation of title into family holdings, he admitted the lack of 'sufficient good land' made this impracticable at Opape Reserve, adding darkly: 'until their numbers are reduced.'[43] Best served on Opape Reserve were Ngāti Muriwai, whose consolidated interests partitioned in 1883 at Te Waiti Stream reveals a working formula of 30 acres per head. Ngāti Rua's share in the balance of Opape 3 at Waiaua amounted to just over 13 acres each. For Ngai Tamahaua the 1883 partition brought about a second dispossession, from their cultivations at Waiaua to the hapū allocation at Opape: 'the home of the Tawai (birch) and the Rewarewa (honeysuckle tree) amidst

[39] Section 24, Native Land Act 1873 discussed in Wai 1750 #A12, pp. 28-29.
[40] Wai 1750 #A12, p. 72.
[41] See Figure 15, Wai 1750 #A12, p. 175.
[42] McLean in 1873 met demands for land by referring to the '20,000 acres' Wilson had reserved for Te Whakatōhea at Opape, Wai 1750 #A12, p. 65, 307. In 1880, Brabant similarly countered Hekara Kopu's request to restore his confiscated land with the statement that 'about 21,000 acres' had been reserved for Te Whakatōhea, p. 83. In 1899, Premier and Native Minister Richard Seddon dismissed Ngai Tamahaua's petition for land on the grounds that their 'share' of confiscated land amounted to 'something over Five thousand acres', Wai 1750 #A12, p. 115.
[43] Wai 1750 #A12, p. 93.

high mountains, precipices, and boggy places …'[44] The hapū's 1898 partition of Opape 1 into family holdings was condemned by the Chief Surveyor in 1914 as 'useless for any settlement or practical purposes.'[45] Rewita Niwa continued to petition government for additional land within Ngai Tamahaua's rohe until his death in 1909, to no avail.[46]

Even for those considered to have been relatively well-endowed with reserved land – the Parish lands of Ngāti Ira – the Crown's definition of 'considerable quantities' amounted to less than nine acres per person. Those least served, the returned prisoners among Te Whakatōhea, received one acre each. In terms of present and future needs, the Crown's 'tribal' reservations augured little more than subsistence. At Waiaua by the 1890s, Ngāti Rua and Te Paku Eruera of Ngāti Muriwai ran modest sheep flocks, the only two such tangata whenua pastoral ventures within the inquiry district. The end of Ngāti Rua's tribal venture coincided with the partition of Opape 3, in 1904.

The deliberate marginalisation of local Māori contrasts with the Crown's fleeting solicitude for Wairoa refugees within the district. Government officials deemed it politic to keep Te Waru Tamatea and his people in the Bay of Plenty rather than return home. To do so, the community of 53 was given 300 acres at Waiōtahe – 'land of excellent quality' – as well as the means to kickstart production (including a plough and a pair of bullocks). The Crown's relative munificence, however, came at a price, for during their enforced absence in the Bay of Plenty, the government purchased the Upper Wairoa blocks from Ngāti Kahungunu whanaunga. Ngai Tamatea, as the community came to be called, were unable to return to Wairoa to defend their customary title to other lands until 1881.

---

[44] 'te kainga o te tawai, o te rewarewa, ki nga Maunga teitei, ki te pari, ki te pokopokorua …' Rewita Niwa, 1902, contemporary translation, Wai 1750 #A12, p. 116.
[45] Wai 1750 #A12, pp. 130-135.
[46] The Ngai Tamahaua rangatira believed Native Minister Carroll had promised as much, see discussion at Wai 1750 #A12, pp. 115-118.

Failure to issue title

Lands reserved by the Governor for Māori under the Confiscated Lands Act 1867 were either to be granted or merely 'set apart'.[47] Given the Crown's district-wide appropriation, one might have expected a degree of care with respect to the reservation of land for the displaced. Many of the confiscation reserves in the inquiry district including Opape Reserve, however, were not formally reserved by gazetted proclamation, let alone set apart or granted. In some cases, other than the names on the district survey plan or a pencilled reference in an old land register, there was nothing to indicate the reserved status of these Crown lands. The additional reserves Native Minister McLean agreed to in December 1873, for example, were recorded on a hand-written note titled 'Promises made' and subsequently misfiled. In 1886, Commissioner Brabant remarked that the delay in the issue of Crown grants was one of the 'standing grievances' among the Bay of Plenty communities. One of most disconcerting features of these confiscation reserves was the Crown's failure to issue title by the end of the nineteenth century. The exceptions were Hiwarau Reserve and two of Ngāti Ira's Parish lands, in 1886.[48]

The lesser option of 'setting apart' suggests the lack of clear title may have been deliberate from the outset. This certainly seems to have been the case for Ngai Tamatea's tenure at Waiōtahe, Under Secretary for Crown Lands WC Kensington admitting as much in 1908: 'I always understood the Maoris were to occupy & cultivate but no title was to issue …'[49] It is also the case that Crown grants could not issue without a survey, for which, being confiscated Crown land, the Crown was financially liable. In the case of Ngai Tai's reserves of Waiohoata and Awaawakino, the cost of doing so – what in 1872 Wilson called 'economical reasons' – may have been a factor in the ongoing Crown delay, until 1898.[50] Wilson rued the 'ruinous cost' of surveying the Opape Reserve partition at the government's expense in 1879. As Judge Wilson,

[47] In both cases, where the reserves were intended for multiple beneficiaries, the Governor could refer subsequent partition to the Native Land Court.
[48] Lots 336 and 393, Parish of Waioeka. The Crown grant for Hiwarau may have been prompted by a lease of the reserve.
[49] Justice Department Under-Secretary Frank Waldegrave a decade earlier shared this understanding: 'These lands have never been formally reserved, but were informally set apart for the occupation of Te Waru and his people, who as you are aware, were surrendered rebels. The lands are the property of the Crown, and I know of no intention of issuing any title to them to the Native occupants.' 17 July 1899, Wai 1750 #A12, p. 244.
[50] Wai 1750 A12, p. 75, 221.

his refusal in 1896 to make survey charging orders against the Opape Reserve partitions contributed to Surveyor General Percy Smith's refusal to issue title for the reserve partitions three years later.[51]

Neither of these factors, however, entirely account for the carelessness in formally reserving the lands in the first instance. One result of the lack of formal reservation was that over time, the reserve beneficiaries came to be regarded as squatters on Crown land, their tenure open to challenge. By the end of the century, Ngāti Ira were compelled to engage legal assistance and petition Parliament to combat Pākehā claims that they had 'no rights' to the 150-acre reserve Hira Te Popo had won from McLean in 1873.[52] In 1900, Commissioner of Crown Lands Gerhard Mueller, too, was working on the premise that the Waioeka Parish reserves were temporary arrangements, given to 'rebels' to occupy 'during good behaviour', their entitlement amounting to a life interest only. At Waiōtahe, Ngai Tamatea were faced with similar Pākehā trespass.

The failure to grant title to the confiscation reserves meant that these reserves legally remained Crown land. In practice, the reserve beneficiaries and the Native Land Court overlooked the technicality. Succession cases were processed from the early 1880s. Court applications and orders for the definition of relative interests and partition accelerated from the mid-1890s. The increasing administrative activity undoubtedly contributed to the dawning realisation among the judiciary by the beginning of the twentieth century, of the court's lack of jurisdiction to do so.

Legislative intervention in 1904 to have title to the reserves issue to the beneficial owners was block specific, affecting Opape, Waiohoata and Awaawakino Reserves and two of the Waioeka Parish Reserves coveted by Pākehā.[53] The task of title determination was given to the Native Land Court, the applications by Native Minister James Carroll under the Act heard by an aged Judge William Mair at Ōpōtiki in November 1907.[54] Again, however, what was largely a formality became mired in familiar maladministration and delay, the 1907 court orders left

[51] Wai 1750 #A12, pp. 103-04, 114.
[52] Lot 337 Parish of Waioeka
[53] Sections 12 and 13, Maori Land Claims Adjustment and Laws Amendment Act 1904.
[54] Like Wilson, William Mair was an old acquaintance of local Māori, having presided over the Compensation Court in 1867 and commanded the military post at Camp Ōpōtiki in 1868.

incomplete for at least another decade because of survey and other issues. Title to Ngāti Patu's Opape 9 and Opape 5 were still to issue by 1933.

Other confiscation reserves which had not been specified in the 1904 legislation were eventually dealt with under the more general provision of Section 25 of the Native Land Act 1909.[55] Title to Ngai Tamatea's reserves was ordered by the Native Land Court in 1912 and reheard on appeal in 1914. In 1924, however, the owners were informed that the 1914 orders did not constitute a complete title and were required to petition Parliament to authorise the court to do so. Title to Te Whakatōhea's 12-acre camping reserve on the outskirts of Ōpōtiki was ascertained by the Native Land Court in 1909 but, once again, the court order was never finalised. Title to Lot 311 Parish of Waioeka issued in 1965.

As precarious as their tenure was, the Crown's failure to issue title to the confiscation reserves was arguably the saving of them. For the paradox of twentieth century title determination was that it spelled the end of any 'reserve' status, effectively transforming the confiscation reserves into Māori freehold land at a time when all restrictions on the alienation of such land were removed.[56] The belated title determinations also occurred in a climate of national preoccupation with 'closer settlement' and the 'profitable utilisation' of 'surplus' Māori land, which scarcely seems coincidental. Native Land Commissioners Robert Stout and Apirana Ngata discovered at Ōpōtiki in January 1908 that Te Whakatōhea possessed no such 'surplus', describing Opape Reserve as second-class land at best. In the case of Waiohoata and Awaawakino Reserves, no sooner had legal title issued, than portions of these Ngai Tai reserves were incorporated to enable alienation by lease.

Individual Crown grants

Much less confiscated land was 'returned' to Māori by way of individual Crown grants, primarily as compensation either awarded by the Compensation Court or settled directly with Crown Agent

[55] The legislation provided that the Governor, by Order in Council, could confer upon the Native Land Court jurisdiction over 'any matter or question affecting the rights of Natives in any real or personal property'.
[56] Section 207, Native Land Act 1909.

Wilson, in 1867. Compensation for the Crown's land confiscation was only open to those who were deemed not to have been 'in rebellion'. In practice, this excluded virtually everyone within the inquiry district.[57] Many of the compensation claimants were women – the wives of 'tauiwi', both Māori and Pākehā – or the offspring of such unions who had been absent from the district over 1864-1865.[58]

Wilson's initial plan to satisfy these compensation claims, too, in a single 2000-acre reserve at Waiaua was upset by Chief Judge Fenton's early edict that claimants were to be compensated with their own land. The Special Commissioner's subsequent allocations within the surveyed settlement as compensation similarly threatened to come undone by the unexpected number of claims, many of them for lands already allotted to military settlers. But, in fact, the Special Commissioner enjoyed a wide discretion with seemingly little court oversight as to how compensation awards were selected on the ground. As alluded to already with respect to Hiwarau Reserve, the Crown agent was even able to locate 'successful' claimants within existing reserves for the displaced population.

Wilson avoided court if he could, preferring to 'settle' with claimants directly. When he could not, the Crown Agent 'defended' the claims. Absence helped claimants meet the 'loyalty' bar but left them vulnerable with respect to proving their 'title interest or claim', by demonstrative ongoing occupation, for example. Perversely, individual claims were countered by the Crown agent's 'defence' to show the area under claim more properly belonged to the wider hapū. Where claimants successfully won from the court a 'share' of tribal lands, the size of this share seems, once again, to have been prescribed by the Crown Agent, based on the census he had made for just this purpose. Most pernicious of all, perhaps, was Wilson's defeat of

[57] Two notable exceptions were Piahana Tiwai of Te Whakatōhea and Wiremu Kingi Tutahuarangi of Ngai Tai, both of whom collaborated with the government throughout 1865, see for example Wai 1750 #A30, pp. 588-89. Walzl relates that both men later led local contingents to assist the government's military operations against Te Kooti, in 1869, Wai 1750 #A30, pp.945; 950.

[58] The experience of these expatriates, held within the truncated, translated minutes of the Compensation Court, illuminate the phenomenon of widening whanaungatanga arising from the war and displacement of the 1820s and a counter-narrative to a people often cast as isolated and introverted. Rather, intermarriage and exchange on this scale suggests instead a district connected to the national fabric, both tribal and colonial, that adds to the evidence of material prosperity enjoyed by hapū in the post-Tiriti period prior to raupatu. Wai 1750 #A12, pp. 250-251.

Huriana Tahawa's claim to the ancestral lands of Te Upokorehe at Waiōtahe, by producing his father's purchase deed: 'to prove that the native title to this land was extinguished in 1840. Case dismissed.'

The maximum award for a fortunate few (discounting the exception of Piahana Tiwai) seems to have been 100 acres. Well over half of the claimants were awarded between 21-50 acres. At least six claimants received 20 acres or less. In two cases, cash settlements were made instead. In all, Crown compensation within the inquiry district in 1867 to individual Māori amounted to less than the single Crown grant John Wilson Senior obtained as a direct result of confiscation and only slightly more than what Te Arawa received at Ohiwa for two years' military service.

Unlike the 'tribal' reserves, with a handful of exceptions, Crown grants were issued for these compensation awards within a year or two, and they came with no restrictions on alienation. Grantees were free to sell their titles and many of them did so, some of them very quickly. By the time of Wilson's return to the district to finalise settlement in 1872, five grants were already sold. Over the remainder of the 1870s, 14 further grants were sold, two of them to Resident Magistrate Brabant; in the 1880s, four grants were sold; in the 1890s, a further eight. By the time of the Native Land Act 1909, as far as I have been able to determine, 25 of the 61 compensation awards remained in Māori ownership, amounting to some 498 acres, a little over a quarter of the total area granted as compensation. The rest appear to have been permanently alienated.

Wilson also used his discretion between 1866 and 1873 to award land to individual 'surrendered rebels' under Section 4 of the Confiscated Lands Act 1867. Fifty-acre allocations were made for a small number of Te Whakatōhea men used by the Crown Agent to 'defend' claims in the Compensation Court.[59] A handful of awards were subsequently made to other

[59] Namely Rewiri Rangimatanuku, Pokanoa Awanui (aka Awanui Te Aporotanga), Witeria Tawhi Moka, Te Ranapia Uatuaho and Piri Te Makarini, see Table 18, Wai 1750 #A12, p. 262. The Crown grants for these parcels were to issue 'when they shall have proved themselves loyal for three years from 1st December last [1866]'. In the event, the Crown grants issued in 1879.

rangatira to smooth the path of resettlement more generally, and to two individuals aggrieved by the compensation process.[60]

If the nineteenth-century story of the confiscation reserves is the gradual attrition of any inalienable, 'tribal' endowment to individualised 'memorial' Māori freehold, the story of Crown-granted land to individual Māori within the inquiry district is the gradual reach of restrictive regulations preventing them from dealing freely with their titles.[61] As alluded to above, many of the Crown grants issued as compensation were sold within a decade of receiving them. Increasingly, however, Crown grants issued to individual Māori were brought instead into the fold of Māori 'memorial' land subject to restrictions on alienation.[62] Individual Crown grants of confiscated land in the inquiry district that issued in the late 1870s came with restrictions.

In the case of Te Arawa's military awards at Ōhiwa, restrictions were imposed at the point the Crown Grants were issued in 1879, by government officials who knew full well this had never been part of the bargain. Dressed as Crown solicitude ('in the case of grants to Natives restrictions are imposed for good reasons & in the interests of the Natives themselves'), the insertion of the 'usual restrictive clause' on these military grants had much more tight-fisted colonial objectives in mind. The government deliberately delayed issuing Te Arawa servicemen title to their surveyed sections for a decade to keep them at Ōhiwa, on the reasoning that they would return to Rotorua once they sold their Crown grants. In the face of the grantees' determination to do just that, the restrictions were deliberately applied, and then maintained, so that the Crown could procure the sections at less than market value.

---

[60] Again, set out in Table 18. Wilson awarded land to former Crown adversaries Hira Te Popo, Erueti Tamaikowha and Hemi Kakitu and to individuals he had previously defeated in the Compensation Court, namely Wiremu Rangihaerepo and Huriana.

[61] In the second half of the nineteenth century, restrictions on the alienation of 'memorial' land (as opposed to the creation of 'reserves') became the principal means of arresting the pace of dispossession arising from judicial title investigation. From 1867, the Native Land Court had discretion to consider placing restrictions on the alienation of the resulting certificates of title. By 1880, this was a requirement in every case. Power to remove restrictions lay with the Governor, on the recommendation of the Native Minister. The primary test both for imposing or removing such restrictions on alienation became whether the Māori vendors would be left with a 'sufficiency' for their maintenance as a result.

[62] The differential treatment was cemented in place by the Native Land Court Act 1886, which defined 'land' over which the court had jurisdiction as land held be Māori, whether by Crown grant, memorial of ownership, or certificate of title under the Land Transfer Act. Wai 1750 #A12, pp. 35-39.

In the circumstances of overnight, wholesale dispossession wrought by confiscation, any protective rationale for such restrictions appears farcical. Hetaraka Te Wakaunua received the Crown grant for his 9.5-acre compensation award in 1878. It, too, issued with restrictions against alienation. The Tūhoe landowner's 1899 application to 'wetekina te here' / remove the restrictions to enable him to sell the section took five years to process and was finally dismissed by the Native Land Court on the grounds that the sale would leave him landless.

Te Whakatōhea academic and Waitangi Tribunal member, the late Ranginui Walker writes of the historical amnesia that characterises settler colonialism. Fifty years after confiscation, the basis of any 'returned lands' – whether as 'tribal reserves' or as individual Crown grants – had ceased to be of any relevance. By 1909, both categories had been merged into the ahistorical catch-all of Māori freehold land, disassociated altogether from the historical events – and undertakings – that created them in the first place.

Old Land Claims

There remains the tale of the Church Missionary Society's 'Old Land Claims' at Ōpōtiki.[63] These so-called land purchases are important to the story of confiscation, not only because of John Wilson Junior's role in post-war resettlement and his use of his father's deeds to defeat compensation claims, but more importantly because of the unrealised Crown interest these Old Land Claims represented by 1862 which informs the government's confiscation of the district four years later.

John Wilson Senior's 1840 'purchases', on behalf of the Church Missionary Society at Tirohanga (the 'Ngaio' purchase) on the one hand, and on his own behalf and that of fellow CMS missionaries James Stack and Alfred Brown at Hikutaia (the 'Pakihi' purchase) on the other, were in breach of the law, transacted as they were after the Crown's deadline of 14 January

[63] The report explores, too, the similarly unlawful, yet successful, claims of Roman Catholic Bishop Jean Pompallier and Auckland Superintendent Frederick Whitaker.

1840.[64] Wilson recorded an agreement on 17 January 1840 and he later related that payment was made on 9 March. The deeds themselves were dated 27 and 28 January 1840 respectively, when the Reverend Brown thought that Hobson's proclamation of 30 January 1840 was the date to beat.[65]

More importantly, the missionaries' claim by November 1841 that Wilson's transactions on his first visit to Ōpōtiki in January 1840 amounted to the purchase of 3,840 acres (the Pakihi deed) and 2,500 acres (the Ngaio deed) beggared local understandings of what had been transacted. Te Whakatōhea had little, if any, first-hand experience of trading land at this time but they were privy to advice from those who had, namely their Ngāpuhi in-law, Moka.[66] Even if Ngāpuhi did not share European ideas about real property such as permanent alienation and exclusive occupancy, one wonders if the Ngai Tawake rangatira's cautionary tales after a decade of land trading in the Bay of Islands account for the 'tuku' in Wilson's deeds, *not* of 'whenua', but rather '*tetahi kainga*' / a home. It is also apparent that Wilson's transactions with the signatories did not have the mandate of the hapū at large.[67] Te Whakatōhea, again with Moka's input, were concerned enough within days of Wilson's March 1840 payment to have Bishop Pompallier prepare another 'deed' banning land trade altogether.[68]

---

[64] And submitted to the Land Claims Commission, according to Walzl, well past the cut-off date for claims, 4 February 1841. Wai 1750 #A30, p. 123. Note that Walzl dates Governor Gipps' proclamation voiding all future private trading as 19 January (Wai 1750 #A30, p. 52), whereas the date was actually 14 January 1840, see Waitangi Tribunal, *He Whakaputanga me te Tiriti The Declaration and the Treaty: Report on Stage 1 of the Te Paparahi o Te Raki Inquiry*, 2014, p. 340.

[65] Wai 1750 #A30, p. 124.

[66] Moka Kainga-matā with his elder brothers Rewa and Te Wharerahi were known as Patukeha, their mana at Kororāreka from 1830 placing them at the forefront of engagement with Europe. Moka signed He Whakapūtanga in 1835. He is recorded as speaking against Te Tiriti o Waitangi in February 1840, principally on account of concern about the existing land trade. His name appears on Te Tiriti o Waitangi, but not his mark. The testimony of Moka's two Ngati Ira sons, Rewiri and Witeria Moka, and the 1867 Compensation Court minutes in general, provide important insight into intertribal exchange right up to the sovereignty wars of the 1860s.

[67] Walzl relates that in 1861, Wilson divulged that the payment for the 'tribal' land was given, of necessity, to 'six or seven Chiefs', Wai 1750 #A30, pp. 53-54. The Ngaio deed bears 14 signatories and that for Pakihi, 25 signatories. Walzl's research also establishes that the lack of hapū mandate was emphasised in the subsequent 1853 repudiation of the Ngaio deed, with respect to Ngāti Ngahere and Ngāti Rua, and by Wiremu Rangihaerepo and others with respect to the Pakihi deed in their 1898 petition, Wai 1750 #A30, pp. 65; 152.

[68] 'by virtue of which the possession of their lands would be made common to them all, and in such a manner that it would be unlawful for any one, *no matter who*, to sell the smallest portion.' Jean Pompallier, 1888, again cited by Walzl in Wai 1750 #A30, p. 57. My emphasis.

Te Whakatōhea never disputed Wilson's Hikutaia transaction outright, although the same could not be said for Te Upokorehe.[69] The Anglican mission at Hikutaia clearly enjoyed a degree of support from a local congregation throughout the 1840s, however 'lukewarm'. But the ambit of the Wilson's farming enterprise remained contested throughout the duration of their residency, which lasted until 1851. Opposition from Te Upokorehe and others was represented by Wilson to the Land Claims Commission in 1844 as simply a matter of payment. In 1861, he told Governor Grey the 'purchase' had evoked 'constant opposition and bad conduct' from locals virtually ever since he had moved in.

The missionaries were successful in obtaining grants in 1844 for these transactions despite the breach of the Crown prohibition. In 1854, Te Whakatōhea were successful in repudiating the Ngaio deed, paying back to the CMS an equivalent value in livestock. Not so the Pakihi deed. Shortly after winning the grant in 1844, Archdeacon Brown had exchanged his share of the Pakihi claim for government scrip, which meant the Crown was now vested in the claim. The subsequent government survey of the Pakihi Block in 1854 more than tripled the Land Claims Commission's 1844 grant: the missionary 'kainga' now purported to be 11,470 acres, most of it falling to the Crown as 'surplus'. The government survey was based on the boundaries set out in the 1840 deed. One last element in this sorry saga is the 'trust' arrangement Wilson may have sold to Te Whakatōhea on the eve of the Crown's treaty-signing: a mission in fact 'to secure as much land as can still be obtained for a station *& the use of the people*.'[70] Post-treaty, similar CMS professed trust arrangements fell by the wayside. In the North-Eastern Bay of Plenty, however, government sponsorship of Wilson's fabrication held out the means of prizing open the steadfastly autonomous district to Pākehā settlement.

---

[69] Again, in 1898 Wiremu Rangihaerepo and others alleged the transaction for Hikutaia had been 'for school purposes and probably did not contain more than about one hundred acres.' Wai 1750 #A30, p. 65.

[70] William Williams, writing of Wilson's January 1840 visit, Wai 1750 #A30, p. 42. My emphasis. The issue is discussed by Walzl, who points to similar trust arrangements initiated by the CMS in response to company-scale private land trading by the close of 1839. Wai 1750 #A30, pp. 85-87. I would add that CMS 'trust' deeds in the Bay of Islands date back at least to 1836, with little to differentiate them from the CMS's other land deeds transacted there. Bruce Stirling with Richard Towers, '"Not with the sword but with the pen": The Taking of the Northland Old Land Claims (CFRT, 2007), Wai 1040 #A9, pp. 168-9.

Impacts

The nineteenth century was not an easy one for the people of the North-Eastern Bay of Plenty. Initially, their hardships had nothing to do with the Crown. As explored more fully in the Part Two report, widening tribal hegemony evident by the early nineteenth century (partly resulting from local conflict like that over Waiaua, for example) was upset from around 1822 by waves of foreign taua from the north. In addition to unprecedented numbers killed or captured, the terror unleashed by these musket-bearing armies saw the local population remove entirely from the district.[71] On their eventual return, dissipated Te Whakatōhea hapū drew together at Ōpōtiki, the tribal concentration encouraged by expanding agricultural production to take advantage of new trading opportunities. Ngai Tai returned to Tunapāhore.[72]

From 1840, for the next twenty years or so, the people within the inquiry district enjoyed trade-fuelled prosperity in a new era of Te Ture-inspired peace. To be clear, indigenous experimentation with the rule of law does *not* mean the writ of British law applied in the district. Nor did it spell the end of hapū mana, the socio-political engine driving local development. It did, however, reflect increasing interest by tribal society in peaceable alternatives to the forcible restitution of mana, *not* because of biblical injunctions to love one's neighbour, but because expanding economic opportunities demanded change.[73]

---

[71] Ngai Tai initially joined Ngāti Maru at Hauraki, returning overland to Tōrere, and then removed again, this time to Tūranga. After Ngāpuhi's attack against them at Te Papa, Te Whakatōhea took sanctuary with Ngai Te Rangi at Tauranga – taking part in Ngāti Haua's battle against Ngāti Maru at Taumatawiwi in 1830 and that of Ngai Te Rangi against Ngāpuhi at Motiti Island, in 1832 – returning to Ōpōtiki by sea sometime after. Ngāti Rua went east for sanctuary – first to Wharekahika and then to Tūranga, before returning home. Wai 1750 #A25, p. 265.

[72] Not Tōrere as stated in my report, see Wai 1750 #A25, p. 265. Walzl relates that Ngai Tai relocated to Tōrere in 1862, Wai 1750 #A30, p. 302.

[73] By 'Te Ture / the rule of law', I mean simply the authority and influence of law in society, as a constraint on individual and institutional behaviour. Civil society guided by the rule of law was a radical departure from the prevailing order in New Zealand, which made little impression on New Zealanders until the 1830s. Fundamentally, the biblical idea of subjection to abstract law with its corollary of impartial judgement and punishment ran counter to that of personal autonomy derived from divine authority – inherent and inherited mana – and the direct and personal responsibility for upholding the same. Against this prevailing worldview, missionary efforts regarding Te Ture in the Bay of Islands had been necessarily modest, experimental 'kooti whakawā' (courts of inquiry) confined to their mission stations. Far from being ahistorical as David Williams asserts (Wai 1750 #A31, pp. 339-341), Te Ture as an innovation of social order made its resounding debut in Ngāpuhi's 1835 declaration of independence, He Whakaputanga o te Rangatiratanga o Nu Tireni. In expressing their sovereignty within He Whenua

Hapū within this inquiry district were not taxed as Ngāpuhi earlier had been to navigate the impact on mana of European-scale resource extraction and land trading. Even so, the economic development Henry Turton described at Ōpōtiki by 1861 – the thirteen vessels at anchor, upwards of 50 ploughs, 26 drays and carts, miles of good roads, a water mill, and bridges besides – could not have been achieved under the tikanga of forcible dispute resolution – the taua of old.[74] The very existence of runanga – and again, Turton reported there were two at Ōpōtiki, one of which was 70-strong – speaks to a new, mediated order, however nascent and imperfect. Wilson's post-war list of Ōhiwa residents from as far afield as Ngāti Kahungunu, Ngāti Porou, Te Whānau-a-Apanui and Tapuika indicates that Te Ture also delivered a novel mobility among these tribal nations.[75] Prevailing tribal sovereignty was no less for such experimentation.

The Crown's war against New Zealanders from 1861 was primarily designed to destroy such tribal autonomy. Within the North-Eastern Bay of Plenty, an unsuccessful campaign against the colonial government in 1864 was followed by debilitating disease. Crown raupatu that followed in 1865 – both the military invasion and the ensuing land confiscation – turned all existing authority and settlement on its head.

It was a long way to fall. I have alluded above to the violation of mana confiscation wrought, both in the short-term extinguishment of customary title and the long-term resettlement of hapū devoid of any customary basis. Crown resettlement of the incumbent population was both mean-spirited and careless, a combination that reduced the formers owners of this inquiry district to subsistence, their title even to these confiscated fragments vulnerable to further incursion. The violation of mana was felt in a myriad of ways: in poverty and poor health, in high mortality rates, in bitter division within and between hapū, in recourse to alcohol, in systemic marginalisation in the new order. Different Crown officials, at different times, equated Māori tenure in this confiscated district to a 'life interest', without future. The retention of mana in the face of this adversity is an epic of resilience.

Rangatira, Ngapuhi's 'Tino' Rangatira proposed to gather every autumn to 'whakarite ture' / make law – 'for the dispensation of justice, the preservation of peace and good order, and the regulation of trade …'

[74] Henry Turton, visiting in 1861, see Wai 1750 #A30, p. 300.

[75] Wai 1750 #A12, p. 179.

Crown raupatu was a colonial act of naked force and appropriation. For the remainder of the nineteenth century, the ‘tribal’ reserved lands within the inquiry district remained a place to regroup, attracting decreasing government interest over time. Any apparent stasis, however, belies the turmoil facing hapū from 1873 from their customary lands outside of the confiscation district – the lands ‘a waho’. Even as the last Parish parcels were reserved in 1873, Land Purchase Officer Wilson had designs on purchasing the wider district for the Crown. The Opape Reserve hapu subdivision occurred in the context of a divisive court battle over customary rights to the interior lands of Whitikau and soon after the partition lists of owners were settled, Te Whakatōhea were forced back into court to prove their title to Oamaru Block. The bitter contest for the interior continued into the mid-1890s, by which time the Crown had renewed aggressive land purchase operations targeting individual interests. These matters are the subject of the Part Two report.